

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

**08 FEBRUARY 2021**

**DAY 339**



**Gauteng Transcribers**  
Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 08 FEBRUARY 2021**

**CHAIRPERSON:** Good morning Mr Freund, good morning everybody.

**ADV FREUND SC:** Good morning Judge.

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

**ADV FREUND SC:** I am indeed Judge. We have available two witnesses to lead this morning if all goes well.

**CHAIRPERSON:** Yes. Okay go ahead you may call your first witness.

10 **ADV FREUND SC:** Thank you Chair. The first witness is Ms Dikeledi Magadzi. Ms Magadzi could you maybe come on screen please?

**MR FROLICK:** Thank you very much; good morning Deputy Judge President.

**CHAIRPERSON:** Good morning Ms Magadzi.

**ADV FREUND SC:** Good morning Ms Magadzi.

**CHAIRPERSON:** Good morning thank you for making yourself available to come and assist the commission. Yes Mr Freund may I ask the Registrar to administer the oath or  
20 affirmation?

**ADV FREUND SC:** Please do.

**CHAIRPERSON:** Please Registrar. Please come back on the screen Ms Magadzi.

**ADV FREUND SC:** That is only Ms Magadzi say something and then you will come on screen.

**CHAIRPERSON:** Can you hear me Ms Magadzi?

**MS MAGADZI:** I can hear you Chief Justice.

**CHAIRPERSON:** Yes.

**MS MAGADZI:** Deputy Chief Justice I am sorry.

**CHAIRPERSON:** Well I see you are promoting me this morning. Yes can I just confirm

**MS MAGADZI:** I can hear you Deputy Chief Justice.

**CHAIRPERSON:** Yes. Can I just confirm the correct pronunciation of your surname. Is it Magadzi or what is the  
10 correct pronunciation?

**MS MAGADZI:** That is correct.

**CHAIRPERSON:** Magadzi.

**MS MAGADZI:** That is correct it is Magadzi.

**CHAIRPERSON:** Okay alright thank you.

**MS MAGADZI:** Yes.

**CHAIRPERSON:** Okay the Registrar will administer either the oath; prescribed oath or affirmation in accordance with your choice.

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

20 **MS MAGADZI:** Dikeledi Phillistus Magadzi.

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

**MS MAGADZI:** No I do not have.

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

**MS MAGADZI:** Yes I do.

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

**MS MAGADZI:** So help me God.

**CHAIRPERSON:** Thank you very much Ms Magadzi. Mr Freund do you want to proceed?

**ADV FREUND SC:** Thank you Chair. Chair you will recall  
10 on a previous occasion we have made mention of Exhibit ZZ1 at the beginning of Volume 1 and you have...

**CHAIRPERSON:** Yes.

**ADV FREUND SC:** Provisionally admitted the whole of ZZ1.

**CHAIRPERSON:** Yes.

**ADV FREUND SC:** Which would include ZZ1.9 which is the affidavit of Ms Magadzi but I will now take Ms Magadzi to ZZ1.9 it starts in Volume 1 at page 90 - 90.

**CHAIRPERSON:** Thank you Mr Freund yes.

20 **ADV FREUND SC:** Ms Magadzi can you – Ms Magadzi can you confirm that at the request of the African National Congress and in response to an invitation from the Commission to your political party you were one of several people who deposed to affidavits and submitted them to the commission through Mr Krish Naidoo?

**MS MAGADZI:** Yes that is correct.

**ADV FREUND SC:** And do you have with you a copy of your own affidavit paginated in accordance with the pagination system of the commission's?

**MS MAGADZI:** Yes I do.

**ADV FREUND SC:** Thank you. If you would just look please at page 90 in Volume 1 that should be the front page of your affidavit and then go through to page 99 that should be the page where you signed. Can you confirm  
10 that that is your affidavit?

**MS MAGADZI:** Yes it is my signature.

**ADV FREUND SC:** Thank you. Chair to the extent that this was provisionally admitted I ask that it be admitted as Annexure ZZ1.9.

**CHAIRPERSON:** Thank you. The affidavit of Ms Phillistus Dikeledi Magadzi which starts at page 90 is now finally admitted as Exhibit ZZ1.19. Yes.

**ADV FREUND SC:** Thank you. Thank you Chair. Ms Magadzi I see from the first page of your affidavit that you  
20 are a member – you are currently Deputy Minister of Transport, is that correct?

**MS MAGADZI:** That is correct yes.

**ADV FREUND SC:** And is it correct that you became a member of Parliament in the National Assembly from the commencement of the Fifth Parliament in other words from

2014 and that you have remained a member of Parliament since then?

**MS MAGADZI:** Yes that is correct.

**ADV FREUND SC:** And I get the impression from your paragraph 3 that in the 20 years before that – before you came to Parliament you served in the Limpopo Provincial Government as MEC in a number of capacities, is that correct?

**MS MAGADZI:** That is correct yes.

10 **ADV FREUND SC:** And when you came to Parliament as a member of Parliament with effect from 2014 as you say in paragraph 6 of your affidavit is it correct that you were appointed as the Chairperson of the Portfolio Committee on Transport?

**MS MAGADZI:** That is correct.

**ADV FREUND SC:** Now it is precisely because you were the Chairperson of the Portfolio Committee on Transport between 2014 and 2019 that you were requested by your organisation to depose to this affidavit – your organisation  
20 having been informed that this was one of the committees on which evidence would be led before the commission. Is that correct?

**MS MAGADZI:** That is correct.

**ADV FREUND SC:** Alright. Now you say in paragraph 7 of your affidavit that your Portfolio Committee consisted of 12

members 7 from the ANC 2 from the Democratic Alliance and 1 each from the Inkata Freedom Party, Economic Freedom Fighters and National Freedom Party that is correct is it?

**MS MAGADZI:** That is correct.

**ADV FREUND SC:** And I suppose it follows that because 7 of the 12 came from the ANC they would by having the majority vote be in a position ultimately to determine the decisions of that committee. You agree?

10 **MS MAGADZI:** That is correct the ANC had 7 members.

**ADV FREUND SC:** Now you make the point in paragraph 8 that this Portfolio Committee's function was to oversee the operations of the Department of Transport and that that department had 12 state owned entities under its jurisdiction of which PRASA was just one, is that correct?

**MS MAGADZI:** That is correct.

**ADV FREUND SC:** And you say in paragraph 9 the first sentence:

20 "Overall the Committee performed its oversight obligation well."

Is that also in your view?

**MS MAGADZI:** That is my view and I believe that the correct – the Committee was doing its work well in terms of oversight on all the entities plus the department.

**ADV FREUND SC:** Right. Thank you. But you do make



the point in paragraph 10 well in paragraphs 9 and 10 you say:

“Save for PRASA the other state owned entities that reported to the Portfolio Committee were relatively stable but PRASA was a particular concern and the Committee focused its attention on this enterprise during your tenure as Chairperson.”

10 Is that correct?

**MS MAGADZI:** That is correct.

**ADV FREUND SC:** And then in paragraph 11 you refer – well I do not think there is any controversy about this to the fact that PRASA was then undergoing a modernisation process and it involved very substantial transactions that it was involved with including revitalising of platforms and stations, refurbishing trains, purchase of a new train from France and locomotives from Brazil, renewal of railway tracks and so forth – it was undergoing – it was engaged in  
20 a fundamental process of restructuring and reconstituting itself and involving an enormous amount of published – public expenditure. Would that be correct?

**MS MAGADZI:** It is correct.

**ADV FREUND SC:** And then you make...

**MS MAGADZI:** The organisation program as we

**ADV FREUND SC:** Please proceed.

**MS MAGADZI:** Thank you very much. I wanted to indicate that on our arrival we – we were given a document which was indicating the organisation program of PRASA and subsequent to that we – we were following up on how work was being done and that is why I indicated in the previous paragraph to say we met with challenges as we were trying to follow up and oversee the work as was indicated not only in the organisation documentation but also in their  
10 strategic planning of the year 2014 to 2019 we saw that there were problems in terms of them implementing the strategic plan and also even with their annual plans there were challenges.

**ADV FREUND SC:** Right and we are going to come to that is some details shortly but I am just trying to sketch the background and part of the background is the point that you make in paragraph 12 which is:

20 “That it was difficult to carry out the committee’s oversight obligation as a consequence of the high turnover of executives, Chief Executive Officers and Board members after 2015.”

Is that a fair summary of the point you were trying to make there?

**MS MAGADZI:** That is correct.

**ADV FREUND SC:** And you say during your tenure as Chairperson there were three Ministers Dipuo Peters, Joe Masangwani and Blade Nzimande. There were four boards. There were numerous Chief Executive Officers and that this instability you say hampered the Portfolio Committee's efforts to follow up on allegations in the media with the trains, with purchase – that the trains purchased were not fit for purpose. Let us just leave that last sentence for the moment other account – we will come back to that.

10 I think the point you really trying to stress here is was a period of very considerable instability at the level of Minister; at the level of Board and at the level of Chief Executive Officer and frankly also at the level of senior management at the level directly below Chief Executive Officer, am I understanding you correctly?

**MS MAGADZI:** That is correct.

**ADV FREUND SC:** Now you then say in paragraph 13 that despite the high turnover of Ministers you did not experience any pushback from the Executive Authority and  
20 there was alignment you say between yourself and the different Ministers. Now I would just like to focus very briefly on that feature of Parliamentary oversight. The importance of the relationship between the Chair of the relevant Portfolio Committee and the Minister responsible for that same Portfolio. You would agree I presume that

that is an important relationship which affects the effectiveness of Parliamentary oversight in respect of that Portfolio?

**MS MAGADZI:** That is correct. We – I would say all the three Ministers we really worked amicably and whenever there were issues I will raise with the Minister responsible and we will have discussions even them attending the Portfolio Committee meetings was not an issue at all.

**ADV FREUND SC:** Alright. And then in paragraph 14 you  
10 say:

“Another factor which made it difficult for the committee to exercise to proper oversight over PRASA was the difference of approach between the committee and the PRASA board as to how challenges at PRASA should be dealt with.”

Now I – I would ask you please to elaborate bearing in mind the very point that you have made about instability. There was – there was a board that had been chaired by if  
20 I am not mistaken Siphiso Buthelezi.

**MS MAGADZI:** That is correct.

**ADV FREUND SC:** It was that board that replaced that board that was chaired by Mr Popo Molefe if I remember correctly.

**MS MAGADZI:** Huh-uh.

**ADV FREUND SC:** That board itself was removed by the Minister and replaced by an interim board. That interim board was again replaced by Mr Popo Molefe's board. That board's turn of office came to an end and another board was installed. That board in due course was itself removed and so forth. So it is important for us to – to refer to that in order to understand what it is you are trying to say in paragraph 14. When you say there was a difference of approach between the committee and the  
10 PRASA board could you be a little more specific please?

**MS MAGADZI:** Thank you very much we indeed like we had indicated we had Mr Buthelezi who was on our arrival the board did not stay very long it had reached their term of office expired and the board that was chaired by Dr Molefe came in and then we had a board which actually was chaired by the now Judge Maluleke and Mr 00:17:27 came back again for a short stint and then there was Mr Kweyama but I need to indicate that our challenge was – what we were seeing as the Portfolio Committee and I will  
20 speak particularly to the board that was chaired by Mr Molefe was that whatever we wanted information; we wanted to oversight; most of the things Mr Molefe was – would always remind us that we are like over-stepping our mark with respect to the oversight that we want to do and the – we are interfering with his fiduciary duties as the

board. And these were some of the things which actually we were experiencing with him to an extent let me indicate that we had an oversight meeting that we – we wanted to go and see the tour trains; we wanted to have discussions with the board on the SA Phasing issue and lastly our oversight in particular it – I – was also to go and see the factory that was established in Nigel. But let me indicate that we were also accompanied by the Portfolio – the Portfolio – this – the Portfolio Committee on Appropriation.

10 We were together with that committee.

On our arrival when we wanted to – to deal with the issues of the SA Phasing in a meeting we ended up not talking to the issues because the chairperson of the board left us in that meeting indicated that he has got other issues to deal with and therefore knowing very well that the – the acting Group Chief Executive has said to us that the reinstatement of the SA Phasing was the decision of the board therefore it became a futile exercise for us to can continually talking to the issues of the SA Phasing.

20 She wanted to get issues from the board.

And I need to indicate that the other thing which was kind of challenging to us was whenever we wanted to meet with the board of PRASA it will only be the chairperson of the board who will come to the meeting.

Even when we were dealing with matters that are

relating to Audit and Risk the chairperson of Audit and Risk will never be there. It will only be the chairperson of the board which actually was as Portfolio Committee it was a challenge for us to can be able to deal with issues because you will have different sub-committees of the board which actually you know expects that they should be able to be held accountable in this regard.

And I need to say going back to this time when we were with the Appropriation Committee we went indeed to  
10 go and look at the 00:21:00 and we satisfied ourselves that we will go back to Parliament and every – we will sit down and as committee and say these are the findings that we had which indeed we were able to do and lastly the other site visit that we had to do was to go to Nigel to go and check the factory.

Whilst we were there we were told that the factory is not ready and therefore we could not go and visit that factory. But at the centre was that you will have  
20 functionaries do not have the board which can be able to explain some of the things which you see being spoken to in the documents. When you want to go and do in loco inspection you are told that the factory is not – has not been established.

I also need to indicate that this for us to do between the two Portfolio Committee we were following up

on what the Auditor General had indicated when we were there – the PRASA audit and came to Parliament and I need to indicate that we worked for a short while with Me Maluleke who actually part of our focus was namely on the trains and the – besides the trains we were worried that PRASA does not make a follow up on – or does not even come and report back to the issues that have been raised by the Auditor General and this was a concern

Remember once we have gone through the process  
10 of what the Auditor General would do you will have a budget review report that will be sent to Parliament which actually will be able to indicate that these are the findings that we had with respect to this SOE and therefore we expect that we must make follow ups as to whether what we have raised in this report of Parliament is implemented.

But to our – let me say to the dismay of the committee many a times the issues that will be raised either by the Auditor General; by the Portfolio Committee will find themselves being repeated over and over. I can  
20 just simply indicate that there are 00:27:53 that the Auditor General would raise and there will be no correction of the issues that were raised by the Auditor General.

Let me just say that the last committee that came in of Ms Kweyama it was for me a very short stint. I would not talk much about that because that is when we went into



elections and the – subsequently I cannot say as to what really – we did with the committee of Me Kweyama but for me the committee that I worked quite a long time with was the committee that was led by Dr Molefe.

**ADV FREUND SC:** Thank you. Now you have raised a whole host of issues which we are going to need to come back to. But one of the points you yourself had raised for discussion is the problems revealed by the Auditor General and the failure to resolve those problems.

10 I do not know whether you had an opportunity to follow the evidence of Mr Godi on Monday of last but Mr Godi referred to some information in the draft affidavit from Mr Makwetu – the late Kimi Makwetu who was then the Auditor General.

And Mr Makwetu and Chair just for your reference the witness will not have this page – for your reference this is in Bundle 4 page 871 in paragraph 61. Mr Makwetu highlights amongst other things the problem of irregular expenditure being out of control.

20 And I am just going to read to you evidence that is already on the record. He says that the irregular expenditure in the year 2013 to 2014 was 0,01 billion.

In 2014/2015 it was 0,55 billion. Half of the – more than 500 million.

**CHAIRPERSON:** One second – one second Mr Freund.

One second. Thank you Mr Freund what paragraph did you refer to in Mr Makwetu's affidavit?

**ADV FREUND SC:** Paragraph 61 which is at page 871 in Volume 4.

**CHAIRPERSON:** Okay I have got it thank you.

**ADV FREUND SC:** Thank you. I will repeat this Chair so that you may follow and the witness may follow.

That in 2013/2014 the irregular expenditure revealed by the Auditor General's report was 0,01 billion.  
10 In 2014/2015 0,55 billion. In 2015/2016 it is 15,3 billion. In 2016/2017 it is 20,3 billion and in 2017 to 2018 it is 24.2 billion.

Now my first question to you Ms Magadzi is you have no reason to dispute that those are the – those are the figures that was revealed by the Auditor General's report, you accept that?

**MS MAGADZI:** Yes that is correct.

**ADV FREUND SC:** Would you also accept that it paints a really truly disastrous collapse in financial management?

20 **MS MAGADZI:** That is correct.

**ADV FREUND SC:** Now what the Auditor General – the late Auditor General also said in his draft affidavit if I can refer the Chair to – let me just check this page 71? Bear with me please. He – the – Mr Makwetu said that every year the Portfolio Committee called the Auditor General's

team for a briefing on the Auditor General’s reports and he says:

“I cannot fault the Portfolio Committee for the Transport Portfolio on its diligence by calling the Executive Authority and entity to account in the sense of calling the Auditor General and calling amongst others the Minister.”

I take it you would accept that praise from the Auditor  
10 General?

**MS MAGADZI**: Thank you very much I appreciate.

**ADV FREUND SC**: But he says the following and I am now reading to you from page 959 paragraph 249 of his same draft affidavit. He says this:

“Although the Portfolio Committee’s interrogation of the audited results was visible from the records of the PC’s – the Portfolio Committees.”

He says:

20 “No real recommendations or corrective action had been noted during the period under review. Furthermore there was evidence that the Portfolio Committee would request an action or initiative to be taken but the follow up thereon was lacking.”

And I must say that it is not only he who has been critical of the follow up – the actions Mr Godi for one and others have made the same point.

Now if I have heard you correctly a little earlier you yourself accept I think that this is a real problem that – that it is one thing for the Portfolio Committee to draw attention to a problem to refer to it in its report; to have its report adopted by the National Assembly and it is another thing to get those – those concerns addressed and  
10 addressed timeously and appropriately. I think I see you nodding, you agree that this is a real problem?

**MS MAGADZI:** It is indeed a serious challenge and a real problem because many times in the Portfolio Committee we were raising lack of consequence management in – at PRASA and we were also raising the question of recurred findings by the Auditor General which actually were never being addressed by the PRASA as such and hence you see the irregular expenditure was growing and growing and growing.

20 **ADV FREUND SC:** Now as I read the Constitution the Executive is accountable to Parliament and if Parliament refers to problems and requires certain issues to be addressed and not addressed is it not possible in your argument for Parliament to have done more – but Parliament just sit back and once – once it has adopted a

report is that the end of the matter? No more responsibility for Parliament.

**MS MAGADZI:** No not really that is not the end of the matter. Let me indicate like you have so eloquently said sometimes there were – the follow up particularly from the Portfolio Committee was not as efficient as you want to do – to see and let me also say that in – this to me was a challenge because you do not necessarily have systems which will be able to assist you to say there are these  
10 issues which we have raised as a Portfolio Committee and therefore you need to make a follow up. In Parliament we do not necessarily have those types of systems which actually can be able to assist you as a Portfolio Committee to – can lay thorough doing of your work with respect to critical issues that we will have raised – we have spoken to that you must follow up particularly with the Executing Authority so that they do not fall by the wayside. And in this instance I so agree that indeed matters of following up on certain issues particularly holding the Executive to  
20 account on certain matters was one of the things which I would say as a Portfolio Committee who were – we were found wanting.

**ADV FREUND SC:** Well I want to just debate...

**CHAIRPERSON:** Mr Freund.

**ADV FREUND SC:** Or discuss that very issue a little

further – a little more detail. Sorry Chair were you trying to come in?

**CHAIRPERSON:** I am sorry Mr Freund ja. Ms Magadzi I – I think you need to be commended for making the statement that you accept that your Portfolio Committee and it may not be the only Portfolio Committee but you are talking about your own – the Portfolio Committee that you chaired that it was found wanting when it came to following up on what needed to be done by the Executive to address  
10 the comrades.

Am I correct that that is what you have said?

**MS MAGADZI:** That is correct Chairperson.

**CHAIRPERSON:** Yes. Earlier on Mr Freund read from Mr Makwetu's affidavit where Mr Makwetu although I think in another part of his affidavit had some praise for your committee but said in another part of his affidavit that when one looks at the minutes or the documentation relating to meetings of the Portfolio Committee – your Portfolio Committee recommendations or corrective action  
20 that the committee thought needed to be done to address the problems seemed to be not reflected in the minutes. That is how I understood what Mr Freund was reading from Mr Makwetu's affidavit.

I would like to know what your reaction is to that part of Mr Makwetu's affidavit. Do you also accept that

maybe you did raise issues but fell short in terms of saying what needed to be done by the relevant functionaries to address the problems?

**MS MAGADZI:** Thank you very much Chairperson. Indeed, like I indicated, there were lots from the committee to dealing with some of the issues which actually were raised. And even when we would deal with these letters in the committee, we would just like deal with the matters in an official way.

10           And no further going to make sure that if at all there has this been this type of an issue which was raised, whether by the Auditor-General or by the Portfolio Committee itself.

          How do we make sure that the board does its fiduciary duty but also the Executing Authority make sure that things are done according to the expectation from Parliament and also from the Auditor-General?

**CHAIRPERSON:** What was the reason for the committee not being able or not doing this part of this work? What  
20 would you say? Was there unwillingness or was there a lack of understanding of what it was supposed to do or what was the problem? Why was it not doing this?

**MS MAGADZI:** Chairperson, let me indicate that doing oversight on 12 entities plus the department – the committee to a particular extent was overwhelmed by the

work that we were doing and that is why you will find that there were things that the committee will do as a follow-up but I need to indicate that the committee was doing to the best of our ability everything that we can be able to do despite the fact that there were some deficiencies  
Chairperson.

**CHAIRPERSON:** Would the deficiencies that you acknowledge in relation to the committee's performance of these oversight functions in relation to PRASA? Also,  
10 would they be found in relation to its performance of its functions in relation to the other 11 entities that it had to exercise oversight on?

Or, is the position that in regard to the other entities - when one goes to the minutes one will find that the committee – maybe not all of those entities but in a number of them it would not just end up with raising issues.

It would actually make recommendations or point the way to either the relevant boards of the Minister of  
20 what should be done and would follow-up on what was done?

Or, was this a deficiency that was to be found in regard to all the entities that the committee was looking at?

**MS MAGADZI:** Chairperson, let me indicate that earlier



on in my affidavit I indicated that most of the entities had stability. You will have the board waiting and finishing their time. The CEO's the same.

And therefore, it was very easy because you would have somebody who will be able to follow-up on the issues that we have raised and then they are able to come back to you.

You will have somebody who will be able, when you request a record, will be able to submit a record to you  
10 as requested. But in the instance of PRASA, as has been indicated, they tell over of an executive in the main, particularly on operational matters, you will find that you can ask one thing several times and still be unable to get the thing that we have requested from PRASA, whether you request that in a meeting or you request that in writing.

It was becoming a difficulty because today there is this Group CEO. The next when you came, there is another. You still repeat the same thing again. And that is what was a challenge.

20 And let me also indicate that, in this instance you will have the board that will – they come in and say go and do. And in the end, you do not get the expected outcome. But I do not need to say that we were, as the Portfolio Committee, somewhere we also could not make it through.

So for me, I would say that it definitely was quite a

challenge for the Portfolio Committee.

**CHAIRPERSON:** Did you raise the problems that you raised with the board also with the relevant Minister, Ministers at different times?

**MS MAGADZI:** Yes, we did.

**CHAIRPERSON:** And did they ...[intervenes]

**MS MAGADZI:** Mostly ...[intervenes]

**CHAIRPERSON:** Did they promise to act but did not act? Did they promise not to act? What was the position?

10 **MS MAGADZI:** Remember it... Let me just indicate that you have the board which actually – I will take the words from Dr Michael who would always be saying: It is my fiduciary duty. And failed the Portfolio Committee in executing its fiduciary duty.

**CHAIRPERSON:** And what about the Minister? What would the Minister say? Because let – I – let me tell you. When I saw these figures that have been of irregular expenditure in Mr Makwetu's affidavit that Mr Freund read to you. They shocked me.

20 But what particularly shocked me was that every year they were going up and up and up, as if there was nobody keeping an eye on saying actually the irregular expenditure should go down, not up.

And for me the most obvious question is: Where were the people who were supposed to tackle this – these

irregular expenditure to not go up every year? And it gave me the impression, it is like the management at PRASA had decided, we are going to show whoever that we are going to – we do not care about what they about irregular expenditure. It is just going to go up.

I mean, 2013/2014 financial year, it was R 0,01 billion which I think would be about R 100 million. Then the... I may be wrong. Then the next year, 2014/2015, that was the first financial year that your  
10 committee – you were leading the committee. It is R 0,55 billion. That would be about R 550 million. It is quite a big jump.

And then as if that was not enough. The following year – this is when your committee has been around for at least two years or something. 2015/2016, it jumps from R 550 million to R 15.3 billion. How is that possible? And you would have thought that somebody would fix the roof and say this can no longer be allowed to continue.

And that the following year it would actually go  
20 down drastically. But no, it goes up. The following financial year R 20,3 billion. The next financial year, 2017/2018, R 24,2 billion. So it is like all the people who were supposed exercise oversight, it is like they do not care about this trend.

And yet, it is a trend that should shock them, that

should make them want to do something they have never done before on the basis that this cannot happen under our watch.

During these years, was your committee aware of this irregular expenditure every year and the fact that it was going up?

**MS MAGADZI:** Yes, Chairperson we were very much aware of the irregular expenditure which was uncontrollable. We would engage with the chairperson and  
10 the Minister and that is why most of the times with our urgent review report - part of the recommendations will always be there that this is what we would like to see as a committee but unfortunately that was never followed up either by the Executing Authority or by the Board of Governance in PRASA.

And they – what really happened was that the irregular expenditure was just ballooning every year. You can only do your bit Chairperson by making sure that what we are expected to do, you do.

20 But I have to indicate that very challenging was the fact that as much as you raise these with the Executing Authority and the Board of Governance, there was no change at all.

And this is one of the things which actually was making us to really focus onto what exactly is happening in

PRASA. Because the other thing that was for us a concern was that the capital programmes were not being done thoroughly as our anticipation as was in the strategic plan.

You would have expected to go and see the stationary revitalisation and nothing is happening. You want to see the change that has been then been refurbished.

We do not really see that but instead, you see the irregular expenditure going up and up just like that. And  
10 for us, this was – what was very frustrating to the Portfolio Committee because you – that is why I said, PRASA was our main focus in the Portfolio Committee.

And despite the fact that we were focussing on what was in PRASA. We were not getting the expected outcomes.

**CHAIRPERSON:** Well, I do not know what the protocols are between the Portfolio Committee and the National Assembly. But my own thinking is that at some stage your committee or you as the chairperson with this ballooning  
20 irregular expenditure would talk to the leadership of Parliament and say there is something really shocking here. Something needs to be done.

And maybe the National Assembly should raise it with the President and say you are the head of the Executive. There is this shocking thing that is happening.

The Portfolio Committee has spoken to the board, has spoken to the Minister but it just keeps on ballooning. Take steps to address this.

Is this something that was done? Is this something that your committee could not do because it has to follow certain channels or what?

But I just think that this was something that if - the relevant – if the board and the Minister were not giving proper attention to, should be – should have been raised  
10 even with the President because he appoints the Minister and the Minister appoints the or – I do not know – appoints the board if they do not do their job. And the Minister appoints the CEO, I guess.

If people do not do their job and they have been given a chance to say sort this out, they should be fired. They cannot do their job. They have been given a chance to do it properly and they cannot, particularly, if we talking about taxpayers' money.

Was this something that could be done, was done,  
20 could have been done but did not succeed? Do you know?

**MS MAGADZI:** Chairperson, we have raised this matter with The House Chair. We even submitted a report and subsequent to that, The House Chair, I think after we have submitted our report, came back to us to say we need to do our investigation into what is happening but in the matter

which was challenging was raised.

And let me also indicate that with the Budget Review Report, the Speaker of the National Assembly, once the report has been accepted by Parliament, referred the report to the Minister for actions to be taken with the recommendations that will be included in the report.

**CHAIRPERSON:** But you do not know whether it went to the point of it being raised with the President? That you do not know?

10 **MS MAGADZI:** That I do not know Chairperson. The only thing that I know be that the Minister responsible will get the Review Report with the recommendations and as the Portfolio Committee you would expect the Minister to act on the Review Report.

**CHAIRPERSON:** Yes. I am going to raise something that maybe Mr Freund was going to raise later but it is convenient for me to raise it now.

20 During most of those years that Mr Makwetu refers to when the irregular expenditure was ballooning, I happen to know from evidence given in this Commission by other witnesses under the PRASA work stream, that PRASA did not have a permanent Group CEO because Mr Montana left in, I think in 2015 around June.

And so some of the years – I do not know if I heard recently that finally the Group CEO for PRASA has been

appointed or not but I do know that at least for most of last year there was an administrator, I think.

But the last Group CEO who was permanently appointed as at some time last year was Montana, who left – Mr Montana who left in 2015.

What did your committee do about the failure on the part of the Minister or the Executive to appoint a permanent Group CEO at PRASA as soon as possible after Mr Montana had left?

10 **MS MAGADZI:** Chairperson, thank you very much. Every time the board came to the Portfolio Committee, we were more interested in wanting to know because it was not only the Group CEO that was acting. You had even in other areas your CFO. There was challenges and the Portfolio Committee would also want to know from the board as to when is the appointment of the CEO.

And let me tell you that the departure of Mr Montana left the PRASA with acting, acting, acting, whether even in the subsidiaries or in the other entities of  
20 PRASA. I think there were very few areas where you will be having permanent CEO.

PRASA in properties, that is where you will have your permanent CEO but the other entities, the Auto Pax you will have your person, a PRASA review have somebody who is permanent but the other areas within PRASA there



would be somebody who is acting.

And hence, the challenge that we are seeing. We did – were raising these matters with the board, with the Minister but unfortunately the turnover, like I had indicated, in five years we got three Minister, in five years we have got like four boards, in five years you have got a plethora of acting Group CEO.

It definitely becomes a challenge for you to be able to put your fingers on the pulse.

10 **CHAIRPERSON:** What excuses you remember as having been told to the committee why these positions, particularly the one for Group CEO and maybe and CFO's, there were vacancies there, why they were not being filled? Do you remember what excuses you were told as the committee?

**MS MAGADZI:** Chairperson, there was not necessarily a very – I would not say that we were told that these are the reasons why there cannot be any CEO being appointed. But from our – let me say, from the assessment of the  
20 Portfolio Committee, while you are advertising the post as in the board, then you leave and therefore the next board that comes will also find that the...

I remember the board that was chaired by Judge Makhubele, when they wanted to make an appointed, only to find that the post was like 18-months it had been

advertised and therefore, meaning, that they had to re-advertise the post again.

So there was not necessarily a good reason to hold to the Portfolio Committee as to why was it so difficult to be able to appoint the Group CEO.

**CHAIRPERSON:** Okay. So as you sit there, you are able to say, really, you are as the committee were never given any convincing reasons why these appointments were not being met by whoever was supposed to make that?

10 **MS MAGADZI:** Seated here Chairperson, I definitely can be able to indicate that for me or the Portfolio Committee there was no good reason why an appointment cannot be made because the departure of Mr Montana, we expected that within six-months or so a group CEO should have been appointed but it was never to be.

It was just there will be this person coming in to act and then the next person coming in to act and that is how it was. Because even us in the Portfolio Committee, you would only invite PRASA to come and deal with this  
20 matter or that matter. Then the next thing, you are having this person as acting Group CE.

And from the board, there is no word as to what has really happened to the previous person who was acting in this position. So that I show I would characterise what we were seeing in PRASA.

**CHAIRPERSON:** H'm. Thank you, Ms Magadzi.  
Mr Freund.

**ADV FREUND SC:** Thank you, Chair. Ms Magadzi, you have dealt with very many issues since last I asked you any question. So I would like to go back over a couple of the issues that you have just been dealing with.

The first is that if, I heard you correctly but you must correct me if I am wrong, when you first started explaining the ineffectiveness of the recommendations or  
10 requirements in the reports of the committee to actually bring about change, I think I heard you say but there was no system being in place to monitor to whether what was required had been done and had been done in time.

We have used the term in this Commission "No Tracking and Monitoring System". Am I correct that was a problem you experienced?

**MS MAGADZI:** That is correct.

**ADV FREUND SC:** And I am assuming, given that you were a senior person in Parliament, that you would have  
20 interacted with your colleagues, other chairperson of other committees. I am assuming that it was not your committee alone that had the problem of "No Tracking and Monitoring System"? I am assuming that this must have been a widespread problem across committees. Would that be a fair assumption?

**MS MAGADZI:** I would not talk to the other Portfolio Committees but I – let me speak to the Portfolio Committee that I was chairing, that for me that was one of the challenges that we were experiencing. And I would not – let me say that listening to Mr Frolick on Friday, that was one of the issues that he highlighted that the systems have been put in place but it still has to yield that half-routes.

**ADV FREUND SC:** Well, did you engage with Mr Frolic or anybody else to try to push, to achieve, effective Tracking and Monitoring Systems?  
10

**MS MAGADZI:** No, not clearly.

**ADV FREUND SC:** Now you also said another problem you experienced was that requests would be made at Portfolio Committee meetings of senior representatives of PRASA and the expectation was that at the next meeting, and often an arrangement would be made for when this is going to take place, the people who you expected to report back and the issues on which you expected them to report back simply did not happen. Am I correct?

20 **MS MAGADZI:** That is correct. To a particular extent, that is what we were experiencing.

**ADV FREUND SC:** Now you can fairly point fingers at those who failed to honour their undertakings. But can we not also point fingers at your committee for itself not following up on those issues?

And in particular, is it not correct that you had all the legal powers you needed to compel witnesses to appear, compel witnesses to produce documents and that you simply failed to do that?

**MS MAGADZI:** I agree.

**ADV FREUND SC:** Now we focussed thus far quite a bit on the problem with irregular expenditure as revealed in the reports and as confirmed by the Auditor-General's report.

10 But there was another important part of the context during which your oversight took place and that is the Public Protector's report on PRASA titled Derailed and issued in September of 2015.

I am sure you would have become familiar with that report in your capacity as chair of the committee. Am I right?

**MS MAGADZI:** That is correct.

**ADV FREUND SC:** Now the Derail Report is a long report with many features but I want to put to you for your  
20 comment that the complaints that were upheld included improper awarding of tenders, inadequate equation, corruption, conflict of interest, financial mismanagement, nepotism and improper treatment of whistle-blowers. Do you agree that those were all complaints upheld by the Public Protector?

**MS MAGADZI:** That is correct.

**ADV FREUND SC:** So. And those complaints – those findings arose from complaints submitted by a trade union in 2012 which were finally upheld in 2015 but only in part because the Public Protector said:

10 I have not had time to get to grips with a number of the other complaints. So I am going to continue to investigate some of that and I also want other steps to be taken and I want the board to take responsibility for investigating and for procuring a forensic investigation of certain issues. And I want National Treasury to get involved and investigate certain things.”

Am I – is that a fair summary I am giving?

**MS MAGADZI:** That is correct.

**ADV FREUND SC:** So you not only have irregular expenditure. You have very good reason to suspect that related to this irregular expenditure is corruption, is 20 criminal activity. And that, I would imagine, should be a matter of very great concern to your committee. Would that be correct?

**MS MAGADZI:** That is correct.

**ADV FREUND SC:** Now I want to take you to something that Mr De Freitas told us. I believe this document was

sent to Ms Magadzi but for the Chair's reference, I am referring to Volume 4, page 485. And this is a letter that Mr De Freitas says that he sent to you. It is a letter dated the 8<sup>th</sup> of July 2016.

**CHAIRPERSON:** I am sorry Mr Freund. Just repeat the volume and the page?

**ADV FREUND SC:** I am just checking that I am giving you the right reference Chair.

**CHAIRPERSON:** H'm?

10 **ADV FREUND SC:** It is Volume... Sorry, I have one reference there. If you can just bear... Sorry. Volume 4. And I keep looking at Volume 3.

**CHAIRPERSON:** H'm?

**ADV FREUND SC:** Volume 4. I think page 485. Sorry, I am struggling here. Just give me a moment.

**CHAIRPERSON:** Bundle 4. Okay. And what is the page again?

**ADV FREUND SC:** Chair, I am just checking. The page I said was 485 but I think I have given you the wrong  
20 reference.

**CHAIRPERSON:** Well, actually, maybe you can look at it. I see it is time for the tea-break. You can have a look at it and then when – after the tea-break we can continue. We will take the tea-break.

**ADV FREUND SC:** Yes, thank you Chair.

**CHAIRPERSON:** It is quarter past. We will resume at half-past eleven. We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Okay, let us proceed, Mr Freund.

**ADV FREUND SC:** Thank you, Chair. Chair, I was referring you in error to the wrong bundle, it is bundle 3, page 485, not bundle 4, page 485.

**CHAIRPERSON:** Okay.

10 **ADV FREUND SC:** Bundle 3, page 485.

**CHAIRPERSON:** Are you going to later refer to Bundle 4 or you are not sure? I want to see whether you might [inaudible – speaking simultaneously]

**ADV FREUND SC:** Yes, I will in all probability also refer to bundle 4.

**CHAIRPERSON:** Okay, alright. I have got it, point...? Mr Freund?

**ADV FREUND SC:** Yes, Chair?

**CHAIRPERSON:** I have got it.

20 **ADV FREUND SC:** Yes, thank you. Ms Magadzi, this particular document which you have told me you are familiar with is a letter to yourself dated the 8 July 2016 from Mr Manny de Freitas, a DA MP on your portfolio committee. It is headed:

“Request to launch inquiry in to R51 billion PRASA



tender process.”

And I will read you from the letter, it says:

“I write to you in the light of the recent news that the R51 billion tender for the purchase of 20 new locomotives by the Passenger Rail Agency of South Africa may have been unduly interfered with by the Gupta family and Duduzane Zuma. This is the latest reported case in which allegations have been made that the Gupta family have attempted to rig  
10 the tender process so that they may benefit.”

And then Mr de Freitas refers you to Section 55(2) of the constitution and he says:

“Parliament must use its power to launch an inquiry into this matter immediately.”

And he proposes that the Gupta brothers and the Duduzane Zuma should appear before parliament to account and he looks forward to a response soonest. Can you confirm that you did receive this letter from Mr de Freitas?

**MS MAGADZI:** Yes, I can confirm that I received the  
20 letter from Mr de Freitas.

**ADV FREUND SC:** Now what Mr de Freitas says is that you did not respond to it, that he again enquired about his letter and that you acknowledged receipt of the letter and said that you would address it but he said that you never did. What is your response to that?

**MS MAGADZI:** Let me indicate that all correspondences which were coming to the committee were addressed by the portfolio committee and even the letter that is spoken to was dealt with in the portfolio committee and the – I would not take a decision on my own that I am calling the Gupta brothers or calling any other person to the portfolio committee, it will be the decision of the committee as to how to deal with the matter or the correspondence that has been sent to the Chairperson. That is how we were able to  
10 deal with the letter from Mr de Freitas. Thanks.

**ADV FREUND SC:** Now is it your evidence that this letter was in fact placed before the committee and was in fact discussed by the committee?

**MS MAGADZI:** It was discussed by the committee.

**ADV FREUND SC:** And what was the decision of the committee?

**MS MAGADZI:** The committee felt that it was not – how can I put it, it was not an opportune time or they felt that there is no need for us to can be able to engage the Gupta  
20 brothers at that particular moment. That is how I can put it and we never engaged with the Gupta brothers.

**ADV FREUND SC:** Well, let me just read to you the summary that Mr de Freitas gives of the newspaper article that prompted his request. I am reading, Chair, from page 381 of volume 3. He says:

“On the 19 June 2016 the Sunday Times published a story with details of the R51 billion tender for the purchase of 20 new locomotives by PRASA which involved the Gupta Family and Duduzane Zuma. Allegations included the Gupta Family had attempted to rig the tender process so that they would benefit. Other allegations included statements made in the media by previous PRASA GCEO Lucky Montana who claimed that he was  
10 introduced to the Gupta Family and associated by...”

That probably should read “and associates”

“...by previous Transport Minister Ben Martins and that the Gupta Family wanted their associates to sit on the PRASA board.”

Now if those allegations, if true, not be a very considerable concern to your committee?

**MS MAGADZI:** Let me indicate that once you put issues to the committee and the committee discuss and the  
20 outcome is such that the committee does not believe that there can be able to take the matter forward, it is definitely the decision of the committee, not my decision. Much as it was there in the newspapers we never took up because the committee felt that it was not necessary at that particular moment for us to can be able to take the matter forward

and call, as requested by Mr de Freitas, the people as mentioned.

**ADV FREUND SC:** But what I am asking you is something slightly different. I am asking you whether if those allegations were true, they would be matters that should be of very considerable concern to your committee.

**MS MAGADZI:** Indeed we made - from the portfolio committee, there were several issues which we raised within the committee meetings and as we were doing  
10 oversight and we felt that at that particular moment we will not want to engage into what has been indicated by Mr de Freitas.

**ADV FREUND SC:** Ms Magadzi, I am going to ask the same question for the third time and if you again do not answer it, I will move on. The question is this, if those allegations were true, are they not allegations which ought to have been of concern to the committee?

**MS MAGADZI:** Mr Freund, the allegations were a concern to the committee hence we had discussions in the portfolio  
20 committee and even if we were doing oversight we wanted to establish what exactly were the issues.

**ADV FREUND SC:** Well, did you ever ask any of the Gupta Family or Mr Zuma, Mr Duduzane Zuma or Mr Lucky Montana to come and either admit or deny what had been reported in detail in the Sunday Times on the 19 June

2016?

**MS MAGADZI:** No, we did not.

**ADV FREUND SC:** Now I want to move on to  
...[intervenes]

**CHAIRPERSON:** Well, hang before you move on, Mr  
Freund. Why did you not? Here was an ...[intervenes]

**MS MAGADZI:** Chairperson, let me...

**CHAIRPERSON:** Ja, okay, I am sorry, I am interrupting  
you, I am sorry about that. Here was an article in a  
10 newspaper that was making very serious allegations  
including allegations about the Gupta Family and saying Mr  
Montana had said the Gupta Family had wanted their  
associates to sit on the PRASA board.

Now let us just recall what the public new in 2016  
about the Gupta Family. The public knew that three years  
earlier in 2013 there had been a huge outcry in the country  
because of the landing at Waterkloof Airbase of a Gupta  
aeroplane and that had raised a lot of questions about the  
Guptas having a lot of influence allegedly on the then  
20 President Zuma and the government.

Also, in 2016 the public knew, and I take it that your  
committee and yourself knew, that Mr Jonas had in 2015  
gone public and said that he had been taken to a meeting  
with the Guptas at the Gupta residence on the 20 – or he  
had gone public in 2016 in March, actually, and this was

June, he had gone public in March 2016 where he said a Gupta brother in that meeting had tried to bribe him in order to for him to accept an appointment as Minister of Finance on the basis that if he accepted the money and if he accepted the appointment, which obviously would only be done by the then President, then he would work with them. So this is part of what the public knew by June 2016 when this article came out.

A member of parliament says to your committee let  
10 us act on these allegations, let us call these people to come and admit or deny or tell us what they know about these allegations, your committee does not ask them or summon them. My question is, why not?

**MS MAGADZI:** Chairperson, I do not necessarily have an answer as why we did not call the Gupta brothers but let me indicate that our discussion in the portfolio committee led us to a situation where we did not call the Gupta brothers and I do not want to lie and say this is what we did but my recollection was that having discussed, the  
20 matter for me was closed in that and that is how I can be able to say this is how far we went.

**CHAIRPERSON:** Based on what you are saying, it seems to me – and I want you to comment on this – it seems to me that you would not be able to challenge a proposition that the committee had no good reasons not to take this

matter up and try and establish whether these allegations were true. What do you say?

**MS MAGADZI:** Chairperson, I think you are correct, probably the committee – at hindsight I would say that the committee should have done out of what was there in the newspapers but we decided to say that this, for us, we cannot be able to do and that is why I am saying at hindsight, for sure we could have done better.

**CHAIRPERSON:** Well, I just want to say I like the idea  
10 that you – I think you are telling me matters as you remember them and I think you are taking responsibility on behalf of the committee where it fell short. The reason I like that is because unless we are prepared to examine ourselves properly and see whether we have done our job the way it should have been done and admit where we have not done the right thing, we are not going to be able to find solution. So I like the fact that where you believe the committee fell short you are able to say I think we fell short, ja.

20 But, of course, this Commission wants to go beyond that, it wants to try and establish what is it that would make a committee that is made aware of such serious allegations not to follow them up, [indistinct – dropping voice]

Now you may not be able to say more than what you have told me but one of the issues that other

witnesses raised last week in regard to parliamentary oversight is that the ruling party has a study group or what is referred to as a study group in parliament where members of the ruling party were serving different portfolio committees together with other I think members of parliament or maybe – I do not know whether members of the ANC or leadership who might not be part of parliament also come in, discuss matters that will be coming up at different portfolio committees and that the message would,

10 I do not know whether it is sometimes or all the time or often be to members of the different Portfolio Committees that they must be hard on the executive because the ministers are ANC ministers and sometimes those ministers are in those meetings of those study groups.

So a minister will be going to a committee but he knows that the party or the study group has instructed the ANC members of the committee not to be hard on them which seems to me to be do not do your oversight job properly because if you think you should be hard on a

20 minister, you should be able to be hard on the minister, if you think there is justification.

So in my mind as we look at this matter why your committee decided not to take up these issues I am wondering whether it might be because of such instructions from the study group or maybe not from the study group



but maybe a general understanding that as ANC members you should not go too far – or you should not be hard on ministers and so on. Do you want to say anything about that?

**MS MAGADZI:** Thank you, Chairperson, let me indicate that our study groups' meetings that we were holding, whether the minister is there we will always have study group meetings in preparation for what we wanted to see happen in the committee because one thing for certain that  
10 you must remember is we have to replenish and make sure that we abide by the principles, the policies, the manifesto of the African National Congress and hence when we go into the study group to discuss matters we discuss based on what we would like to see the outcomes being of the portfolio committee because what becomes interesting to us, Chairperson, is that we must make sure that we do and we execute the tasks within the mandate and confines of the ruling party and therefore, we would go into the study group, debate on issues, agree on the issues but in this  
20 instance that we indicate that we never in the study group discussed the approach towards Mr de Freitas' letter because it – normally, I would not even take the correspondences that comes to the Chairperson to the study group but we will look at the programme of the portfolio committee and then be able to say how do we

handle this issue.

The member of the study group will only get to know about the correspondences once they are in the portfolio committee and therefore, we never discussed that issue in the portfolio committee and probably those who would say that the study group will get instructions, we already have the instructions within the manifesto of the African National Congress, those are the instructions that we should be abide by.

10           We have the policies and the policies of the ANC and those are the ones that we should be able to say are we doing the right things when we do and we are doing that? And I want to say probably Mr de Freitas also in their party they have got matters that they believe their party should be able to push and I do not dispute how they would want to push their letters but it cannot be correct if at all it is his him who says we get instructions, the portfolio committee must not do this.

20           Every time the minister comes to the portfolio committee we are making sure that without fear, without favour issues that must be dealt with will be dealt with accordingly irrespective of the fact that they are ministers of the African National Congress, whatever issues needs to be dealt with, it will be dealt with in accordance to what - it is at our disposal as the portfolio committee.

**CHAIRPERSON:** So are you saying that you have never had an instruction or suggestion from any ANC leader whether inside parliament or outside parliament to the effect that members of the ANC in parliament must not be hard on either the ministers, ANC ministers, or the President of the ANC when they ask questions or perform their oversight functions?

**MS MAGADZI:** Chairperson, I do not remember getting those kind of instructions from my party and that is why, as  
10 a portfolio committee, we were always making sure that we do our work to the best of our ability and that is why I am saying going into parliament, being in the portfolio committee, we always must make sure that we uphold the manifesto of the ruling party to make sure that what the ruling party has said it is going to be doing in this particular term of office gets done.

**CHAIRPERSON:** Mr Freund?

**ADV FREUND SC:** Thank you, Chair. Ms Magadzi, then I  
20 have to go back to the question that you have already been asked. There is a detailed set of allegations published in the press and drawn to the attention of your committee of what, if it is true, would probably amount to serious criminal misconduct in relation to a R51 billion tender at PRASA. If, as you say, your committee was under no pressure or instruction not to enquire into allegations

against the Guptas, against Duduzane Zuma and allegations of state capture, I want to put to you that it is inexplicable that your committee should decide not to investigate this. Do you want to comment please?

**MS MAGADZI:** Thank you very much, Mr Freund, let me indicate that part of the things that the committee did was to make a recommendation that because there are serious issues in PRASA, there is a need for the state apparatus, your police, your – the Hawks, National Treasury and other  
10 state apparatus to investigate the issues that were being raised in PRASA and therefore, for us, once we have done that, we felt it was opportune moment that we will see an investigation being done by the auditor general, by National Treasury, by the Hawks, by the South African Police Services so that those who have done criminal activities or if there is corruption in PRASA, they must be held accountable, they must be arrested.

**ADV FREUND SC:** Did you committee specifically request the Police, the Hawks or any other agency to investigate  
20 this very allegation that we are now talking about that was drawn to your attention by Mr de Freitas' letter?

**MS MAGADZI:** If you would recall, Dr Molefe came and said – and even wrote a letter to the Speaker wherein he was indicating that he has requested the state apparatus, I think it is the Hawks, if I am not mistaken, for them to do

certain investigations and he was indicating that he does not see anything coming to fruition and it was out of the recommendations that we made as a portfolio committee and hence when he wrote a letter to the Speaker, I also had an opportunity from the Speaker indicating that letter to the portfolio committee that this is what happened, but it was – the recommendations that we made to say we believe that the state apparatus should be able to make an investigation which the Chairperson of the board of PRASA  
10 took up and subsequently was not happy about how issues were unfolding.

**ADV FREUND SC:** And, as I understand it, that exchange related to what action should be taken following the Public Protector’s report which was issued in or about November 2015 and even in relation to that you were aware that Mr Molefe was claiming that the Hawks were not doing what they should be doing to investigate those allegations. Do you agree with what I have just put to you?

**MS MAGADZI:** That is correct.

20 **ADV FREUND SC:** So we go back to my earlier question, did your committee specifically takes steps to ensure that any agency would pertinently investigate the allegations to which I have just been referring which only came to light well after the Public Protector’s report and which allegedly very briefly a form of State Capture attempt by the Gupta’s

in respect of the Board of PRASA. Now you either did or you did not, which is it?

**MS MAGADZI:** Chairperson let me indicate that in Parliament you submit regular reports and you expect that those reports once submitted should be executed. But from the committee's side, let me indicate that we did not.

**ADV FREUND SC:** Right, thank you. Now there is something else I would like to refer you to, it arose during the evidence of Ms Mazzone, the DA, Deputy, the DA  
10 Shadow Minister for Public Enterprises. She testified last week but...[intervene]

**CHAIRPERSON:** Mr Freund.

**ADV FREUND SC:** Chair.

**CHAIRPERSON:** Are you moving away from these particular allegations or is it connected with them?

**ADV FREUND SC:** It is connected Chair, but it is in slightly different context, but it is connected.

**CHAIRPERSON:** Okay, let me...[intervene]

**ADV FREUND SC:** Perhaps you should allow me a little  
20 latitude.

**CHAIRPERSON:** Yes. Let me ask this question. Do you concede Ms Magadzi that the conduct of your committee in doing - in not taking up these allegations to at least establish what the people consent had to say about them was a serious dereliction of duty on the part of your

committee?

**MS MAGADZI:** Chairperson thank you very much, I would not say it was dereliction of duty but I would say that when you have a discussion in the Portfolio Committee and the Portfolio Committee, so agree that this is the route that we will take.

For me, I take it that we did not disengage in our duties teachers but or rather as a Portfolio Committee at that particular time we saw it fit to take the route that we were taking.

**CHAIRPERSON:** Well, I thought about your evidence was that the committee decided not to do anything about it at that time, did I understand your evidence correctly?

**MS MAGADZI:** Chairperson, let me indicate that – I cannot recollect properly, so as to what we said in the Portfolio Committee but there was no action that we took to that effect and I would not want to say that it was dereliction of duty but I can rather be comfortable with the fact that we did not take any action.

**CHAIRPERSON:** Did you not have a duty; you were the Chairperson of the committee. You were the leader of the committee and I take it that you were supposed to show leadership and give guidance. Obviously, you could not force members of the committee to your view, one way or another. They were free to make such decision as they

made but each member of the committee and if they were to come here, they would have to decide whether they are defending their decision to do nothing, or whether they accept that they should have done something and not doing something was a dereliction of duty.

So I asked the question, were you not under a duty as a committee to do something about these allegations particularly against the background that I gave earlier on.

**MS MAGADZI:** Chairperson, I would agree with you that  
10 they did not do anything.

**CHAIRPERSON:** But my question is a different one. Do you not agree that you were under a duty once you were made aware of such serious allegations, R51billion and that was said to have been irregularly obtained or in which the Gupta Family and Mr Duduzane Zuma were said to have been involved and the allegation that the Gupta's had tried to, wanted to ensure that the PRSASA Board had their associates in circumstances where we are talking about  
20 2016.

Remember, that is the year in which Ms Thuli Madonsela issued her reports. A few months later, we are talking about June, a few months later she issued her State of Capture report which led to this Commission. Already there have been lots of allegations about the Gupta's in the media, and things have happened and you



are told, you are made aware of these serious allegations. How is it possible that you - it can be said that the committee had no duty to do something about these allegations, if that is what you are saying?

**MS MAGADZI:** Chairperson, I – that is why at hindsight, when these issues are raised, one believes that for sure despite the fact that it was discussed in the Portfolio Committee and a particular decision was reached, one could have thought through to say, these are the issues  
10 that we need to follow up but we never did anything. I have to be honest, we never did anything.

**CHAIRPERSON:** Yes, but remember I am going to say again. My question is a different one. Do you accept or do you not accept that the committee had a duty to do something about these allegations? You have said that you - the committee decided not to do anything or the committee did not do anything. So my question is, do you not accept that the committee had a duty to do something?

**MS MAGADZI:** Indeed I accept the fact that the  
20 committee should have done something.

**CHAIRPERSON:** Okay, I guess I am never going to get an answer to this direct question that I've asked about three times Ms Magadzi. I am rather disappointed about that, I thought I would get a clear answer on what it seems to me clearly prior to the committee to do something. This was a

committee that was aware that there was a lot of instability at PRASA you told me that, yourself. This was a committee where you were aware, there were a lot of allegations of corruption. The Public Protectors Report was out derailed.

This was a committee that was aware that there was irregular expenditure that was ballooning at PRASA and then it gets told, becomes aware that there was a tender of R51billion which involves the Gupta family and Mr  
10 Duduzane Zuma and the allegations were that the Gupta family had attempted to rig the tender process so that they will benefit.

And it was alleged that Mr Montana had said that the Gupta family had tried to, had wanted to put its associates on the PRASA Board, by 2016 PRASA was in serious financial challenges. There were all kinds of allegations of corruption. On your own evidence, there was instability and your committee that you were leading refuses to do something about something so serious, and  
20 you are not able to say having been Chairperson of that committee that you know that the committee had a duty to do something and it may well be Ms Magadzi that part of the problem is that a lot of people were not making the judgment call that that needed to be made in terms of their duties. Mr Freund, you may continue.

**ADV FREUND SC:** Thank you, Chair. Chair, I know that on our video conference facilities, sometimes one cannot clearly hear every word. So I just want to check with Ms Magadzi that I heard her correctly because I understood her when you asked her the question previously, about whether she accepted that the committee had a duty to have acted in those circumstances.

I thought I heard her to say that she accepts that the committee should have done something, which seems  
10 to me to be agreeing that there was a duty. So I just want to check with the witness whether I heard her correctly.

**CHAIRPERSON:** Yes.

**MS MAGADZI:** That is correct, sir.

**ADV FREUND SC:** Yes, thank you.

**CHAIRPERSON:** Yes, I think I did hear that as well and it may be that Mr Freund is correct. That when you say the committee should have done something, it may be that that is another way of saying it had a duty. But what I did notice is that when for some time, I continued to say, to  
20 ask you the question whether there was a duty, you did not say – know when I said it should have acted I meant it did have a duty.

But I think Mr Freund is right, we should give you an opportunity to say whether when you said it should have acted, you meant it did, you accepted that I had a duty or

the position is this different. We need to - so that we are fair to you and your committee.

**MS MAGADZI:** Chairperson, I think that is correct. We should – when I said at hindsight, we should have done something Chairperson.

**CHAIRPERSON:** If I say by saying the committee should have done something, you are accepting that it had a duty to say, to do something. Am I showing a correct understanding of your evidence?

10 **MS MAGADZI:** That is correct Chairperson.

**CHAIRPERSON:** Okay, alright. So that, therefore the committee's conduct in not doing something would be a dereliction of duty, is that correct?

**MS MAGADZI:** That is correct, Chairperson.

**CHAIRPERSON:** Yes, okay, alright. Now, I must thank Mr Freund to correct this because I certainly thought that you were not accepting that the committee had a duty. Of course, I think both you and I should accept responsibility for that misunderstanding because you also did not say no,  
20 no when I say it should have acted I may now accept that it had a duty but I think now it has been clarified. Thank you very much. Okay, Mr Freund.

**ADV FREUND SC:** Thank you for that Chair. Thank you Ms Magadzi now I think it is still the same issue in a slightly different context. Ms Mazzone gave evidence, now

a motion that was put on the floor of the National Assembly on the 8<sup>th</sup> of September 2016 and that was yet another attempt of an opposition party to persuade those with the power to make a decision, which is to say the MP representing the majority party to cause an investigation to take place into serious allegations of State Capture and of alleged corruption.

And she told the Chair about a motion that was put on the floor a draft resolution to establish an *ad hoc* Committee to investigate the alleged Capture of State resources and undue influence over the government. And she said that it had widespread support from the opposition parties but all the representatives of the majority party voted against that.

And I will refer the Chair to a document you do not have Ms Magadzi, but when I look at Bundle 2, page 361, which is an extract from Hansard I see that amongst the very many ANC MP's who voted against that proposal, that motion was yourself. Am I correct you voted against that?

20 **MS MAGADZI:** That is correct.

**ADV FREUND SC:** And I want to understand why you voted against that, when you voted against were you acting on an instruction on the Whip that this was the position to be adopted by all ANC MP's?

**MS MAGADZI:** Chairperson, first of all let me indicate

that when we are in Parliament, are not in Parliament as myself I have been. I am representing the African National Congress and therefore will always and every time ensure that I tow the party line and that is just exactly what I did.

**ADV FREUND SC:** And what was the party line on requests for investigations into allegations of State Capture involving the Gupta's, the Zuma's and others?

**MS MAGADZI:** The motion which was put before Parliament, which was proposing the *ad hoc* Committee,  
10 the ANC said we are not going to support that motion.

**ADV FREUND SC:** And can you tell me why not?

**MS MAGADZI:** I do not necessarily would be able to say I can speak my own thinking but I will not say this is the reason why the ANC said that. But when - if parties say this is the route that you are going to take, you cannot deviate from the route that the party has indicated that you must fill.

**ADV FREUND SC:** Alright, let us move on. I want to take you to the events...[intervene]

20 **CHAIRPERSON:** I am sorry Mr Freund before you move on. But Ms Magadzi you are not telling me are you that as a member of Parliament, if there is a motion that must be voted upon and your party says vote this way and not that way. You do not even ask, why, you are not telling me that, are you?

**MS MAGADZI:** Chairperson, I am not telling you that the party would give it - would give a reason as to why but - or rather let me say I did not ask the reason why, I just believed that my party say we are not going to support the motion and I did exactly just that.

**CHAIRPERSON:** Are you able to tell me whether before your party told you which way to vote, whether you had come to your own view as to whether this was the motion that you would otherwise want to support or not support, or  
10 you had not come to any view by the time the party told you when and once the party told you it was irrelevant what your view was.

**MS MAGADZI:** Chairperson like I indicated, I did not go to Parliament out of my own accord. I went to Parliament representing the African National Congress and once there has been an indication from my party, I therefore would be able to follow what has been indicated by my party and I would say in this instance, the motion put forward by Ms Mazzone the ANC said, we are not going to support and  
20 definitely I did that, I did not support.

**CHAIRPERSON:** But at this stage, you are not able to share with me what reasons your party gave, so that I can assess whether it had valid reasons for saying this motion should not be supported or whether it had no valid reasons, you are not able to share with me what reasons

the party gave.

**MS MAGADZI:** I cannot recall Chairperson as to what were the reasons why the party said we should not support; I really cannot recall.

**CHAIRPERSON:** But sitting here now, knowing what you know and what has happened over the years. Do you have a view whether if you knew then what you know now, whether you would have - within the party has spoken in favour of saying let us support this and obviously you  
10 would, I think on your approach you would accept that if the party did not agree with you, then you would go along with whatever the party decided.

But internally, knowing what you know now, do you think that if you had known what you know now you would have said we must support this?

**MS MAGADZI:** Chairperson, let me say knowing what I know now, I still believe that what the party had instructed us to do for me was correct.

**CHAIRPERSON:** So if the same thing were to happen, if  
20 we were to find ourselves in 2021 with a similar situation and a similar proposal, motion and the party said vote against this, you would still be comfortable with voting against the proposal.

**MS MAGADZI:** Definitely I will be following my party line.

**CHAIRPERSON:** Okay, alright, Mr Freund.



**ADV FREUND SC:** Thank you, Chair. Ms Magadzi I want to move on with some different issues and I want to refer you in particular to a two-day meeting. I am sure it must have been a very memorable meeting that took place on the 7<sup>th</sup> and 8th of March 2017 at which your committee gave consideration to the ongoing crisis within PRASA. Chair this was dealt with in the evidence of Mr de Freitas, in volumes 3 from page 387 through to page 391. And I think we can deal with this meeting fairly briefly I hope Ms  
10 Magadzi.

In the course of that meeting, it is correct is it not that your committee unanimously decided, or be it that people might have had different reasons for making the same decision. Your committee unanimously decided that it was necessary for your committee to commence an inquiry into the affairs of PRASA, is that correct?

**MS MAGADZI:** That is correct.

**ADV FREUND SC:** And what divided the committee was what would be the important issues to be investigated in an  
20 inquiry. On the one hand, I was completely in your comment at least the representatives of the DA were of the view that there were allegations of corruption and the like, particularly flowing out of what was understood to be the content of the Werksmans Report, and they felt that that justifies an inquiry. So you agree with me so far?

**MS MAGADZI:** That is correct.

**ADV FREUND SC:** And on the other hand, there were a number of members of the majority party who supported an inquiry but whose motives were a little different, the issues that more concerned them were a little different. And I want to put to you that two of those key issues that led the majority party MP's to want to support such an inquiry was firstly, this.

There was anger on the part of ANC MP's about  
10 what was said to be allegations made by Mr Popo Molefe that the African National Congress had been the beneficiary of monies through a contractor with PRASA that had really come from PRASA and there was a feeling that this allegation was unjustified and unsubstantiated. That was one of the concerns, am I correct?

**MS MAGADZI:** Chairperson that is not correct. What the members of the African National Congress did was to - in a meeting which was scheduled amongst other things, which were, we wanted to raise was for Mr Molefe to come and  
20 tell us and give us evidence of the money that was paid to the African National Congress because that money, the monies, which were indicated, were in the court papers that the African National Congress has received money.

I need to indicate that members of the Portfolio Committee, all of us we were in agreement that we need to

investigate the malfeasance, which were had happening, the corruption which was happening, criminal activities that we felt is happening in PRASA and that we all agreed to say we need - as we were talking, we were indicating that the issues that we were raising must form part of the terms of reference for the investigation. We also need to raise the issues that have been raised by the Auditor General, particularly on irregular wasteful expenditure. We also need to factor in a number of things which actually were  
10 happening in PRASA and there was no single party which was saying this is what we want to do.

All of us as the member of the Portfolio Committee, were agreeing on the issues which were raised by members to be put in that, the question of the money that went to the ANC was a separate thing altogether from what we wanted to investigate.

**ADV FREUND SC:** Alright now, I want to be clear because I do not want there to be any misunderstanding between us. The question that I have just asked and that you have  
20 just answered relates to the events on the 17<sup>th</sup> of March 2017. That was an occasion on which you agreed with me, there was unanimity that there should be an inquiry. But I just want to remind you in perhaps you had been all confused that there was a later event, on the 20<sup>th</sup> of February 2018. So almost a year later, where there was

also a decision by your committee to convene an inquiry and I am sure you would know that. So I just want to check when you told the Chair that all the issues you have mentioned, the allegations and so forth were amongst the reasons why all members wanted this inquiry in March 2017. You clearly had in mind March 2017 you are not getting confused with February of 2018?

**MS MAGADZI:** That is correct Chairperson. Those were the issues amongst other issues which were raised by the  
10 members of the committee in March of 2017.

**ADV FREUND SC:** Alright. Now what I was putting to you was that there were two issues as I saw them that motivated ANC MP's I am just going to get this right. I put to you the one that you dealt with which is about allegations of monies finding their way PRASA ultimately into the ANC coffers. But the other issue that seemed to concern many of the ANC on this committee very considerably was the fact that the Popo Molefe board had mandated a private sector firm of attorneys Werksmans to conduct investigations and there was a strong  
20 feeling on the [?] that was quite inappropriate it should not have been done. Am I right that that was another part of the sentiment?

**MS MAGADZI:** Mr Freund you are correct the – we had concerns on the appointment of the – the investigators in PRASA and our concerns emanated from the fact that

1. The Werksmans company was not part of the contracted legal firms which were there in PRASA. And be that as it may we said it should have been appointed correctly. Whether they go out in a bidding or whatever was done it was irregularly appointed and those were the issues that we were raising and wanting to get the reasons why and the irregular appointment because we raised it several times in the meeting that there is a need to regularise the appointment of that month.

10 We were not speaking the fact that they are doing the job but we wanted them to be regularised.

**ADV FREUND SC:** Alright and that issue itself had quite a long history. I just want to mention I do not know if you recall that in March of 2016 quite some time before we talking about in March of 2017 is it had already been confirmed by the Minister in answer to a question in Parliament that Werksmans Attorneys had been appointed to lead this investigation – the forensic investigation and they had done that at the request of the board chaired by Mr Popo  
20 Molefe. This had long been common knowledge, do you agree?

**MS MAGADZI:** Chairperson in several meetings that we held as Portfolio Committee we – we raised the issue that Werksmans has been irregularly appointed.

**ADV FREUND SC:** And I do not want to get engaged in a –

in addressing whether you are right or wrong on that. You may be right; you may be wrong but let us just assume that that was an issue that was in dispute or an issue on which the committee wanted some – some clarity.

The fact of the matter is and I think you have already confirmed this that by the end of this two day marathon meeting there is complete unanimity on your committee for the reasons you have already told the Chair that there was need now for an inquiry into the affairs of PRASA.

10 I think you agree with that; am I right?

**MS MAGADZI:** That is correct.

**ADV FREUND SC:** And then something dramatic happened. What 00:04:19 at the meeting on the 8 of March the acting Director General of the Department of Transport Mr Mokonyama I believe read out a letter that had been sent to the committee from the then Minister Dipuo Peters in which she said that she had dissolved the board; the board headed by Mr Molefe. Is that correct?

**MS MAGADZI:** That is correct.

20 **ADV FREUND SC:** But as you have told the Chair the reasons for the need for the investigation into PRASA were widespread; they related to a lot of financial irregularities and a lot of alleged misconduct, alleged corruption and 00:05:15 you agree? I see you nod I just want to clear this up.

**MS MAGADZI:** I do agree Chairperson. Agree.

**ADV FREUND SC:** Now what puzzles me if it is factually correct as I think it may be is that a week later on the 14 March the ANC members of this Portfolio Committee did a complete turnaround and they said there is no longer any need for any investigation into PRASA by this committee. Do you agree that that is factually correct?

**MS MAGADZI:** Chairperson that is not correct. What we had agreed upon in the Portfolio Committee we still believe  
10 that we needed to continue with it. But I hasten to indicate that before the committee we had three very – three legislations which actually demanded the attention of the committee and hence the – the investigation was put kind of on hold because we were dealing with the National Transport – the amendment of the National Transport Act the amendment of the Adjudication of Administrative Road Traffic Offices and lastly the Road Accident Benefit Scheme Bill which were in front of the Portfolio Committee and hence there was no turnaround by the members of the African  
20 National Congress instead our focus was to make sure that we deal with this legislation to finality.

**ADV FREUND SC:** Now I want to put to you that your memory on this which you are simply not correct and that there was a very clear and deliberate decision by your committee at that time not to proceed with the inquiry that

you had decided the week before to commence. And I want to put to you that if one reads the report prepared by the Parliamentary Monitoring Group of that meeting and follow up meetings the – the discussion makes clear that many of the – or at least several of the members of the ANC in justifying not proceeding with the inquiry used as their reason the fact that the board had been dismissed and said having been dismissed there was now no longer any need for this inquiry. Do you dispute all of that?

10 **MS MAGADZI:** Chairperson the investigation was not about the board of PRASA but the investigation was about the happenings in PRASA and therefore it was not going to be possible that now that the board of PRASA has been dismissed it means that there are challenges and the activities which warrant that to be investigated were gone with the going out of the board and that cannot be the issue.

**ADV FREUND SC:** Sorry I am not clear that I understand your evidence. I – I think I understand you to be saying this. That you agree that the mere fact that the board had been  
20 removed was not in itself an adequate reason not to continue with the investigation. Do you agree with that?

**MS MAGADZI:** That is correct Chairperson.

**ADV FREUND SC:** So are you saying that you stand by your evidence that the committee did not reverse its decision previously to conduct – to conduct the inquiry it proceeded



with that decision.

**MS MAGADZI:** The committee did not reverse the decision to make enquiries into PRASA.

**ADV FREUND SC:** Did it implement the decision?

**MS MAGADZI:** The decision was not implemented Chairperson like I have indicated we were under pressure to deal with the legislation which was before the committee.

**ADV FREUND SC:** So it did not reverse the decision but it did not implement the decision. How does it come about that  
10 you do not implement a decision if you have just taken it?

**MS MAGADZI:** Chairperson like I indicated Mr Freund through you Chairperson we had legislations before the committee which we were supposed to deal with and see them through and that is why we put on hold the investigation.

**ADV FREUND SC:** Just so that we are – there is no misunderstanding between us what Mr De Freitas said in his evidence was the following and I am reading from Bundle 3 at page 390. He said:

20 “At the end of the second day of hearings the committee unanimously agreed that it had undertaken 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 an inquiry into PRASA was reconfirmed by myself at the same meeting. The Parliamentary Communication Service released a statement echoing this.”

From what I hear I do not think you dispute any of that.

**MS MAGADZI:** No that is why I am saying that we agreed on the investigation.

**ADV FREUND SC:** But of course in order to have an investigation the next step was to agree on the Terms of Reference. You never met in the next eleven months to agree on the Terms of Reference did you?

**MS MAGADZI:** Chairperson we did not meet to deal with the Terms of Reference we – my recollection is to the effect that we were even supposed to have some amongst us as members of the Portfolio Committee to go into that particular investigation but that never happened.

**ADV FREUND SC:** You see I hear what you say but I must put to you what Mr De Freitas says so that you can comment on it. He says that at this next meeting which is one week after the decision that was taken to – to have this inquiry he says that – well let me go back at – the top of page at 292 he refers ...

**MS MAGADZI:** Just hold it.

**ADV FREUND SC:** Can I proceed?

**MS MAGADZI:** Yes please.

**ADV FREUND SC:** At the top of page 292 of Bundle 3 he says this:

“Mr Sabande said the committee had agreed on an inquiry initially however committee had not anticipated that the Minister would be so quick to respond about PRASA an inquiry was not necessary as the PRASA board had already been expelled.”

Then it continues.

10 “Mr Maswangane who later became Minister suggested that the Minister be requested to appear before the committee afterwards the committee should decide whether to pursue the inquiry or not.”

And then he says:

20 “I stated that since the 8 March meeting it appears that ANC members had been instructed to tow the line and keep quiet. I expressed concern that the PC allowed the Minister to tell us how to conduct oversight. I could not support the proposal to abandon the inquiry.”

Now what Mr De Freitas is doing here is he is lifting out of the PMG minutes of this very meeting and I want to put to you again that the sentiment (audio distorted) of this meeting

was that because the board had been removed the feeling of the ANC members was that there was no need to continue with the meeting. I think you disagree with that am I right?

**MS MAGADZI:** I disagree with that if you – you would read again what Mr Maswangane said. That was part of how we wanted to proceed with the investigation because we wanted the Minister to come so that we can be able say to the Minister this is what we are going to be doing with respect to the investigation into PRASA. And the – unfortunately I  
10 cannot recall whether the Minister did come to the meeting or not but it was not to say for the fact that the committee has been dismissed therefore we need to dismiss the investigation. The investigation was not about the committee but the investigations was about the happenings in PRASA.

**ADV FREUND SC:** Alright. And it appears from what I have just read to you that was attributed to Mr Maswangane that the suggestion was that after 00:14:58 the Minister the committee should decide whether to pursue the inquiry or  
20 not. And I want to put to you that quite clearly what must have happened is that a decision was taken not to pursue the inquiry. Do you stand by that?

**MS MAGADZI:** There is nowhere in the minutes of the Portfolio Committee where they are saying we are discontinuing with the investigation. And let me also indicate

that subsequent to that we – there is a report that we wrote as the Portfolio Committee and submitted that report to the Chair of Chairs. Our indication was that we wanted that report to be tabled in Parliament so that it can be within the records of Parliament but it never went to Parliament.

**ADV FREUND SC:** Well I am going to come back to where we are for the moment just so that we can all get our bearings about time. You are aware are you not that on the 20 February 2018 which is eleven months after the time we  
10 are talking about (audio distorted 00:16:15) again to conduct an inquiry. Am I right? It is a fair decision for the committee to conduct an inquiry.

**CHAIRPERSON:** I am sorry Mr Freund. I am sorry Mr Freund. I could not hear.

**ADV FREUND SC:** Yes.

**CHAIRPERSON:** A number of parts of your question. It may that the transcribers could hear you but I think there were technical problems. Maybe just repeat the question and we will see whether the problems will – are still there or not.

20 **ADV FREUND SC:** Yes with pleasure Chair. I am just endeavouring to get confirmation from Ms Magadzi that eleven months after these March 2017 meetings we have been talking about there was another set of meetings that really commenced on the 20 February 2018 that another decision was taken to conduct an inquiry into the affairs of

PRASA. I just wanted to check with the – with Ms Magadzi that you call that and can confirm it?

**MS MAGADZI:** I cannot hear clearly.

**CHAIRPERSON:** Let me check with the transcribers whether they can hear ...

**ADV FREUND SC:** Chair can you just enquire from the technicians.

**CHAIRPERSON:** One second Mr Freund. The transcribers are they able to hear Mr Freund? They cannot hear him. Do  
10 they need some time to attend to the problems or is – he can try again. Okay Mr Freund the transcribers or the people recording the proceedings could not hear you. Let us try again and see whether it will be better now.

**ADV FREUND SC:** Chair let me – let me try again. What I am asking you Ms Magadzi is whether you can just confirm that about eleven months later from March of 2017 in February of 2018 there was another formal decision adopted by your committee to commence an inquiry of maladministration within PRASA. Is that correct?

20 **MS MAGADZI:** That is correct.

**ADV FREUND SC:** And I know that we are jumping the gun a bit but that too did not result in fact in an inquiry; that inquiry never in fact happened, is that correct?

**MS MAGADZI:** That is correct.

**ADV FREUND SC:** And we will come back to that later. I

want to just finish off on where we were – it was all about March 2017. And I just want to understand more clearly from you what happened to this inquiry? Because in – on the 8 March 2017 you formally resolve to commence an inquiry. You formally resolve that you will meet to consider the Terms of Reference. But as you say it was never implemented and the Terms of Reference were never discussed or agreed.

Now is it your evidence that the sole explanation for that is that your committee got too busy with other work?

10 **MS MAGADZI**: That is correct Mr Freund. We – we were very busy with the legislations that were before the Portfolio Committee and every time at the slightest moment then we would revert – remember it is not only PRASA that we were overseeing we trying to balance the whole equation and that is why I said the most crucial thing that held us to be unable to continue with the investigation was the legislations which were before the Portfolio Committee.

**ADV FREUND SC**: Alright we will come back to that later. I want to move on to another letter that Mr De Freitas told the  
20 Chair that he sent to you. It is a letter dated the 8 June 2017 and it is dealt with in – in his report and at page 394 and he says that on that occasion he wrote a letter to you requesting that the committee summon the directorate of Priority Crime Investigations or Hawks to provide a comprehensive and detailed report to the progress of the

investigation into PRASA. He says he requested a response be sent to him by the 14 June 2017 and he says again no response was received. Do you recall that letter and can you confirm that you gave him no response?

**MS MAGADZI:** Let me indicate once more that any other correspondence that would come to the Chairperson will be dealt with in the committee and the outcomes with Mr De Freitas was part of that particular committee. Unlike external people he would be able to get the outcomes in the  
10 committee. And in this instance I would not say that I never responded to that correspondence but it was dealt with within the Portfolio Committee.

**ADV FREUND SC:** And what was the decision of the Portfolio Committee to Mr De Freitas' request that the Hawks be asked to provide a comprehensive and detailed report into the progress of the investigation into PRASA?

**MS MAGADZI:** I cannot recollect as to what was the decision of the Portfolio Committee in this matter.

**ADV FREUND SC:** You were aware were you not that at  
20 least Mr Molefe was alleging that the Hawks were not adequately investigating the many issues that he had referred to the Hawks for investigation. You knew that that was his claim am I correct?

**MS MAGADZI:** That is correct.

**ADV FREUND SC:** And fair to say that your committee never



put pressure on the Hawks to disclose to your committee what progress if any they were making in respect of what had been referred to them by Mr Molefe and his board.

**MS MAGADZI:** That is correct the Hawks was never invited to the Portfolio Committee and therefore we could not get information as to progress with respect to issues as raised in PRASA – for PRASA.

**ADV FREUND SC:** Alright. I want to move onto a different topic. Chair if I could refer you to

10 **CHAIRPERSON:** Oh I think Mr Freund.

**ADV FREUND SC:** Bundle 2

**CHAIRPERSON:** Mr Freund.

**ADV FREUND SC:** Page 408.

**CHAIRPERSON:** Mr Freund. I think...

**ADV FREUND SC:** Yes Chair.

**CHAIRPERSON:** I think it is the convenient time to take the lunch break.

**ADV FREUND SC:** As you please Chair.

20 **CHAIRPERSON:** We will adjourn for lunch and resume at two. We adjourn.

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

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Okay let us continue.

**ADV FREUND SC:** Thank you, Chair. Ms Magadzi, can

you hear me clearly

**MS MAGADZI:** Yes, Chair I can hear you.

**ADV FREUND SC:** Thank you. Ms Magadzi, I want to turn to a different issue which is the set of letters that were sent out by Mr Frolic, the Chair of Chairs to the chairs of a number of portfolio committees including your Portfolio Committee which he sent on or about the 15<sup>th</sup> of June 2017.

And in that letter – and Chair that letter is in  
10 Bundle 2, page 488 and we have endeavoured over the lunch to send a copy to Ms Magadzi.

I am not sure whether she had a chance to see it. It should be in her inbox in her email. In that letter Chair at Bundle 2, page 488 - it is only a two paragraph letter. And with your leave and if you ready I propose just to read it into the record.

**CHAIRPERSON:** Yes, that is fine. You can read it.

**ADV FREUND SC:** Thank you. It is dated the 15<sup>th</sup> of June 2017. It is address to you Ms Magadzi in your  
20 capacity as Portfolio Committee, as the Chairperson of the Portfolio Committee of Transport. It is headed: Allegations of State Capture in Organs of State.

And it says:

“I am sure you are aware of numerous allegations of State Capture that had appeared

in the media in recent weeks.

Some of these allegations involve members of the board of the Passenger Rail Agency of South Africa, PRASA.

I would like to request that your committee investigate the allegations within the parameters of the rules and report any findings where applicable to the National Assembly as a matter of urgency.

10 Yours sincerely, Mr Frolic, House Chairperson of the Committee.”

Do you recall this letter?

**MS MAGADZI:** Yes, I do.

**ADV FREUND SC:** Now Mr De Freitas dealt with this in his evidence. It is at page – in Bundle 3 – in Bundle 7. And he says that we see in this letter that he was alerted ...[intervenes]

**CHAIRPERSON:** Hang on Mr Freund...[intervenes]

**ADV FREUND SC:** ...to the fact of a similar letter  
20 ...[intervenes]

**CHAIRPERSON:** I ...[intervenes]

**ADV FREUND SC:** ...that had been sent ...[intervenes]

**CHAIRPERSON:** Sorry, Mr Freund. Did you say Bundle  
3?

**ADV FREUND SC:** Yes?

**CHAIRPERSON:** Did you say Bundle 3?

**ADV FREUND SC:** Bundle 3, page 397. It is where Mr De Freitas' evidence on the point appears.

**CHAIRPERSON:** Yes. Okay. I had sent that bundle away because I do not have much space here. So now. What is the page?

**ADV FREUND SC:** 397 in Bundle 3.

**CHAIRPERSON:** 397?

**ADV FREUND SC:** Black letter, 397.

10 **CHAIRPERSON:** Bundle 3, page 397 is on my bundle not ...[intervenes]

**ADV FREUND SC:** Under the heading ...[intervenes]

**CHAIRPERSON:** ...the letter but ...[intervenes]

**ADV FREUND SC:** Under the heading ...[intervenes]

**CHAIRPERSON:** Oh, where it says letter received from the House Chair regarding investigations ...[intervenes]

**ADV FREUND SC:** That is correct Chair.

**CHAIRPERSON:** Okay alright. Thank you.

**ADV FREUND SC:** That is correct Chair.

20 **CHAIRPERSON:** Okay alright.

**ADV FREUND SC:** Now Mr De Freitas testified to this orally and his version in short Ms Magadzi is the following. From his Chief Whip at the time, Mr Steenhuisen, had it been drawn to is attention that the letter similar to the letter I have just read to you, had been sent to the

Chairperson of the Mineral Sources Portfolio Committee.

And he was led to understand by Mr Steenhuisen that a similar letter had been sent to you. But he says you never tabled that letter at the Portfolio Committee on Transport. And he says he was not officially aware that there was such a letter.

So he raised the subject and he says as diplomatically as possible and he explained to you that he had heard of the letter requesting us as the PC, initiating  
10 an inquiry into PRASA.

And then he says that you as the chairperson of the committee explained to him that PRASA itself was undertaking their own inquiry and that other agencies such as the Hawks were involved. And he says that your argument was that essentially this precluded us, the committee, from lodging an inquiry.

And he says that he argued that this was not the case and that your committee was at liberty to investigate PRASA as Parliament had oversight on government. Now I  
20 have a number of questions arising from his version.

My first question is. Can you confirm that you did not, as a matter of fact, tabled before your committee the letter that I have read to you of the 15<sup>th</sup> of June 2017 from Mr Frolick?

**MS MAGADZI:** Mr Freund, I did table the letter in front of

the Portfolio Committee, but I will go back again to say as late in the course. In 2017, we had a number of legislations before us and we had already – we had a report which we submitted to The House Chair to say this will be the founding document towards the investigations to PRASA.

And also wanting to check with himself to say: How do we deal with the situation where we have these legislations? By then there were five bills before us. How  
10 do we deal with a pack of a situation?

And we had to prioritise, dealing with the legislation but we never said we are not going to do the investigation. And subsequent to that, as we were dealing with the matter, we went into a situation where we developed terms of reference.

I think it was somewhere in 2018. We developed some terms of reference responding to this letter because at least a few of the legislations were out of the way.

We were left with the Road Accident Benefit Skill  
20 Bill before us. We were left with a specific litigation services brought before us. We were left with Airports Company Bill before us but we had already been able through Parliament passed the National for amendment. We have already passed the adjudication of administrative, road and fences through Parliament.

So that is why we were able at that particular time to say now we can be able to deal with the terms of reference wherein two members of the Portfolio Committee were assigned to deal with the terms of reference in response to this – in response to the letter but Mr Frolick was able – what was sent to us.

**ADV FREUND SC:** Thank you. Now could you tell me the date on which you tabled this? Because I have to tell you that a very diligent search had been performed in particular about the Parliamentary Monitoring Group who attend every meeting of you.

And as far as they have seen and so far as I am aware and as far as Mr De Freitas is concerned, it was not. So are you able to give us any details as to when it was tabled?

**MS MAGADZI:** I cannot give you the exact date but it was somewhere in July of 2017 when we were discussing this matter.

**ADV FREUND SC:** July 2017. Well, Ms Magadzi if in the course, after you have testified, you come across any evidence to support that, then I would suggest that your legal representative make that available to the Commission and we will investigate that further.

**CHAIRPERSON:** I am sorry Mr Freund ...[intervenes]

**ADV FREUND SC:** And ...[intervenes]

**CHAIRPERSON:** I am sorry Mr Freund. I think you understood that she was saying it was July 2017 but I thought she said July 2018. Is that – which year is it Ms Magadzi when the committee discussed the letter?

**MS MAGADZI:** We received the letter in June of 2017 and in our committee meeting sometime in July of the very year we were able to look into how can we able to respond to the question that was put, the request that was put by The House Chair.

10 **CHAIRPERSON:** Okay so it was July 2017 when the letter was discussed? But you – the committee ...[intervenes]

**MS MAGADZI:** Yes.

**CHAIRPERSON:** ...began to look at terms of reference only in 2018. Is that correct?

**MS MAGADZI:** That is correct Chairperson.

**CHAIRPERSON:** Thank you. Yes, Mr Freund.

**ADV FREUND SC:** Thank you, Chair. And when your committee discussed this issue in July of 2017, approximately, what decision, if any, did your committee  
20 make or what instructions, if any, did they give you on how to deal with this issue?

**MS MAGADZI:** We agreed with what Mr Frolic was saying to say we need to investigate. And that was the decision that we took that we need to investigate as per the instruction from The House Chairperson.



**ADV FREUND SC:** And I presume it would be a matter of priority because it is alleged to relate to numerous allegations of State Capture and you have been requested to report back to The House as a matter of urgency. So I presume this must have been a matter of some priority to your committee?

**MS MAGADZI:** Chairperson, let me indicate that everything that we were doing in the Portfolio Committee was important and therefore we have to take everything as  
10 important as it is presented before the Portfolio Committee.

**CHAIRPERSON:** But Ms Magadzi, various matters may all be important but the level of urgency would differ. So you may say, all of these tasks need to be done because they are important but some are more urgent than others.

It is difficult to think that they would all be enjoying exactly the same level of urgency.

I mean, there may be a task which if not done within the next three months could lead to some disaster but there could be another task which is quite important  
20 but it can be done in six-months' time and there will not be much of a disaster.

Would you not accept that proposition that even though different matters may be important, the level of urgency would differ?

**MS MAGADZI:** Chairperson, indeed the level of urgency

from time to time would differ but I have already indicated that before us there were legislations which needed to be dealt with before Parliament rise as we were moving towards the elections.

**CHAIRPERSON:** Well ...[intervenes]

**ADV FREUND SC:** You are talking about in the middle of 2017?

**CHAIRPERSON:** Ja, that was after the Local Government Elections and two years away from the General Elections  
10 of 2019?

**MS MAGADZI:** Chairperson, between 2016 and 2018 we had several legislations which were before Parliament. And we were dealing with those legislations besides the fact that as the Portfolio Committee you were going into other things that are brought before the Committee.

And hence, when we were discussing – in the ultimate end when the bills – we were now easing out of the bills, we had to go into ways to put the terms of reference which was in 2018 so that we can be able to  
20 investigate as requested by The House Chairperson.

**CHAIRPERSON:** I would – it would not be right that I do not mention to you that I am concerned that your – from 2016, I think about June, when mister – was it Mr De Freitas? I think it was. Made the request for an inquiry into allegations of State Capture by the Gupta family, I

think, or when he asked that your committee should summon the Gupta's and other people in relation to the R 51 billion tender. Your committee did not see this as a matter that needed urgent attention.

It decided not to do anything at that stage. Or, also when other terms were made to get your committee to look into these allegations of corruption and State Capture involving the Gupta's, your committee thought well we have – what is more urgent is this legislation. It was 2016.

10           In 2017, a letter comes from the Chair of Chairs within Parliament. In effect, his saying this is urgent. Would your committee please investigate and report back to the National Assembly?

Your committee, once again, takes the attitude that this can wait for another – I do not know whether it is seven months or nine months or a year. We are busy with legislation.

          And yet, we are dealing here with, in terms of what Mr Frolick said in his letter to you, allegations of State  
20   Capture.

I am very concerned that your committee, despite what was known in the public domain in terms of allegations involving the Gupta's and despite what Mr De Freitas proposed, despite what Mr Frolick proposes, your committee does not see this issue as requiring their urgent

attention. I am very concerned about that.

You may be able to say something to lay my concern or – but I am quite concerned. You do not at any stage in 2016 and 2017 say as a committee: Hang on. These allegations have been made. They keep on coming up. Now they come from, we are being asked to investigate. Let us give this matter some urgent attention.

Your committee does not seem to think this matter is urgent. You might not be able to say anything but I am  
10 just saying I need to be fair to you say that this is what is going on in my mind about your committee.

You might say: No, Chair you should not be concerned because of A, B, C, D. Or maybe because rightly or wrongly we took the view that the legislation was more urgent than the allegations of State Capture.

**MS MAGADZI:** [No audible reply]

**CHAIRPERSON:** You do not want to say anything or you want to say something?

**MS MAGADZI:** No, thank you Chairperson. You have said  
20 it.

**CHAIRPERSON:** Yes, okay alright. Thank you. Mr Freund.

**ADV FREUND SC:** Thank you, Chair. Ms Magadzi and Chair, there was a follow-up letter from Mr Frolick and Chair that is to be found in Bundle 2 pages 486 and 487.

And it reflects the fact in the first paragraph that you had met with Mr Frolic to discuss his requests and that according to him, the two of you had agreed on an approach in dealing with the matter at hand.

And the matter at hand is the letter date the 15<sup>th</sup> of June 2017 on allegations of State Capture. It is two page letter. I am not going to read it all into the record but the gist of it is that Mr Frolick was still of the view that the relevant member of the Executive should be called to  
10 clarify the allegations in the public domain and that should be the point of departure before the committee determines its next course of action.

And then the letter reads as follows:

“Finally, the committee must determine the resources required and communicate the needs to my office.”

Now I take it you received such a letter at or about this time, on the 25<sup>th</sup> of August 2017?

**MS MAGADZI:** That is correct.

20 **ADV FREUND SC:** But you keep on going back to Mr Frolic and say: Well, the reports has been required of the following and yes we will proceed as you have requested or how did you respond?

**MS MAGADZI:** We did go back to Parliament, to Mr Frolic to indicate after the discussion in the Portfolio Committee

how we would like to execute the task. And subsequent to that, I need to indicate that we had the public hearings on the bill – one of the bills that was before us.

I had indicated as to, for us to can be able to deal with what we had discussed with Mr Frolic, the Portfolio Committee will need, amongst other things that we had requested because the committee sits once a week, was to the effect that we need to be given extra days of sitting so that we can be able to deal with what was before the  
10 Portfolio Committee besides looking at the other resources which actually the committee was going to need.

**ADV FREUND SC:** An did you ever pursue that and ever even commence this urgent inquiry?

**MS MAGADZI:** We did not commence with the urgent inquiry because when we finalised the terms of reference and wanted to start with the inquiry, that is when Parliament rose to go to take for the elections.

**ADV FREUND SC:** And am I correct that you finalised the terms of reference in February 2018?

20 **MS MAGADZI:** That is correct.

**ADV FREUND SC:** Now Mr Frolick has submitted an affidavit as part of the same set of affidavits that you have submitted. And he says – and Chair in Volume 1, page 54.

**CHAIRPERSON:** [No audible reply]

**ADV FREUND SC:** It says:

“However, the Portfolio Committee on Transport (which is of course a reference to your committee) and Minerals (a different committee) sighted reasons with the administrative programme and lack of clarity on how to proceed with the implementation of the decision for not doing so.”

He says:

10 “This was raised a few times in meetings of the Chief Whip’s Forum and the National Assembly Programming Committee to discuss with the Speaker and the ANC Chief Whip.

I had several meetings (says Mr Frolick) with the chairpersons to provide the necessary guidance and support to deal with the matter.”

And then he says in the final paragraph of his affidavit:

20 “The end result was that both these Portfolio Committees, Transport and Minerals, failed to implement the decision.”

Do you think what Mr Frolic there says is truthful and a fair summary on how the events unfolded?

**MS MAGADZI:** It is truthful because we could not implement what he had requested from us on time but we were able to have the terms of the reference and the

people who were supposed to deal with the inquiry five months later in February of 2018.

**ADV FREUND SC:** Now I want to go back to something I put to you earlier. I put to you Mr De Freitas' version. You remember he said you never even tabled this letter to the committee and he says that he had a discussion with you, one on one, informally.

And that you argued to him that it was – that PRASA itself was undertaking their own inquiry and that  
10 other agencies, such as the Hawks were also involved and for that reason there was no need for your committee to pursue an inquiry.

I want to give you an opportunity to comment on that because it may be that the Chair is forced to make a credibility finding as to whether he believes that Mr De Freitas said or whether he believes that you say.

So here is your chance to answer on what Mr De Freitas said.

**MS MAGADZI:** Chairperson, let me indicate that as  
20 members of Parliament, I cannot say that because the Executive is doing this, I cannot do it as Parliament or as a Portfolio Committee.

And I want to dispute the fact that – for the fact that if PRASA was doing the investigation or the Hawks were doing investigation, it did not stop us from doing our



own investigation as the Portfolio Committee.

And therefore, that for me, I dispute because if that was the truth, we would not have gone into a situation of having the terms of reference or even having people who will be able to deal within the Portfolio Committee deal with the request that came from Mr Frolick.

And I think that for me is not a true reflection of what I believe you need to do as the Portfolio Committee. And let me indicate that it is not correct what Mr De Freitas  
10 said.

**ADV FREUND SC:** Well, I want to put to you that the report prepared by the Parliamentary Monitoring Group which went through your own reports on your committee and looked at the instances of engagements in your committee and anybody on the issue of PRASA.

Nowhere in that report, so far as I am aware, is there anything to corroborate what you have just said. There is no indication that letter was tabled. There is no indication that letter was discussed. There is no indication  
20 that there was a decision to defer an investigation.

In fact, the impression it creates is that you colluded in withholding that letter from the committee because – and I want to put it to you for your comment, you did not want this to be done.

**MS MAGADZI:** Mr Freund, let me indicate that every time

there was a correspondence that comes to my attention, I will put to it to the attention of the Portfolio Committee.

And who am I as an individual to choose to want to do certain things as and when they become before the Portfolio Committee?

I have never worked as an individual. I was working within the collective of the Portfolio Committee. And therefore, any other issues that would come before me it will always go to the Portfolio Committee.

10 And I really would not – I do not have better words to be able to say I definitely not individualistic in how I deal with issues.

**ADV FREUND SC:** Alright. Now Chair, if you can just give me a minute? I have misplaced a piece of paper.

**CHAIRPERSON:** Okay. Well, while you are looking at that, let me say something to Ms Magadzi. Ms Magadzi, you have said that, I think in 2016 and 2017, there were urgent pieces of legislation that the committee needed to deal with.

20 I would like you, if you can, after today to deposed to a supplementary affidavit where you can give me more details, one about what pieces of legislation you are referring that you were – the committee was busy with in 2016. When had the piece of legislation been brought to the committee to work with, what meetings they or the

committee had to deal with them and when did it finalise, also in 2017. But I accept that because we are talking a few years ago, that might not be easy. If it is not easy you can indicate so but if you can, it would help just so that I can have a good picture of the reasons that you give for saying the committee could not deal with the investigation of inquiry or could not - ja, in 2016 as well as 2017. So I would like you to give me more information that will assist me to have a clear view of what you were dealing with in  
10 terms of pieces of legislation and so on. Is that something that you think you could do?

**MS MAGADZI:** Chairperson, I think it is doable.

**CHAIRPERSON:** Okay, no, no, thank – how much time do you think you might need to be able to furnish such an affidavit to the Commission? What deadline would you give yourself?

**MS MAGADZI:** Chairperson, I can give myself two weeks going into the archives and looking for that information.

**CHAIRPERSON:** Yes.

20 **MS MAGADZI:** If it is fine with yourself.

**CHAIRPERSON:** Okay, no, that would be fine. So we would be – today is the – what is the date today? I cannot remember. But two weeks from now. Okay, that is fine, let us work on that basis. Thank you. Mr Freund?

**ADV FREUND SC:** Yes, thank you, Chair. I want to take

you to another issue now, Ms Magadzi. And here a reference for you, at bundle 4, page 420. That is the actual source document. Mr de Freitas' evidence on this one is bundle 3 page 408 and I want to tell you, Ms Magadzi, that Mr de Freitas has produced a letter dated the 12 January 2018, January 2018, and it contains a letter he wrote to you and it deals in large measure, firstly, with problems of rail safety and as important as that is, I am not focusing on that for present purposes.

10 But he also deals in that letter on page 421 to 422 with the second issue. He says:

“The committee should also scrutinise the recent appointments at PRASA. Both the Acting Group CEO Cromet Molepo and the Acting CEO of Rail, Nthuthuzeli Swartz have multiple allegations of corruption and maladministration that has been lodged against these officials.”

And he goes on in some length to describe what those allegations are and then he says towards the end of his  
20 letter:

“This committee has the express duty to hold the executive accountable as well as ensuring the effective management of the department, its entities and its mandate to fulfil these duties.”

And he says this in bold:

“I here request the Transport Minister, Joe Maswanganyi and executives of PRASA be formally summoned to appear before the committee to account for the abovementioned concerns. Given the gravity of the matters raised above, I trust you will also view these matters in a serious light and proceed to address these requests with the urgency they warrant.”

Can you confirm that you received that letter?

10 **MS MAGADZI:** Chairperson, let me indicate in this instance I do not recall and appreciate – I do not recall, maybe I need to also go into my archives and check if I did receive that letter. I do not recall.

**ADV FREUND SC:** Chair, from our side we have no difficulty if the witness wishes to deal with this in a supplementary affidavit.

**CHAIRPERSON:** Yes. No, no, that is fine. So you can have a look at your archives and then in the affidavit that you talked about you could then deal with the issue of  
20 whether you received this letter and, if so, what you did arising from after you had read it. Thank you. Mr Freund?

**ADV FREUND SC:** And while you can consider that – thank you, Chair, while you consider that, Ms Magadzi, I want to put to you clearly what Mr de Freitas alleges. Mr de Freitas alleges that your office confirmed receipt of his

letter but he received no response to it and he says when he attempted to discuss the letter with you, with the PC Chairlady, he was fobbed off. Do you have any recollection or comment on that?

**MS MAGADZI:** I have indicated that I do not recall this letter. Most of the letters that you spoke to sent by Mr de Freitas I was able to say yes, I remember this letter but in this one, I do not recall and therefore even quotes that so-called I rebuffed him, it is something that I will not  
10 comment on.

**ADV FREUND SC:** That is fine and we wish to do so in a supplementary affidavit please feel free to do so. Now what I also want to put to you is that there is a constant refrain in Mr de Freitas' evidence, not only that the committee did not do what it should do but that you personally both failed to respond to correspondence, important correspondence, and failed to put to the committee, as you say you did, these letters. The impression he creates is completely different to the  
20 impression that I understand you to be conveying, he is saying on multiple occasions – and I have referred to a number of them today with you, those letters were not tabled, really suggesting you were concealing from the committee correspondence of importance. Do you wish to comment on that?

**MS MAGADZI:** Chairperson, let me indicate once more that any other correspondence that was coming to me was tabled before the committee but I must also indicate that he feels I was concealing things from the committee but at no stage was Mr de Freitas arriving on time when we were dealing with correspondence in the portfolio committee and therefore that is why there is a reason to say that I was concealing some of things from the portfolio committee. And let me indicate that as far as I recollect, any other  
10 correspondence to my attention would be brought before the committee.

**ADV FREUND SC:** Alright. Now let us move on to something we have referred to several times but we have now finally reached it which is the events of February 2018. This is what Mr de Freitas calls a third attempt into a parliamentary inquiry and he refers to a meeting of your committee that took place on the 20 February 2018 and he says the following:

20 “Mr Ramatlakane of the ANC recalled that the committee had wanted to initiate an investigation into the previous PRASA board. However, the investigation had been suspended. He suggested that due to the concerns of #UniteBehind and United Consumers Voice, outstanding issues identified by portfolio committee members of

various meetings and investigation should be instituted against PRASA based on Rule 227(c).”

And then he says that you then said that the portfolio committee had wanted to investigate the previous board under the Chairmanship of Dr Popo Molefe that you claimed that the investigation had been stopped because he had been suspended by the Minister of Transport and due to the latest allegations and outstanding items from the PRASA interim report the portfolio committee need to  
10 investigate PRASA and then he goes on to say that the committee as a whole agreed that there should be an investigation.

Now how much of that do accept? How of that, if any, do you dispute?

**MS MAGADZI:** Mr Freund, let me indicate that to my recollection we were not investigating the PRASA board but wanted to investigate the malfeasance which were happening in PRASA as an organisation. Indeed some of the things that he has mentioned there are true but I need  
20 to indicate that we were not investigating PRASA board in this instance and therefore we all agreed that there is an need for us to be able to go into the investigation, as requested by the house chair but also the committee saw that there is not as much work which was before the committee but we can able to deal with the issues.



**ADV FREUND SC:** Right. And by this time, of course, the Zondo Commission had been appointed, that is correct, is it not? They were appointed – this Commission was appointed in January and we are now talking about in February so you were not concerned that the work of the Zondo Commission should in any way get in the way of your inquiry, you thought you should proceed with your own inquiry.

**MS MAGADZI:** Chairperson, let me indicate that we felt  
10 as a committee that we have to do what we have to do as members of parliament and even if eventually, what we would have done can form the basis of the investigation through the Commission we will be able to submit that to the Commission.

**ADV FREUND SC:** Right. And what we also agreed according to this report and I should indicate to you that Mr de Freitas' report is drawn almost verbatim on these issues from the reports of the parliamentary monitoring group:

20 The committee agreed that the investigation should be launched in terms of Rule 227(1)(c) and they said it was important to conduct an investigation into PRASA before the 1 April 2018.”

This was regarded as a matter of priority and urgency, is that correct?

**MS MAGADZI:** That is correct.

**ADV FREUND SC:** “And it was agreed that a sub-committee comprising Mr Ramatlakane of the ANC and Mr Hassinger(?) of the DA and certain relevant officials to draw up the terms of reference by the 22 February 2018.”

I take it that is correct.

**MS MAGADZI:** That is correct.

**ADV FREUND SC:** And indeed ...[intervenes]

10 **CHAIRPERSON:** I am sorry, Mr Freund? Of course, Ms Magadzi, in 2016 and 2017 the President of your party as well as the President of the country was President Zuma. In February 2018, I cannot remember from what date, but from a certain date in February the President of the country as a new President, president Ramaphosa and of course from sometime in December 2017 your party had a new President also, President Ramaphosa, those events had happened in the meantime, is that correct?.

20 **MS MAGADZI:** I beg your pardon, Chairperson, I did not hear you clearly.

**CHAIRPERSON:** Yes. Is it correct that in 2016 and 2017 the President of your party and the President of the country was President Zuma and that from ...[intervenes]

**MS MAGADZI:** That is correct.

**CHAIRPERSON:** And that from sometime in December

2017 he ceased to be President of your party and Mr Ramaphosa became President of your party, is that correct?

**MS MAGADZI:** That is correct, Chairperson.

**CHAIRPERSON:** And I do not know what date your committee's meeting was in February 2018, but I think from sometime in February 2018 Mr Zuma ceased to be President of the country and Mr Ramaphosa became President of the country, is that correct? Those events  
10 had happened [inaudible – speaking simultaneously]

**MS MAGADZI:** That is correct, Chairperson.

**CHAIRPERSON:** Okay, alright. Mr Freund?

**MS MAGADZI:** That is correct, Chairperson.

**CHAIRPERSON:** Thank you, Mr Freund.

**ADV FREUND SC:** Thank you, Chair. And is it correct that terms of reference were subsequently proposed to the committee at its meeting on the 13 March 2018 and were adopted by the committee and Chair, you will find this at bundle 3, pages 419 to 420. I want to read to you, Ms  
20 Magadzi, just extracts of the official portfolio committee minutes. This is what was agreed:

“The inquiry will investigate governance, procurement and the financial sustainability of PRASA. The inquiry will look into, amongst others:

1. Appointment of permanent board members and

executive management.

2. Alleged procurement irregularities as indicated in the Public Protector report Derailed.”

That of course went back to 2015.

As well as the allegations made of procurement irregularities with regard to the modernisation as well rolling stock projects dated back to 2012.

3. Allegations of impropriety regarding PRASA’s current Acting Group CEO as well as past Group  
10 CEOs dating back to 2012.”

And then a number of other issues one of which is:

“Consider Werksmans’ (indistinct – recording distorted) process and scope legality.”

Do you confirm that those were amongst the issues that your committee decided in March would be the terms of reference for the investigation it was going to carry out?

**MS MAGADZI:** That is correct.

**CHAIRPERSON:** Do you remember – I am sorry, Mr Freund, do you remember, Ms Magadzi, whether in  
20 February 2018 your committee did not have any urgent legislation that needed to be attended to?

**MS MAGADZI:** In 2018 we had to, if I recall, bills before the portfolio committee and that is why we had to look into the other things that we can be able to handle.

**CHAIRPERSON:** So in February 2018 there were two bills

that needed your attention?

**MS MAGADZI:** Yes, yes, Chairperson.

**CHAIRPERSON:** Yes but you cannot remember whether they were urgent or not?

**MS MAGADZI:** Let me say that in terms of parliamentary organisation, once the bill comes before you have to deal with that bill and be able to see it through and we were under duress and under pressure precisely because we knew 2018 we were going to rise for elections and  
10 therefore we should not leave work – the bills which were hanging so that they do not lapse in parliament but we are able to see them through so that we would have done our work.

**CHAIRPERSON:** The committee – your committee still consisted of the same members who served in 2016 and 2017, is that right? There had been no substantial changes in the composition.

**MS MAGADZI:** There has been changes, Chairperson, in the portfolio committee. We lost one member of the  
20 portfolio committee in a tragic death, we lost Honourable Masonganye who went into the executive and I think from the EFF we were – there was an introduction of a new member, the member that we started with from 2014 was taken to another portfolio. That is what I can recall.

**CHAIRPERSON:** I am just wondering what it is that

convinced this committee in February 2018 to agree to these investigations and to even say by some date in April they must have completed them and yet it is the same – substantially the same people who in 2016 and 2017 seemed not really to be in on investigating these things. Are you able to enlighten me on what it is that suddenly persuaded them that this was the right thing when for two years at least they seemed not to – maybe it is one and a half years, they seemed not to be keen.

10 **MS MAGADZI:** Chairperson, I would say to yourself that I indicated that we had several legislations which were before the portfolio committee which actually made us to delay with respect to the investigation but also, Chairperson, besides that, I need to indicate that on an annual basis the Portfolio Committee would have and annual plan that we are supposed to execute and follow and the investigation, as it came to the fore, it was not because we are following our annual plan to the letter but it was precisely because we had legislation that we had to  
20 see through in the main, that is what I can be able to say delayed us from going into as speedily as is possible the investigation with the terms of reference as has been indicated during February of 2018.

**CHAIRPERSON:** Mr Freund?

**ADV FREUND SC:** Thank you, Chair. Ms Magadzi, as I

understand evidence, you say Mr Frolick’s letter called for urgent action, the committee was willing to deal with it but because of the pressure of other legislation it could not manage to deal with it until finally it adopted decision on the 20 February 2018 that now we are going to commence such an inquiry, have I got that correct?

**MS MAGADZI:** That is correct, sir.

**ADV FREUND SC:** And then on the 13 March, which is a few weeks later, the committee firstly adopts the terms of reference with what he discussed but secondly, and this is  
10 what I want to put to you – and Chair, this is at bundle at page 421.

**CHAIRPERSON:** What page in bundle 3?

**ADV FREUND SC:** It is minuted as follows:

“An inquiry ...[intervenes]

**CHAIRPERSON:** I am sorry, what page in bundle 3? I have got bundle 3, I just want the page.

**ADV FREUND SC:** 421.

**CHAIRPERSON:** Oh, okay, I am on the right page, you  
20 may continue.

**ADV FREUND SC:** Thank you. In the middle of that page, Chair, you will see immediately before the coloured diagram there is a paragraph that reads as follows:

“An inquiry planner schedule was agreed to unanimously. The inquiry planner divided the

inquiry for investigation into five phases starting with phase 1 on the 16 May 2018 and concluding with phase 5 on the 26 October 2018 as follows.”

And it then sets out in quite minute detail exactly how this is going to be planned and scheduled. Do you accept that?

**MS MAGADZI:** That is correct.

**ADV FREUND SC:** So as at the 13 March 2018 nobody in the committee thought that there existed any good reason why they could not get on with this inquiry and complete it  
10 – they should commence it in May and complete in October of 2018. You would agree with that?

**MS MAGADZI:** I beg your pardon.

**ADV FREUND SC:** You would agree that as at the 13 March 2018, the date of this meeting, nobody on the committee was aware of any good reason at that time why they could not get on with this inquiry in May and finish it in October of the same year. They all agreed unanimously on a schedule that provided for that.

**MS MAGADZI:** That is correct..

20 **ADV FREUND SC:** Now in the interest of time I do not want to go through every minute detail of what happened after that. The bottom line is this, you never ever started the inquiry, did you?

**MS MAGADZI:** That is correct.

**ADV FREUND SC:** And am I correct in understanding that



you justify that on the basis of a allegedly urgent legislation ...[intervenes]

**CHAIRPERSON:** I am sorry, Mr Freund. Please do not forget your question, Mr Freund. The meeting at which the committee decided to conduct the investigation did you say was the 18 March, Mr Freund?

**ADV FREUND SC:** Chair, I will be more clear and maybe it might help you, Chair, if you have regard actually to Mr de Freitas' evidence in bundle 3, you will see that he deal  
10 with ...[intervenes]

**CHAIRPERSON:** At page?

**ADV FREUND SC:** He deals with this firstly at page 415.

**CHAIRPERSON:** Yes.

**ADV FREUND SC:** Dealing with the 20 February 2018 and then you will see, Chair, that at page 419 and following he deals with the 13 March 2018. So the dates that is the direct answer to your question is 13 March 2018.

**CHAIRPERSON:** Yes, okay, alright.

**ADV FREUND SC:** And on that occasion you will see at  
20 page 421 that the unanimous agreement is that this inquiry will comprise five phases. The first phase to start on the 16 May 2018 and the fifth phase on the 26 October 2018. That was the unanimous view taken by the committee on that occasion. I think you accept all of that, Ms Magadzi?

**MS MAGADZI:** That is correct.

**CHAIRPERSON:** I just want to ...[intervenes]

**ADV FREUND SC:** And then, Chair, if I move on with the question?

**CHAIRPERSON:** Mr Freund, I just wanted to say my registrar has checked and she tells me that the 14 February 2018 is the date when Mr Zuma resigned as President of the country. Okay, you may proceed.

**ADV FREUND SC:** Chair, I note that and that may or may not have a bearing on...

10 **CHAIRPERSON:** Yes.

**ADV FREUND SC:** As to the explanation.

**CHAIRPERSON:** Ja, it might not.

**ADV FREUND SC:** The next question that I had put, Chair, that you said I should not forget and I think you may not have heard the witness' answer was this. I asked you, Ms Magadzi, am I correct in understanding – I first asked you am I correct that this inquiry never started and you said yes, that is correct.

**MS MAGADZI:** That is correct.

20 **ADV FREUND SC:** And then I asked you the following, am I correct in understanding that the reason that you rely on for never having started is allegedly urgent legislation and I think you obviously said that is correct.

**MS MAGADZI:** That is correct.

**ADV FREUND SC:** So all of a sudden you could still not

inquire into this which you had been asked in July of 2017 to inquire into as a matter of urgency and all because of urgent legislation. What was that urgent legislation?

**MS MAGADZI:** I indicated that we had several legislation from LLTA, amendment after amendment, a RAPS bill, ATNS bill, ACCSA amendment bill. These were the bills were before parliament and let me indicate, Chairperson, that much as we did not commence with the investigation, the committee agreed that there will be people who must  
10 start with the – who must deal with the investigations, they never had an opportunity to deal with the investigation, but we have agreed that there should be people who would be able to go into the investigation.

**ADV FREUND SC:** So, do I understand you correctly that the pressure of the ...[indistinct - distortion] programme prevented the members of the committee themselves from proceeding but nonetheless your intention and communicated desire was that certain staff working on investigating this as it were in your absence?

20 **MS MAGADZI:** That is correct.

**ADV FREUND SC:** And did that ever happen?

**MS MAGADZI:** No Chairperson it did not happen.

**ADV FREUND SC:** Why did it not happen?

**MS MAGADZI:** If I may recall, we - the file that we had put that we will be able to investigate was when we were

dealing with finalisation of other legislation but also dealing with the public hearings of the RABS Bill.

**ADV FREUND SC:** So, Mr de Freitas testified that the excuse given at the time was the need to deal with the RABS Bill and Mr de Freitas also testified that it wasn't so urgent, and in fact, that a decision has since been taken to scrap the entire bill, is that correct?

**MS MAGADZI:** The bill was urgent because if you would know what the challenges that ...[indistinct] is faced with  
10 that bill is still urgent, even today and I am of the belief that, that bill still has to go to Parliament.

**ADV FREUND SC:** But it's so urgent – and it was so urgent at the time that it took you away from any investigation into an allegation of State Capture, an allegation of serious corruption, your priorities – you paid no heed to those as priorities, am I correct?

**MS MAGADZI:** Chairperson let me indicate that ...[indistinct] and therefore, whatever legislation comes before you, you should be able to prioritise because we are  
20 in Parliament to make laws.

**CHAIRPERSON:** But you are also in Parliament in terms of our constitution to perform oversight over the Executive, that's a very important constitutional obligation on you as members of Parliament, isn't it?

**MS MAGADZI:** That is correct Chairperson but – you're

very correct and for me, let me indicate that, for the fact that we had legislation which was very, very urgent in terms of what has been indicated to us, we had to deal with those legislation, we had to deal with other issues and – including the investigation and oversight over the Executive and therefore, that is why I said earlier on, it is important that – it was important that we should be able to balance how we're doing our work in Parliament.

**CHAIRPERSON:** Mr Freund.

10 **ADV FREUND SC:** Now the problems – sorry Chair.

**CHAIRPERSON:** Mr Freund, continue.

**ADV FREUND SC:** The problems of irregular expenditure mushrooming, of rampant ...[indistinct - distortion] from procurement laws continued to be pointed to by, amongst others, the Auditor General, here I will refer you to Bundle 3 at page 446 where Mr de Freitas deals with this and the Auditor General, as had become customary, had revealed serious financial irregularities, suggested that PRASA was on the verge of financial collapse and that the systems  
20 were inadequate and Mr – that would have come to your attention at the time, and would, presumably, have been a matter of serious concern to you, is that correct?

**MS MAGADZI:** That's correct Chairperson.

**ADV FREUND SC:** Now, Mr de Freitas refers to yet another letter that he says he wrote to you, this is at page

450 of Bundle 3, he says,

“On the 28<sup>th</sup> of August 2014 – 24<sup>th</sup> of August 2018, that was my error, I wrote to the Chair of the Transport Portfolio Committee, Ms Magadzi, he gives the Annexure number, it’s Annexure C39, requesting that the agreed upon inquiry into PRASA be initiated, he says he found it interesting that despite having received a letter from the House Chairperson, Cedrick Frolick, Magadzi said nothing about it to the Committee and then he says, he referred in his letter to you, to this information from the Auditor General was actually had been leaked information that had appeared in the press and he says again, as was the case, all correspondence to Magadzi, I received no response to my letter”,

10

Do you remember that letter, and if you do, did you respond to it?

20

**MS MAGADZI:** Chairperson I indicated earlier on that all the response were put forward in a meeting of the Committee and – for external persons I would respond for the letter as put forward by Mr de Freitas, the Committee – and when I respond to the external persons I would be taking the discussion from the Committee an email instances we would even go to an extent of calling those people who have written to the Chairperson of the

Committee into a Committee meeting but letters that came from Mr de Freitas would be dealt with in the Portfolio Committee and then, that's how we would be able to get a response.

**ADV FREUND SC:** Now, you will recall that in an earlier stage in your evidence today, I indicated to you that your Committee received a certain measure of praise from the Auditor General – the former Auditor General, Mr Makwetu, he says you did call the Auditor General's team to your  
10 Committee, you did call the Minister to your Committee, you did listen, but he says you were ineffective, you didn't manage to achieve what should have been achieved. I want to put it to you that that is unduly kind to you, you were not only ineffective, you were unwilling. You were unwilling, as a Committee to discharge your obligation to exercise oversight over the Executive and in particular, you were unwilling to investigate allegations of State Capture or corruption, particularly with those involved with the President and persons perceived to be close to the  
20 President, would you agree, and if you disagree would you tell us why please?

**MS MAGADZI:** Chairperson, we may not have succeeded to do the investigations, but it did not mean that we did not want to investigate those who were closer to the President or the President himself. Let me indicate that from where

you are starting to talk about honourable de Freitas, there's an indication as if the Committee never had any work to do but to do what de Freitas wanted the Committee to do. Remember, I indicated that, we've got an annual plan, there will be legislation that will be coming and other things that will be coming but here in this instance, Chairperson, Mr Freund, you're indicating – it is like, every time Mr de Freitas comes with something, we have to jump and do it, and that is not how the Committee should be

10 able to work and let me indicate that there were discussion and debate in the Committee on every other thing that Mr de Freitas would bring to the Committee and today here, the Committee – I, representing the Committee should say that the Committee was wrong in taking the decisions that we took, it can't be right because those decisions will be taken in the Committee and once the Committee takes a decision there is no how I can be able to, as a Chairperson divert from the decision that was taken by the Committee and let me indicate that I take serious objections to – and

20 let me also indicate that Mr de Freitas, these things were raised in the Committee, today he should be – he wants to be seen as if he was ...[indistinct] to the Committee whereas the Committee rejected most of the things that he was raising. It can't be right that, now, I should be able to say the Committee was wrong, decisions of the Committee



were decisions of the Committee.

**ADV FREUND SC:** Let me make things clear to you, Ms Magadzi, firstly I accept that you as Chair speak for the Committee, but you can't be personally blamed, solely for decisions that were made by the Committee, I understand that. Secondly, I also want to make clear that my criticism that I put to you a moment ago was not based solely on what Mr de Freitas was saying. My criticism was based on problems that are far more fundamental and go back far  
10 longer from the time of the publication of the derailed report, I want to put to you, your Committee showed no enthusiasm for getting to grips with the true misconduct that was started to be revealed by that report and the proof is in the pudding in the way you dealt with the Werksmans reports because the Werksmans reports uncovered a trove of relevant information and I want to put to you that your Committee never showed any interest in examining the substance of the Werksmans reports instead it resorted to the device of trying to obscure the issues by focusing on  
20 the regularity of the process by which they had been appointed as attorneys. You had no desire whatsoever to get involved with the true unravelling of what was going on at PRASA, your comment please?

**MS MAGADZI:** Mr Freund, let me indicate that if you can go into the archives of the Portfolio Committee you will see

that we requested, on several occasions, to meet with the Board of PRASA so that they can be able to table. There were several issues that we had raised from the ...[indistinct] to Werksmans and other issues that we felt we were discontent about but, unfortunately, we were never appraised with the information to that effect and when we, eventually, the last Committee that was there, when we requested them to assist us with the information of the investigation by Werksmans there were boxes and boxes of information that came to the Portfolio Committee which actually – we even went, again, back to the Portfolio Committee to say – to the Board to say, can we get an Executive summary so that we are able to know what – how we should be able to handle this matter. Indeed, we were very keen and for sure going forward because the AG, also, had raised the irregularity of the appointment of Werksmans and we can't shy away from that, that we believe that there was – Werksmans was irregularly appointed and in view of the fact that the AG had raised the irregular appointment we spoke to the Minister, we spoke to the Board to say, we want this to be regularised.

**ADV FREUND SC:** Ms Magadzi, again let me make my myself clear, if you had any reason to suspect or to believe the appointment of Werksmans and the manner in which was done was irregular, will not criticise you in the least

for drawing attention to that issue and requiring that issue to be properly investigated and appropriate to be regularised, I do not criticise you for that but the evidence of Mr de Freitas, at least, and I believe that the report prepared by the PMG will, to a considerable extent bear this out is to the effect that your Committee did not show genuine interest in the thrust of what Werksmans was able to reveal on the contrary it tried to look the other way. Now, if you say that's not correct, you say you wanted –

10 you asked for – you received a mass of material and you asked for an Executive summary, could you tell me when that was?

**MS MAGADZI:** I cannot, vividly recall when that was but I know that we received quite a sizeable amount of information but let me also indicate that it is Mr de Freitas' view that we were more interested in the investigation and not in the outcomes of what Werksmans did, it is his view, it's not the Committee's view, I would indicate it because if it was the Committee's view we wouldn't even ask for

20 information because Mr Mulefedi did not come on several occasions when we wanted that information and want to deal with the issues, he didn't attend the Portfolio Committee's because he was the only person who would come from the Board to the Portfolio Committee. The Minister, also, when we requested this information could –

referred us to the Board so that we can be able to get proper information from the Board and therefore, it can't be correct that we were more interested in the investigation. We would not even have started to look for what could Werksmans – what Werksmans did in PRASA.

**ADV FREUND SC:** Well, the proof lies in the pudding, it's your own evidence, it's not me, that you never once, actually commenced your investigation, having decided, according to you, in June of 2017 that these important and  
10 serious allegations should be investigated, it's your evidence, not mine, that the Committee never started that. In the whole of 2017 and the whole of 2018. If you were genuinely interested in what Werksmans had revealed, don't you think you would have investigated?

**MS MAGADZI:** Chairperson, let me indicate that we want – our take was that we should be able to get information and be able to investigate based on the information, but it was correct that we never investigated but was at the centre of the Committee was that we need to get the report  
20 that comes from Werksmans so that we can be able to know what we are dealing with in PRASA.

**ADV FREUND SC:** Right, thank you. Ms Magadzi, finally, you have deposed to a written affidavit, some of that material I have taken you through, in the course of today and the Chair will have an opportunity to read this affidavit

but if you feel that there are parts of this affidavit that raise issues of some importance, if you feel you haven't been given a fair opportunity to deal with, then I'm now inviting you to raise whatever you feel you would want to add to your evidence.

**MS MAGADZI:** Thank you very much Mr Freund, let me indicate, that earlier on there was an indication from Mr de Freitas that there was a tender for R51billion, and I need to indicate to yourself that the budget of R51billion overall  
10 was the budget that was gazetted by the National Treasury based on the programme of modernisation. Meaning that PRASA was supposed to get money from that R51billion to deal with signalling, to deal with station improvement with the trains, with the security, with fairways and coaches and it was – there was never a tender which was R51billion, that was the R51billion that was ring fenced by Treasury so that the modernisation programme can be able to be executed and I also need to indicate that some of the issues that actually – some of the tenders which were  
20 made, like, the Braamfontein – the improvement of the Braamfontein station, that tender was cancelled, if I've gone into my archives and as far as the trains are concerned, it's a story that everybody knows that it went to Court for – it was executed by Court and that for me is history but I wanted to correct that it was not a tender of

R51billion and the other thing that I want to indicate was the – as for the people who were involved, as indicated previously that, the Gupta and then Mr Zuma were to be given that tender ...[indistinct] is it true because if you look into the service providers who were there it was nor – it was Alsom and not the group that was reported to be belonging to the Gupta's that is one thing that I wanted to say but I also would want to say to the Commission that, having been given this opportunity, I think it is very  
10 important that when you look into the Committees of Parliament there definitely is a challenge, I think I've also mentioned that in my affidavit. An indication that there is very little financial resources that gets given to the Committee in such a way that sometimes you are even unable to do your oversight, specifically because when you want to go and do oversight you will be told that there is not sufficient funding for the Portfolio Committee and therefore it makes you to look like you – it's like you – it's like the ...[indistinct] within the Portfolio Committee that  
20 you are unable to do your work, whereas there are challenges that the Portfolio – the Parliament is experiencing in this regard but I also want to indicate that part of the things that one made as a observation in PRASA, which the Deputy Chief Justice had indicated is – of which, we also, as the Portfolio Committee saw as a

predicament was the fact that people will be there at work but they will not be able to execute their tasks as is expected which became a serious challenge that, you request for information, you don't get that information and therefore it makes you, as a Portfolio Committee and as legislators to really look like you have failed in the execution of you tasks and this, for me, are the things that I also need to bring to the fore but the other thing which actually, Mr Freund, we didn't talk about is the allegation  
10 of the coal trains as we wanted to go into the investigation when we called Rail Safety Regulator to the Portfolio Committee they impressed upon us that they have done the trials of the trains in most of the areas and the trains were fit to can be utilised in the Republic of South Africa and this, for us, were some of the things we felt that for the fact that the specialist in this regard had been able to say that the trains can be utilised, the Committee indicated that, while the trials – because they had been completed and the trains can be utilised and therefore for us, we feel  
20 quite happy that the trains can continue but we were happy because there was, in Court, presented by Dr Molefe that they should be able to take further the matter, whether it's corruption or ...[indistinct] in Court and that is how we were able to look into this whole matter. I think, Chairperson, Mr Freund let me leave it at that, and I'd like to thank the

opportunity, it was very hard, I must indicate, hard Deputy Chief Justice to sit in front of you and Mr Freund. I thought at some stages I was going to lose it all but thank you very much for inviting me to the Committee.

**ADV FREUND SC:** I have no further questions.

**CHAIRPERSON:** Thank you very much, Ms Magadzi for coming to assist the Commission, we appreciate it very much, there is just one or two questions that I want to ask, just for information.

10 **ADV FREUND SC:** Chair, if I can just indicate, we are not hearing you.

**CHAIRPERSON:** Can you hear me, Ms Magadzi.

**ADV FREUND SC:** Very poor, very weak.

**CHAIRPERSON:** Oh, how is it now.

**ADV FREUND SC:** Only marginally better now.

**CHAIRPERSON:** Oh.

**ADV FREUND SC:** And I don't see you.

**CHAIRPERSON:** Oh, and – so probably Ms Magadzi can't hear me at all. Maybe I should...[intervenes].

20 **MS MAGADZI:** Chief Justice is not audible from my side.

**CHAIRPERSON:** Well Mr Freund also says the same thing.

**ADV FREUND SC:** Very poorly, I see a note that somebody says it sounds like a loose cable.

**CHAIRPERSON:** I'm just looking at the technicians to see



whether – they say it should be fine now.

**ADV FREUND SC:** I've just started to hear you now, Chair.

**CHAIRPERSON:** Okay, alright, okay, Ms Magadzi can you hear me...[intervenes].

**MS MAGADZI:** I can hear you too Deputy Chief Justice.

**CHAIRPERSON:** Okay, alright, no thank you I just have one or two questions, I think one. Section – where is this Section – the constitution makes provision for Ministers – I  
10 thought I had this Section of the constitution in front of me, I can't see it now. Has a provision, Ms Magadzi which you might be aware of, to the effect that Ministers are supposed to provide Parliament with regular reports of what is happening in their departments, that is part of accountability. Did the Ministers of Transport, while you were Chair of the Portfolio Committee of Transport, provide Parliament with regular reports in accordance with that Section and if they did what was the level of irregularity, how often did they provide reports of what was happening  
20 in their – under their portfolios.

**ADV FREUND SC:** You're on mute.

**CHAIRPERSON:** Ja, I ...[intervenes]

**MS MAGADZI:** Thank you very much, can you hear me now DCJ?

**CHAIRPERSON:** Yes now I can hear you yes.

**MS MAGADZI:** Sorry, I had muted, let me indicate maybe I should say two-pronged approach to what – how we were receiving the reports. The first one would be that we would receive quarterly reports of the activities and operations in the department which actually will be coming from the entities plus the department on a quarterly basis which we ...[indistinct – distortion]. The other one would be when there are other issues and activities that the Minister believed, that the Minister would have done in the

10 Department the Minister would come and make a presentation to the Portfolio Committee on those activities based on how it was not like a frequent thing of activities that would be in the Portfolio Committee coming directly from the Minister. Most of the things the Minister will incorporate as part of the quarterly report that we will be receiving, but at the same we need to indicate that whenever we are meeting either with the MTT's or with the department the Minister will be part of the engagement in the Portfolio Committee and that is where – how we were

20 able to engage with the – complying with the provision of the Constitution that the Ministers will provide a ...[indistinct] to the Portfolio Committee.

**CHAIRPERSON:** And would you recall whether with special reference to PRASA, during the years when the irregular expenditure was going up and so on, would you

remember whether the Ministers dealt with that issue in their written quarterly reports to say they were aware of it and what steps they were taking to address it, or is it something you cannot remember

**MS MAGADZI:** I cannot remember vividly what the Ministers would raise but I know that Minister Dipuo Peters and Minister Masongwane and Minister Zimande they would frequent our meetings and that is why recalling a little bit of what Minister Peters at some stages when we were  
10 engaging with PRASA issues indicated that there will be a follow through particularly on the lack of consequence management, on the lack of implementation of the Auditor General's findings which actually were on an annual basis repeating themselves in that regard and that is my recollection that indeed the Ministers whenever we are sitting on any entity or the department they would always be there to make sure that whatever we are doing they are able to go into the department and be able to look into that or implement whatever decision that might have been taken  
20 by the Portfolio Committee.

**CHAIRPERSON:** Okay thank you very much Ms Magadzi, once again thank you for coming to assist the Commission. You are now excused.

**MS MAGADZI:** Thank you very much DCJ, thank you very much Mr Freund, it was difficult.

**CHAIRPERSON:** [laughing] Mr Freund?

**ADV FREUND SC:** Chair I have available two witnesses, I rather think that two is a bit optimistic. Mr Vincent Smith is on standby, and has been on standby for quite some time, so in my submission perhaps we should take a short adjournment and then go as far as we possibly can through the evidence of Mr Smith.

**CHAIRPERSON:** What is your estimate, I know that you might say well you don't know how many questions the  
10 Chairperson will ask so you cannot estimate, but what is your estimate of how long you need with Mr Smith?

**ADV FREUND SC:** Chair at a guess an hour but I am usually wrong.

**CHAIRPERSON:** Well my recollection is that at least the first estimate you made last week I noticed that it was spot on, I haven't noticed any other that has been wrong but with Professor Calland how much time do you think we need?

**ADV FREUND SC:** I would prefer to have about two  
20 hours, but Chair it is very much in your hands as to how much detail you want to go into with him because a lot of his submission is in writing but if we could reach him and get through him that would be the first prize.

**CHAIRPERSON:** Yes, well I have read his submission, I don't know that there is a need to take too long with him,

he makes important points but some of the points that he makes are points that I am quite familiar with, so I am quite happy that we take a short adjournment of ten minutes and then when we come back then we – it may well be that with Mr – with Professor Calland, you said he is out of the country.

**ADV FREUND SC:** No, no Professor Calland is here, he is in Cape Town, it was Mr Johnston who was testifying from Edinburgh.

10 **CHAIRPERSON:** Oh, okay, well it may well be that when we come to him we could take maybe if we take an hour and we don't finish it may well be that we could make a plan, subject to your available and his availability to continue tomorrow morning before I start with tomorrow's witnesses or to make some other time in the evening, one of the evenings this week.

**ADV FREUND SC:** Yes Chair I would fully purport that we should make that effort and just see how far we get.

**CHAIRPERSON:** Yes, ja, no, no, we will make the effort.

20 Okay, let us take a ten minute adjournment and then we will be back, we adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Good afternoon Mr Smith. I think you might – you probably should unmute yourself or – because I

could see you were speaking Mr Smith but I could not hear anything. Can you hear me?

**MR SMITH:** I can hear you Chairperson.

**CHAIRPERSON:** Yes okay. Good afternoon.

**MR SMITH:** Good afternoon, good afternoon Chairperson.

**CHAIRPERSON:** No thank you very much. Just in case we have not – the commission has not acknowledged receipt of you contribution in terms of the submission or affidavit relating to matters relating to oversight that I had asked you  
10 to do for the commission I just want to say I am aware that we have received – the commission has received your submission or affidavit and we appreciate the trouble you took to give us that input.

**MR SMITH:** Thank you Chair.

**CHAIRPERSON:** Okay and thank you for coming back to assist the commission. Registrar please administer the oath or affirmation.

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

**MR SMITH:** Vincent George Smith.

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

**MR SMITH:** I do not.

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

**MR SMITH:** I do.

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

**MR SMITH:** So help me God.

**VINCENT GEORGE SMITH** [duly sworn, states]

**CHAIRPERSON:** Thank you very much. Mr Freund you may proceed.

**ADV FREUND SC:** Thank you Chair. Chair you will recall as  
10 we have discussed previously that the African National Congress submitted as Exhibit ZZ1 at the beginning of Bundle 1 a set of affidavits of which an affidavit by Mr Smith is one of them. It is Exhibit ZZ1.6 and I am going to be working primarily from ZZ1.6 and I would like to ask you Mr Smith whether if you look at pages 66 through to 75 in Bundle 1 that is the numbering at the top left can you confirm that that is an affidavit that you have submitted to the commission?

**MR SMITH:** I confirm.

20 **ADV FREUND SC:** And that is your signature at page 75 I take it?

**MR SMITH:** I confirm.

**ADV FREUND SC:** Chair to the extent necessary and to the extent that this has already been provisionally admitted I ask that this be admitted formally into the record.

**CHAIRPERSON:** The affidavit of Mr Vincent George Smith starting at page 66 is here admitted finally as Exhibit ZZ1 .6.

**ADV FREUND SC:** Thank you Chair. Now Mr Smith this affidavit and you have submitted several affidavits to the commission. This affidavit is an affidavit that was prepared as I understand it in response to a request from the commission to the African National Congress that it through witnesses should make submissions and place evidence before the commission and yours was one the of the  
10 affidavits sought by the ANC in that context and that is the context in which you have produced this particular affidavit. Is that correct?

**MR SMITH:** That is correct.

**ADV FREUND SC:** You have as the Chair has just alluded to after testifying on a previous occasion also submitted a separate document entitled submission by Mr V G Smith former member of Parliament and Chairperson of several committees of the National Assembly, is that correct?

**MR SMITH:** That is correct.

20 **ADV FREUND SC:** But if I have a look at the affidavit submitted that to which we have just referred it seems to me to a large measure adopt and summarise what appears in that – in that other document. Would that be a fair – a fair description?

**MR SMITH:** That is fair.



**ADV FREUND SC:** So what I propose to do is to concentrate on the affidavit itself but of course you must feel at liberty where appropriate and if necessary to refer across to some point made perhaps in more detail in the other document. But I am going to lead you from the affidavit to which we have just referred.

Now when I look at that affidavit I see in paragraph 3 that you say you served as a member of Parliament from 1999 to 2019 in other words for a full 20 years.

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

**ADV FREUND SC:** And in that time you were a member of the Standing Committee on Public Accounts known as SCOPA. You were – you chaired the following committees. The Portfolio Committee on Correctional Services which you chaired from 2009 to 2014 and that is the primary reason why you are sitting with us today, is that correct?

**MR SMITH:** That is correct.

**ADV FREUND SC:** But you have also chaired the Standing Committee on the Auditor General the Constitutional Review  
20 Committee, a Joint Standing Committee on Financial Management at Parliament, the Ad-hoc Committee on the SABC inquiry and the Ad-hoc Committee on the Funding of Political Parties and you give the dates in your affidavit.

**MR SMITH:** That is correct.

**ADV FREUND SC:** You say you also served as an ordinary

member of the Ad-hoc Committee on Police – on the Police Minister’s Report on Nkandla. Did you subscribe to the – the report issued by that Ad-hoc Committee?

**MR SMITH:** If you could repeat the question.

**ADV FREUND SC:** Did you agree with or subscribe to or support the views expressed by that particular Ad-hoc Committee on the Police Minister’s Report on Nkandla?

**MR SMITH:** At the time I did yes.

**ADV FREUND SC:** Time you did. Now I do not want to  
10 spend a lot of time talking about Nkandla but would it be fair to say that that particular Ad-hoc Committee took the view that regardless of what was done by the Public Protector they preferred the view of the then police Minister that really there was nothing improper or irregular about the expenditure on Nkandla and there was nothing that needed to be repaid?

**MR SMITH:** I do not recall the recommendations because I mean I have got that in front of me but – but to a large extent I think – I think yes we took that view but I would  
20 have to look at that report to see exactly what the recommendations were Sir.

**ADV FREUND SC:** Well I am not going to dwell on that issue. What – what I particularly want to focus on in your evidence today is the period during which you chaired the Portfolio Committee on Correctional Services during the

period 2009 to 2014 and I think you deal with that from paragraph 12 onwards of your affidavit.

**MR SMITH:** That is correct.

**ADV FREUND SC:** Now you make the point in paragraph 12 that the committee which you chaired at the end of its tenure prepared a - what you refer to as a handover report. I sometimes see that referred to by other as a legacy report in 2014 save to say that that report was published and is publicly available. Would it be fair to say that the purpose –  
10 or what – what would say is the purpose of that report?

**MR SMITH:** Well the purpose of that report is to in the first instance report on what we agreed upon at the beginning of our term. How we went about doing or achieving those objectives and as a report that can be used as a resource for – for whoever follows that committee.

**ADV FREUND SC:** And just as your committee and your chairmanship issued such a report when you assumed office as Chair of that Portfolio Committee you had the benefit did you not of a similar report from your predecessor committee  
20 which had been chaired by Mr Denis Bloem, is that correct?

**MR SMITH:** That is correct.

**ADV FREUND SC:** Now Mr James Selfe has deposed to an affidavit and testified before this commission last week. I do not know if you had an opportunity to hear any or all of his evidence?

**MR SMITH:** No I did not.

**ADV FREUND SC:** Alright. Well one of the things that he said and this is in paragraph 6.23 of his report and that is in Bundle 2 at page 732. He says referring to Mr Bloem in due course he followed Mosiuoa Lekota into COPE but he says but before he did so he was largely responsible with the ever efficient committee secretary Cindy Bailey for the composition of a handover report of the PC's CS that is the acronym we use for the Portfolio Committee on Correctional  
10 Services of the Third Parliament to the Committee of the Fourth Parliament. And he says:

“This report chronicles issues that the committee had dealt with between 2004 and 2009 and highlighted the issued that were on-going and or unresolved.”

And the point that is of particular interest to me.

“Many issues were highlighted in the report that the contracts to BOSASA, Pezulu and Sondolo IT featured prominently.”

20 And I think Mr Smith you are now aware that Pezulu and Sondolo IT were companies affiliated to or subsidiaries to the principle BOSASA company. You are aware?

**MR SMITH:** I am – I am aware.

**ADV FREUND SC:** And he says:

“The report referring to the previous legacy

report emphasised that the committee was never fully informed about the way in which these contracts were awarded and particularly despite the committee's misgivings was never informed why the catering contract was re-awarded to BOSASA early in 2009."

The report concluded that and he quotes:

10 "The committee remains disturbed with the manner in which the matter was handled and the incoming committee should treat it as a priority."

Now I assume that as the incoming Chair of the new committee of the next Parliament you would have read and been aware and noted what I have just put on record.

**MR SMITH:** I was.

**ADV FREUND SC:** Alright. Now you say in your affidavit in paragraph 19 I am going to quote and just read it into the record.

20 "Early in our tenure that is as the new committee the committee received an update by the Special Investigative Unit the SIU on investigations relating to the Department of Correctional Services which commences prior to the Fifth Parliament and were on-going.

And you say the committee was in full support of the investigations and look forward to their outcome.”

You recall this?

**MR SMITH:** I do.

**ADV FREUND SC:** And I would just like to look at that in a little more detail. And I am going to start by if I can find it – and refer you to what appears in a report prepared by the Parliamentary Monitoring Group – Chair that is in Bundle 2  
10 ZZ8 and in particular at pages 788 to 789. I am going to – I am going to read you – it is a very short extract Mr Smith but just to see whether – whether you have any recollection of this. So Chair I am reading from Bundle 2 page 788 which is part of the PMG’s BOSASA report and it says that:

“Mr Hofmeyer made a presentation.”

I think it was by means of slides or something of the like – of the type, do you recall that on this occasion?

**MR SMITH:** I do.

**ADV FREUND SC:** And after referring to a number of other  
20 issues he came finally to what he called Case Number 4 a National Tender for high value contracts.

And then according to both the PMG report and the slides that are available it says:

“Matter referred to the SIU by the Auditor General in the Public Service Commission

under the heading Allegations”

A couple of bullet points.

“Corruption and awarding the tenders to the Service Providers. Bid Rigging, supply a draft and specifications.”

And then it continues.

“Investigation established.”

And then a number of bullet points.

10 “Evidence of corruption, irregular relationship between DCS officials and service provider, evidence of bid rigging, supplier drafting specifications and then it says status or report with the department for review. Disciplinary action recommended and report referred to the MPA for decision regarding prosecution.”

You recall this presentation?

**MR SMITH:** I do.

20 **ADV FREUND SC:** And do you recall as is recorded in the PMG records of that particular meeting that you as Chairperson described the findings of the SIU as and I quote “Horrible”

**MR SMITH:** I do.

**ADV FREUND SC:** Now both Mr Hofmeyer of the SIU and you personally as Chair of the Committee felt that it would

not be appropriate to name in those particular proceedings the company or group of companies that was the subject matter of that presentation. And I am not taking issue with your view on that I can understand there would be an argument in support of that but it is correct is it not that Mr James Selfe shortly thereafter in that meeting said well he was not going to abide by that stance and he – and he not only said it was the most shocking presentation he had ever in his fifteen years in Parliament but he also said that he  
10 was not going to be party to not naming names and he started naming names including BOSASA Operations Pty Limited and – and he was – he was rightly or wrongly putting the record that he knew very well what was the company or group of companies being referred to. Do you remember that incident?

**MR SMITH:** I do remember that.

**ADV FREUND SC:** And would you agree with me that whether it was prudent or not prudent to put it on record as to who was being referred to you for one and probably  
20 everybody else room knew very well that this was a reference to the then widely published allegations in respect of the BOSASA Group of Companies.

**MR SMITH:** Yes we did.

**ADV FREUND SC:** And the minutes show and when I say the minutes I am really referring to the PMG records that you



thanked the SIU for empowering the committee and that you would like to – you would like the follow up from this session to continue on the one hand by hearing about the continued work of the SIU and the legal action implemented by the NPA on the other hand by hearings from the department what it was going to do to implement the recommendations of the SIU and the quarterly interactions between the committee and the department and the committee would monitor these processes. So you were concerned and you wanted to ensure that they would be properly followed up. Is that a fair summary?

**MR SMITH:** That is a fair summary without us unduly influencing the process as Parliament.

**ADV FREUND SC:** Alright. Now you say in your affidavit and I am referring to paragraph 20 that during the period 2009 to 2014 no new tenders were awarded to BOSASA and no doubt you were intending to refer there to tenders awarded by the Department of Correctional Services, is that correct?

**MR SMITH:** That is correct.

**ADV FREUND SC:** I would like to put it to you that that part of your affidavit is incorrect. That there were several further tenders awarded to BOSASA and its affiliated companies during that period. Are you in a position to dispute that?

**MR SMITH:** Let me explain what I was saying there. I – I

was specifically referring to the nutritional tender or the tender on the nutrition. And I stand by my point that there were no new tenders awarded for nutrition. No new tenders. There were extensions of a tender that had been awarded in 2014. I beg your pardon in 2004 that was what I was trying relay to the – to the – or in my affidavit.

**ADV FREUND SC:** Well I understand that one can draw a technical distinction between new tenders and extensions of prior tenders without going to tender but what I do not understand is why you sought to make that point specifically and in that particular language and format.

**MR SMITH:** Because Sir you asked me the question in your letter to me. Were there any new tenders? And I was responding directly to questions that were presented to me by our legal team. That was one of those specific questions and I thought I was responding to that question Sir.

**ADV FREUND SC:** Well I understand you but there is clearly been a misunderstanding because I did not pose any questions to you. I had a discussion with your legal representative about some of the issues that I was interested in and presumably this question came from him because it certainly did not come from me.

**MR SMITH:** I do not recall. I beg your pardon.

**ADV FREUND SC:** No it is not – I am not – I am not...

**CHAIRPERSON:** Oh let Mr Smith say something. He wants

to say something about that. Mr Smith.

**MR SMITH:** Chair I – I beg my pardon that I said it came from the evidence leader but I certainly received those questions from the legal team or the legal advisor from the ANC that said these are the questions that you must respond to and I responded to those questions as best I could. I think there were about six or seven of those questions. My understanding was that those were questions that were a product of a discussion between the evidence leader and the  
10 – the lawyers of the ANC so I apologise if I have misunderstood it.

**CHAIRPERSON:** Hm.

**ADV FREUND SC:** Not at all.

**CHAIRPERSON:** Okay.

**ADV FREUND SC:** Not at all. Now what I do want to draw to your attention however is what appears both from the affidavit of Mr Smith and from the material produced and furnished to the commission by the Parliamentary Monitoring Group. In Mr Smith's case Chair at page 737 of Bundle 2 at  
20 paragraph 6.43.

**CHAIRPERSON:** Yes I have got it.

**ADV FREUND SC:** What Mr Selfe says is the following: HK14/2008 which is the description of a particular contract and I think it is what Mr Smith is referring to. It was a contract for catering in prisons and was due to expire on the

31 January 2012. It was not possible according to Mr Monyane who was an official of the Department to in source catering before then owing to the lack of capacity.

So Mr Selfe says: therefore the BOSASA contract was once more extended first to 31 July 2012 and then to January 2013. And you will see there is a reference there footnote 29 and foot note 29 is a reference to the PMG report on BOSASA at page 39 and then again at page 44.

And that report is part of Exhibit ZZ8 in Bundle 2 and  
10 if I am not mistaken I think the most useful reference is if I  
can take you to Bundle 2 at page 806?

**CHAIRPERSON:** Got it.

**ADV FREUND SC:** And you will see there Chair that at the –  
at the foot of the preceding page this is a reference to  
something discussed at a meeting of the Portfolio Committee  
on the 20 March 2013 and at the top of the page it says the  
following:

“The Chairperson referred to the nutrition  
contract.”

20 The Chairperson was you Mr Smith, is that correct?

**MR SMITH:** That is correct.

**ADV FREUND SC:**

“To the nutrition contract which had expired  
on 31 January 2013. The committee had  
agreed that it could be extended to 31 May

but it had to go through the Supply Chain process.”

And then if we go down two paragraphs, three paragraphs we see a – a paragraph that starts:

“The Chairperson reminded Mr Modise that it had been decided that the contract would not be extended automatically. Whatever was done it had to adhere to Supply Chain Management principles and on it went.”

10 Is – are what we are reading here a correct summary of the discussion that took place on this issue on the 20 March 2013?

**MR SMITH:** I believe it is Sir.

**ADV FREUND SC:** So you as Chair of this committee with knowledge of the nature of the findings of the SIU were in favour of and supporting the extension of the nutrition contract to BOSASA without tender provided that on a later occasion it should go out to tender, is that a fair summary?

**MR SMITH:** That is a fair summary not me as Chairperson  
20 Mr Freund but the whole committee including what Mr Selfe in his own affidavit that we felt after explanation from the committee – oh beg your pardon – from the department that we hear what they are saying but it cannot continue beyond that.

**ADV FREUND SC:** Well let us just be clear when we talk

about Mr Selfe. Mr Selfe as you will recall and correct me if I am wrong. Mr Selfe had expressed his personal disquiet with any repetition of any of the BOSASA contracts in the light of the allegations that had surfaced and had apparently be confirmed by the SIU report. Would you agree with that?

**MR SMITH:** I would not dispute that but I do not think that those were matters that were debated and discussed in the committee but I certainly would not dispute what Mr Selfe said neither would I confirm it but it was the general view of  
10 most of the members of the committee that we though outsourcing was a problem in the department.

**ADV FREUND SC:** Well it is well and good to think that outsourcing is a problem and to be fair to you I accept that there are indications at certain meetings of this committee where reservations were expressed about the principle of outsourcing. But nonetheless if we look at not what reservations were expressed but what decisions were taken both by the department and by the Portfolio Committee to your knowledge contracts continued to be awarded to  
20 BOSASA and its subsidiaries not only immediately preceding your appointment as Chair a renewal in 2008 but in fact they continued right up until 2019 resulting in contracts from the DCS alone running to some R7 billion. Do you agree?

**MR SMITH:** I do.

**ADV FREUND SC:** Now at – in the same PMG BOSASA

report I just want to put on record for your comment as to whether you can confirm or deny or do not know what this report records having picked this information up from the minutes of the meeting of the 27 February 2019 which I accept is sometime after you were on the committee. But in that – in that meeting what was recorded is the following: I will start back at page 816 just to put all in context.

10           “The first nutrition services contract – this is a contract to BOSASA HK2/2004 for nutritional services was awarded on 27 July 2004 for a period of three years ending on 31 July 2017. This contract was extended twice and ultimately ended on 31 January 2009.”

Which as I understand it is shortly before you came onto and became Chair of the Portfolio Committee, is that correct/

**MR SMITH:** That is correct.

**ADV FREUND SC:** And then it says:

20           “The second contract HK5/2006 on the 30 August 2006 Correctional Services awarded the contract for nutritional services to BOSASA for a period of five years commencing 1 October 2006 ending 30 September 2011 for Waterval Management area.”

So it is a similar contract with a specific area.

“This contract was extended twice and ultimately ended on 31 July 2013.”

Do you have any recollection or knowledge of that?

**MR SMITH:** I do – I think I do yes.

**ADV FREUND SC:** You think that is correct so far as you know?

**MR SMITH:** I think yes, ja.

**ADV FREUND SC:** Right. And then continuing at the top of the next page, page 817 of Bundle 2.

10            “The third contract HK1/2008 was awarded on the 8 December 2008 for a period of three years commencing on 1 February 2009 ending 31 January 2012. This contract was extended twice and ended on 31 July 2013.”

Now that as I understand it is really the contract about which we were talking a few minutes ago when your committee said well it can be extended and then again extended again but then it had to come to an end and it came to an end on the 31 July 2013. Does that sound right to you?

20    **MR SMITH:** It sounds right – my recollection is that we were talking about all activities that related to outsourcing of the – efficient for offenders. And that could be included in there. There could be more than just the one area. But yes, that sounds correct.

**ADV FREUND SC:** And then what I want to put to you is –



and this is where I finally coming to the point. The fourth contract, HO 11/2012 was awarded on the 11<sup>th</sup> of June 2013 for three years commencing on 1 August 2013 until 31 July 2016.

The scope of the contract was extended or was expanded to include Groenpunt and Bizzah Makhate management areas. Furthermore, the contract was extended for a period of six months which ended on 31 January 0217.

10 Now that contact, as I understand it and you can correct me if I am wrong, was awarded yet again to a BOSASA entity and was awarded pursuant to what purported to be a tender process. Is that correct?

**MR SMITH:** Please repeat the question and what paragraphs?

**ADV FREUND SC:** Alright. So I will read you again. All I want to know whether this is correct and whether it was a so-called tender. The fourth contract, HO 11/2012 was awarded on the 11<sup>th</sup> of June 2013 for three years  
20 commencing on 1 August 2013 until 31 July 2016.

So that was a contract that went to tender and was awarded to a BOSASA entity in the period in which, as I understood your evidence before, no such thing ever happened.

**MR SMITH:** If you could help me by indicating what was

that for? You say HO11. Was that an official tender or what was that tender for? I do not have it before me.

**ADV FREUND SC:** I also do not have the actual contract before me. It is my understanding it is an efficient contract but I do not have it before me. So it is subject to verification but my understanding is, it is another efficient contract. It was a – yes it is an efficient contract for specific areas. Now but an efficient contract awarded to the BOSASA operations controlling company.

10 **MR SMITH:** My comment sir and I speak as I do not have it. I would imagine that prior to that date, when you efficient in those area that I am not saying you are necessarily talking about, were provided that company.

And that is why when I started earlier on, I indicated that it would have been an extension of an existing contract and not a brand new contract but without the detail, it makes it very difficult for me to comment comprehensively about that.

20 But my recollection would be that it was originally or prior to that date business that had been done by that same company.

**ADV FREUND SC:** Well, I understand your difficulty. I am not in the least critical of you for not carrying all of that information in your head but what I want to put to you is that if that information is correct.

This is information that would have been accessible to you during your period as chair of that committee and it would have been an instance of or shall I say a further instance of further contracts being awarded to BOSASA notwithstanding the allegations that have been published not only in the press but which had *prima facie* been found to have substance by the SIU.

Do you agree?

**MR SMITH:** I do agree.

10 **ADV FREUND SC:** And then just to complete the picture. And I understand that in part it is irrelevant to you directly because you seized to be chair of this particular Portfolio Committee at the end of the fourth if I have that right

The current contract, this is at 2019 that this discussion was taking place. 08/03/2016 was awarded on 19 December 2016 for three years commencing on 1 February 2017 until 31 January 2020.

20 In other words, at the time that Mr Agrizzi came to testify before the Commission, BOSASA had been receiving before, during and after with your tenure as chair of the Portfolio Committee ongoing contract with some R 7 billion. And that I think you have already agreed with.

**MR SMITH:** I do agree with that. So, yes.

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

**CHAIRPERSON:** Mr Freund.

**ADV FREUND SC:** Yes, Chair?

**CHAIRPERSON:** Attempts should be made to try and establish whether that was a nutritional contract and maybe if possible what areas?

The one person who is likely to know quite well, I suspect, would be Mr Agrizzi. So he is one source of information who might – I think it might be important for Mr Smith to know exactly what those details are so that if he jogs his memory in any way he could supplement his  
10 evidence.

**ADV FREUND SC:** Yes, I will endeavour to follow that through Chair and I hope that if I forget that somebody within the Commission will remind me.

Now what I want to explore with you Mr Smith is this. The SIU report was regarded as sufficiently persuasive to your knowledge to have led the Department of Correctional Service to have suspended and taken disciplinary steps against the then Chief Financial Officer, Mr Gillingham who ultimately resigned in the face of a  
20 probable disciplinary sanction.

You were aware of that at the time of those developments, of the suspension of the fact that a disciplinary was taken and that it was based on what was revealed or confirmed by the SIU report. Would you agree with that?

**MR SMITH:** I can agree with that. I am just not sure if those incidents happened during our tenure of power. But yes, I am aware that there were disciplinary hearings against the CFO, yes.

**ADV FREUND SC:** Right. And what puzzles me is why if the... Let us step back a little bit. The SIU report itself was the product or the consequence of a series of detailed exposés in the press that *prima facie* seem to suggest that there have been serious irregularities in the several  
10 contracts to the benefit of BOSASA and its subsidiaries, really in the period 2004 and 2006.

They had been exposed in the press. They had been all sort of public statements made. Mr Selfe made all sorts of statements. And ultimately, that led to the SIU investigation and report. Is that a fair summary?

**MR SMITH:** That is a fair summary. Yes, Chair.

**ADV FREUND SC:** And then the department continues to award, either by extension or by tender, further contracts to BOSASA and further nutrition contracts in particular to  
20 BOSASA and seems to do so with no apparent criticism from yourself or no decision from your committee that this is being regarded as problematic. Is that a fair point?

**MR SMITH:** No, it is not.

**ADV FREUND SC:** Well, then please tell me why it is not.

**MR SMITH:** Firstly sir, we received the report from the

SIU early in 2009 and at that occasion there was a unanimous decision by the committee that the SIU must continue with its investigations.

Our understanding is that it had not concluded. It was an update of an ongoing investigation. And we made an undertaking that we would support whatever needs to be done from the SIU and another law enforcement agency in terms of that investigation and it would receive our support.

10           So firstly, it was an ongoing investigation and we supported it. Secondly, you yourself sir referred to – and I do not have it before me – I think in 2013 where the committee took a decision that we would frown upon further extensions of that contract.

So I do not think it is accurate to say we took no action or – ja, we took no action. I think we did – we recognised and respected the ongoing investigations by the SIU and gave them our support.

20           And that is where we thought we should leave it as Parliament unless we are accused of interfering in the work of another department of government.

**ADV FREUND SC:** I want to follow up on various points you made there. Firstly you say it was an SIU ongoing investigation but is it not correct to your knowledge that the Minister reported to Parliament in response to a

question that the report had been referred by the SIU for prosecution or for the MPA to consider whether to whether to prosecute ...[intervenes]

**MR SMITH:** Yes, I recall that was the next process, that the SIU would have done its work and then taken to a sister department to continue the work. So let me retract saying that it was an SIU ongoing investigation.

Let us say it was an investigation of the law enforcement agencies, whether it was SIU or the MPA or  
10 whoever. I withdraw that it was an SIU but I am saying it was ongoing work.

**ADV FREUND SC:** I understand your point. Then another point you made it that the committee was against what you called – you used the word – and I imagine must carefully it shows an extension of the contract.

Now I, having read the various minutes, I think as you do, that it is appropriate to distinguish between extensions of an existing contract and putting out to tender the same contract in a competitive process.

20 And what I want to put to you is this. What your committee said was: We will tolerate not one but two extensions of the BOSASA Catering Contract but after that we will tolerate no more extensions. If it is going to be re-awarded it must be done through a tender process.

Am I accurately putting your position or not?

**MR SMITH:** You are accurately putting our position sir. And maybe it is important that we locate it at the time that decision was taken.

When that decision was taken the department said to us that they had done, if I can call it the capacity audit, and found that they did not have the necessary capacity at the time but that they would work towards capacitating themselves.

So it was in that context that we said if indeed you  
10 are going to capacitate yourself, make sure that whenever this thing is renewed you have the necessary capacity to do it, number one.

And secondly, if you take it out for tender that even if the incumbent does not get it, it does not negatively affect the running of the operations.

**ADV FREUND SC:** Now when you talk about the department developing capacity. I think what you mean is this. There was talk that really there was no need to outsource catering at all. It frankly had before the  
20 BOSASA contract been handled internally within the prisons department by staff and prisoners.

And there was a view that that should continue, that should resume, that there should be no catering outsourcing at all. And there was some debate on that principle.



So when you are talking about developing capacity, you mean the capacity to do the job yourself. Am I right?

**MR SMITH:** Yes, not only capacity. And by the way, that debate took place on our terms. It is us that said that. When I say us, I am saying our committee had said that.

And the capacity that you are talking about. One was the Human Resource capacity but secondly was for the department to acquire the necessary financial resources to  
10 be able to purchase or acquire what was necessary to furnish the kitchens for a want of a better word.

So one was capacity and two the necessary equipment because at the time all the equipment that was there was equipment that belonged to BOSASA. And we had said to them make sure your budget caters for new equipment but also make sure that inmates are able to cook for themselves. That is what we decided as a committee.

**ADV FREUND SC:** And what you decided was, whilst that  
20 issue was under consideration, you had no objection to in fact you expressly authorised that the contract should be extended not once but twice. Am I correct?

**MR SMITH:** No, you are not correct sir. Parliament has no capacity to authorise or to adjudicate any tender. So when you say authorise, I am not sure what it is that you

are talking about because as Parliament you have no authority or jurisdiction to award or authorise any tenders.

**ADV FREUND SC:** Just bear with me while I find the reference.

**MR SMITH:** [No audible reply]

**ADV FREUND SC:** Chair, I can give you a secondary reference. I will find the primary reference shortly. But at Bundle 2, pages 737 to 738 there is a paragraph that I have already referred to, paragraph 6.43 of Mr Selfe's  
10 affidavit.

And in the last sentence of that subparagraph quoting the BOSASA report. This is the BOSASA report by the PMG which is purporting to quote you Mr Smith. It is alleged that on the 20<sup>th</sup> of March 2013 you personally said the following:

“The committee would not allow the contract to be extended again having taken knowledge of a prior extension and the fact that there was now being muted a further extension.”

20 By extension, I mean extension without going to tender. Do you dispute that you said that the committee would accept or indulge or commit or not object to these two extensions but would not allow the contract to be extended again?

**MR SMITH:** Again sir, I – as you said it is 2013 and I

would not – the sentiment that we were raising and maybe the English or the wording was not appropriate.

The sentiment that we were raising or that we would not as a committee accept an argument from the department that they have to extend it because they do not have capacity.

Let me reiterate. We do not have – or not we – Parliament does not have the ability or the authority to adjudicate or to award a tender.

10           It might what was picked up and recorded by the committee secretary and I will not dispute that but in hindsight maybe the word allow should have been substituted by another word that relays the sentiment that we do not think that we can sit and look and sit back when this happens.

But certainly, whether we had the ability to allow or not allow, that is not the domain of Parliament.

**ADV FREUND SC:** Well, I understand your point. There is a separation of powers point and there is a point about  
20 what is the proper function of the department, what is the proper function of Parliament and I accept that there is something to the point you are trying to make.

But would you accept that you as a chair of the Committee of Parliament had a duty to exercise oversight and to require accountability by the Executive and in that

process you were fully entitled to express adverse views of conduct of which you disapproved?

**MR SMITH:** I agree sir.

**ADV FREUND SC:** And you were fully entitled if you thought that there was something problematic about extending on several occasions or at least two occasions a contract awarded to a company where you were party to knowledge which suggested that in the view, at least of the SIU, that contract had been acquired by a process of  
10 bribery, corruption and tender rigging? You were fully entitled to express your opposition and your criticism.

**MR SMITH:** Yes, I agree sir.

**ADV FREUND SC:** And you did not, did you?

**MR SMITH:** I do not recall the proceedings but I do know for a fact that the committee as a whole raised on numerous occasions our dissatisfaction with outsourcing generally.

We might not have raised it with the specific service provider but on – to the end of our term we raise  
20 our dissatisfaction with the outsourcing of Correctional Service.

So if you are asking me if we relayed it specifically with that one, I suppose that we would have to go and look at the minutes but generally I could say we were never ever comfortable with outsourcing within the Department of

Correctional Service as a committee.

**ADV FREUND SC:** But what you are talking about  
...[intervenes]

**CHAIRPERSON:** One second Mr Freund. One second.  
Mr Smith, why would your committee that I understand -  
certainly from other evidence that I have heard and it may  
include your own evidence previously.

Why would your committee which had been  
horrified by the SIU reports about what was happening  
10 between BOSASA and the Department of Correctional  
Service, why would your committee which had been  
horrified in 2009 as it commenced its work after the  
General Election not have said to the Department of  
Correctional Services but how can you continue with  
having any business relationship with a company where  
there is a report from the SIU that tells us horrific stories  
of corruption?

Why would your committee not have said that to  
the Department of Correctional Services?

20 **MR SMITH:** Chair, I want to be careful. I am sure that we  
might not have said it outright but I do believe that the  
entire committee including all the members would have  
relayed that sentiments both to the department and the  
Minister but I do not recall us saying it upfront to the  
department why are you doing business with that particular

service provider.

In hindsight Chair maybe we should have said it as bluntly as you are putting it because that was the right thing to do at the time.

**CHAIRPERSON:** You see and I may have said this to you before, one of the things that I continue not to understand is how it was possible for BOSASA to continue to be allowed to do business with the state in general and with the Department of Correctional Services?

10 In particular for as many years as it did, despite these allegations of corruption, besides these findings by the SIU in their investigation in the SIU report?

But government seems to have just allowed it to continue doing business. The allegations, I understand, would have been in the media and so on.

It just – it is one of those things that are difficult for me to understand to say – I mean, I think from what I have heard, BOSASA would have begun to do business with Department of Correctional Service not later than  
20 2007, not later than that year. I may be mistaken but I think not later than that year.

And if I recall correctly they only stopped after this Commission had started and Mr Agrizzi had spilt the beans and only then did the government start doing something to stop this business.

I mean, that is – BOSASA doing business with the Department of Correctional Service and other organs of state. So I say but how is it possible because people in Parliament knew about the SIU report.

As I recall, the allegations were in the media about corruption involving BOSASA, allegations of corruption involving BOSASA and Department of Correctional Services but BOSASA and the Department of Correctional Services just continued as if these things were not known.

10           Now your committee was specifically – specifically had the mandate and the obligation to perform oversight over Department of Correctional Services.

It starts its work in 2009 after the General Elections. It gets given this report that tells it about horrific things. They do not say but this cannot be allowed to continue Minister of Correctional Services, DG of Correctional Services or Commissioner. This cannot be allowed.

20           Not to speak about extending your contractual relations with this company. It is – I just have difficulty to understand that and I am offering you the opportunity if there is something that I am missing to say this is what you are missing.

There is nothing that one should not understand about the conduct or attitude of the committee towards this

or reaction or lack of reaction on the part of the committee.  
This is the situation.

**ADV FREUND SC:** Thank you Chair. Chair, I do not want what I am saying to appear as an excuse from Parliament's point of view. However, the reality Chairperson is that when it comes to work that is done by the Executive of Government or Departments who then offer what services they provide and so on.

Ours as Parliament, as I understand it, is the  
10 power to persuade. He did not have the power to micro-manage or the power to dictate.

And I must repeat, I am not offering that as an excuse Chairperson. All I am saying is that was the power relationship but I believe it is still the power relationship.

That is why even up to 2019 or I do not recall Mr Freund when you said it was extended the last time, but that was the nature of the power relationship.

I am not offering it as an excuse and I fully appreciate your frustration or your lack of understanding  
20 Chairperson but that was the power relationship at the time. And I was – as I understood it anyway, was our power was just to persuade and we could not dictate.

**CHAIRPERSON:** Well, it may be that Parliament does not have the power to force a Minister or a Director-General or the President who is the Executive to adopt its own



solution to a particular problem.

That I can understand if somebody says when there is a problem that we as Parliament have identified, we have raised with the Executive, we had a particular solution and the Executive does not agree with our solution, we cannot force them to agree with our solution to the extent that the point is made, I can understand that point but I am not sure if I can understand – that says if, for example there is corruption in a department and let us  
10 say, for example – and I am not specifically going back to – I am not saying that this was dealt with in the SIU report but let us say there are specific people, there were specific people within the Department of Correctional Services that were mentioned as having been involved in corruption with BOSASA in regard to these matters that the committee was looking at and you say, as a committee, Minister, in the light of the findings of the SIU report, disciplinary action should be taken against the Commissioner of Correctional Services.

20 If the minister says to the committee I accept that my DG or the Commissioner of Correctional Services appears to have been involved in acts of corruption with BOSASA but I am not going to do anything about it, I am not sure that the committee can leave it at that, parliament can leave it at that and say well, we leave it like that. Do

you think parliament should just leave it at that on your understanding of parliamentary oversight?

**MR SMITH:** Certainly not, Chairperson, certainly not. I think – and I speak for myself, if any minister or any member came and said I am aware of it, I hear you warning me but I am going to continue regardless, certainly I think that there should be certain – there should be steps taken by parliament. I do not recall any minister coming and saying I am aware of it and I am not going to take any  
10 action against – I think that is the distinction. But certainly, yes, if we have warned the minister and he or she does not take any steps, I do think that we should – we should look at other measures to do it or to take forward. So I agree with you, Chairperson.

**CHAIRPERSON:** Well, the example I was giving you was an extreme one because – it was an extreme one as I was giving it deliberately because sometimes extreme examples help us to test the principle and I think you and I are on the same page that in the example that I gave, really it  
20 looks like parliament should do something and should not throw their hands up and say we can do nothing about it. But let us look at another example.

It is the same facts. The minister does not say I agree that it looks like my DG has been involved in acts of corruption but I will not do anything about it, it does not

say that to you as parliament or committee of parliament but says I will see what I am going to do but never does anything. Three months later he has not done anything. Six months later, he has not done anything, a year later, he has not done anything, you must conclude or you must, the committee, say to the minister but you said you would see what to do, what is happening? And if he gives you or she gives you an explanation that is unconvincing, it seems to me on the face of it that even in that case parliament  
 10 should say well, this is intolerable, this is unacceptable, we should look at what we can do because it is unacceptable for a Minister, who is not able to defend this conduct and its criminal conduct in his department but who does nothing and cannot give us any justifiable reason for doing nothing, then as parliament, we must look at what we can do, we cannot just leave the situation like that. Would you not agree with that proposition as well?

**MR SMITH:** I would agree with that proposition, Chairperson.

20 **CHAIRPERSON:** Yes, yes.

**MR SMITH:** Can I, can I...?

**CHAIRPERSON:** Yes.

**MR SMITH:** Without justifying can I just say something that is probably factual and what actually happens on the ground, Chair, is that – and if that is why there was one of

the focus points for our committee when we took over was the stability of senior management. What happens frequently is that when these types of things happen, you find that senior managers then resign from one department and resurface in another department or another sphere of government. So I do not recall in my time that there was any specific individual who was there for five years and was not dealt with and was given impunity, I am talking about an individual but the point that if this indeed does  
10 occur, there should be disciplinary hearings, disciplinary action, I fully concur with you, Chairperson.

**CHAIRPERSON:** Well, then you could have a situation where maybe they are not specific individuals mentioned but nevertheless the minister, you know, accepts that there is a lot of corruption that has been happening in the past and it seems to be continuing but he seems or she seems either unwilling or incapable of getting this situation arrested, you have given him or her enough time, maybe it is a year, maybe it is two years, the allegations of  
20 corruption keep on coming up and they are increasing, so you may reach a conclusion to say he is either unwilling or not capable of making sure that his department or her department arrest this situation. Therefore, in that situation I would imagine that as part of your oversight you would look at what can be done. If you must call for –

must call upon the President to – as parliament call upon the President to fire the minister whether he accepts your recommendation but then at least that is what you should do. Do you not think so?

**MR SMITH:** I think that is what should be done, Chairperson. Let me indicate that in my time from 1999 until the time I exited from parliament I recall only one occasion where parliament actually made that recommendation that look, Mr President, we think you  
10 should reconsider. And again, Chairperson, I suppose we learn as we go along. I think in future what you say what in fact happened because there is a precedent that has been set but up to the point of the SABC inquiry, I do not recall that parliament was as brazen as you are suggesting we should be but I do believe we will be going – well, parliament would be going forward, Chair.

**CHAIRPERSON:** Okay, thank you. Mr Freund?

**ADV FREUND SC:** Thank you. Mr Smith, the precedent you are talking about is the recommendations made by the  
20 SABC *ad hoc* committee.

**MR SMITH:** I beg your pardon, I never heard your question, sir?

**ADV FREUND SC:** I just want to check that the precedent that you had in mind, the single instance where something like that had happened was the recommendations made by

the *ad hoc* committee into the SABC, am I correct?

**MR SMITH:** That is the only occasion that I recall where such recommendation was made, Chairperson.

**ADV FREUND SC:** And I suppose, correct me if I am wrong, the report of the *ad hoc* committee would have been tabled before the house, before the National Assembly and the National Assembly would have adopted the report, is that correct, is that how it works?

**MR SMITH:** That is correct, sir, yes.

10 **ADV FREUND SC:** Now effectively the National Assembly recommended to the President that the future tenure of a particular minister should be reconsidered.

**MR SMITH:** Correct, sir.

**ADV FREUND SC:** What you are saying, if I understand you correctly, is in future that should perhaps happen more frequently, a useful precedent has been set and it is a useful device for addressing the problem of the accountable executives.

20 **MR SMITH:** I believe that is most parliament – or the least parliament can do and beyond that, it then is the prerogative of the President who appoints and dismisses cabinet but the most or the least we can do is to make that recommendation at parliament.

**ADV FREUND SC:** I hear you. Now I want to go back to what we were talking about before the Chair asked you

some questions. I was asking you questions about the stance taken by yourself and the committee which you chaired in relation to the further rewards, either by extension or tender of contracts to BOSASA and its subsidiaries and you said but well we can do is persuade, we cannot instruct and what I understood you to mean is this, ultimately your committee does not have the power to determine who is going to get contracts, that is for the executive to decide but I think you recognise that you did  
10 have the power and indeed the right to attempt to persuade the executive to do what you thought was proper. Do you agree with me?

**MR SMITH:** Yes, I do.

**ADV FREUND SC:** Well, you will recall how we started our engagement this afternoon; I took you to paragraph 6.23 of the legacy report of the previous [indistinct] 10.55 which said:

20 “In respect of contracts to BOSASA, Phezulu and Sondolo IT that the committee remains disturbed with the manner in which the matter was handled and the incoming committee should treat it as a priority.”

And now I want to put to you what Mr Selfe says at paragraph 6.46 of his affidavit. But now we come to the end of the cycle and he says:

“What was perhaps worse was the fact that despite the controversy of an official contract and the way it which was awarded, extended and re-awarded and the very serious malpractices identified by the SIU in November of 2009, the matter did not feature at all.”

And he emphasises those words.

“...in the Legacy report of the PCCS drawn up in 2014.”

10 And he attributes a measure of fault to you personally in that respect. What is your comment?

**MR SMITH:** First of all, sir, I am not in the business of challenging people that are not before me. But let me say this, Mr Selfe was a member of that committee when this report was drawn up. He did not raise any objections or the fact that it should be emphasised. That report went to parliament, Mr Selfe, like I and everybody else is a member of parliament, I do not recall Mr Selfe saying but you know what, guys, add that line to put it there.

20 So for me it is difficult to understand why after those opportunities to enrich the report a member of parliament does not enrich the report, as he or she has the right to do, and then 20 years after the fact come and say but this is it and I am not wanting to blame anybody, I am just saying it would be more helpful if when the opportunity



arises to say but I am a member and I think this is how that report should be enriched. I certainly – I certainly did not in my personal capacity, as is stated there, deliberately de-emphasise.

**ADV FREUND SC:** Well ...[intervenes]

**MR SMITH:** That is all what I want to say, sir.

**ADV FREUND SC:** I hear you and we can consider the position of Mr Selfe in due course, but let us consider your position. You are the person who said to me this afternoon  
10 and to the Chair your committee does have the power at least to seek to persuade the executive in relation to issues of concern to you and I want to put to you that whether there is any fault on the part of Mr Selfe or not, this is a highly significant omission from your legacy report.

What you are told by your predecessor should be a matter of the highest priority has somehow dropped entirely off the radar screen to such an extent that far from seeking to persuade the executive to act differently, you  
20 make no mention of the issue at all both in this report and frankly in the several years that preceded it.

**MR SMITH:** Are you asking for my comment, sir?

**ADV FREUND SC:** I am asking for your comment please.

**MR SMITH:** Yes, I am saying, sir, that – and it is in the minutes. There was a briefing by the SIU. We understood

that this was work that was ongoing and that the process will reach its logical conclusion via the SIU/NPA/the judiciary. I am not sure – and again I am not justifying it, I am not sure that if that was the case and we believe that we have done what needs to be done as parliament that there was anything more that we should have done. And if there was, I am the first one to say that we slipped up but I genuinely believed that once it was transferred to the body that is better capacitated to deal with it, ours was to support that body or those bodies to deal with it.

I make no excuse for the fact that our legacy report did not reflect it. I make no excuse for that but I am saying that my personal understanding that this was work that was done somewhere else and I was confident that those bodies would take it to its logical conclusion.

**ADV FREUND SC:** But let us just look at the time factor here, Mr Smith, it was on the 16 November 2009, very early in your period as Chair that Mr Hofmeyer in a sense confirmed the reliability, as he saw it, of a series of serious allegations.

**MR SMITH:** Yes.

**ADV FREUND SC:** Five years later, almost five years later, to your knowledge no steps had been taken to prosecute and your committee sits silently by and makes no fuss about this. I put it to you that was culpable. You

of course free to comment.

**MR SMITH:** I disagree with you, sir, and that is my opinion. In, I think it is Mr Selfe's report or something to that effect, I think there is reference to a member of the NPA who themselves said that what had been presented by the SIU at the time would not stand in court and it has to be reworked. So I again am saying we are not lawyers or investigators as members of parliament, ours is to refer to the bodies that are best placed to do it and hope that they  
10 do what they need to do. If the committee was expected to do regular follow-ups - let me say we did not say we did not do regular follow-ups but it was not for any other reason other than, certainly from my point, we thought that it was in capable hands and I would have a different view to your view that says it is culpable, but that is my view, sir.

**ADV FREUND SC:** Well, Mr Smith, you know as well as I do that we have this debate against the context of some very serious allegations that have been made by Mr  
20 Agrizzi. Mr Agrizzi says it was no coincidence that the heat came off, it was the consequence of personal bribes to yourself. Now I understand you deny that but you will understand that the failure of your committee and in particular you personally to persist and to follow through on what you originally described as a horrific finding to

reach the point at which at the end of your term there is not mention at all, at the very least raises question marks, about whether perhaps Mr Agrizzi says is true. Do you wish to comment?

**MR SMITH:** I totally disagree with that.

**ADV FREUND SC:** Thank you, Mr Smith, I have no further questions.

**CHAIRPERSON:** Well, Mr Smith, just a few questions.

**MR SMITH:** Yes, Chair?

10 **CHAIRPERSON:** So what is it that your committee did between 2009 and 2014 or in that period of five years ...[intervenes]

**MR SMITH:** I cannot hear, Chair.

**CHAIRPERSON:** Oh, okay, is that better?

**MR SMITH:** It is better now, yes.

**CHAIRPERSON:** Okay, alright. What is it that your committee did about these horrific matters that the SIU report told you about over the five years that you were Chairperson of this committee? What did your committee  
20 do about these horrific matters of corruption that the SIU report told your committee about?

**MR SMITH:** Chair, I do not know that there was anything that – or I do not recall that there was anything that the committee did other than – I am almost convinced that in every engagement with the minister or even during our

budget debates that this would have raised by various members of the committee but I have the benefit, Chair, of having served SCOPA and I do know, maybe not the Correctional Services committee but I do know that parliament in my life at SCOPA certainly looked at those type of things.

So to answer you, Chair, in Correctional Services itself, I am not sure that there was anything, I do not know what you call it, physically or consciously that we did other  
10 than probably raising it in the debates at budget time and/or in the engagements quarterly with the minister but I do think that it would have certainly been raised much more sharply. I know that it was raised much more sharply at the level of SCOPA [indistinct] 22.02.

**CHAIRPERSON:** And you cannot remember whether in the committee, in the portfolio committee on Correctional Services it was these issues that were covered by the SIU report were raised with the Minister of Correctional Services in the committee of - on Correctional Services.  
20 You cannot remember or you do remember?

**MR SMITH:** Chair, I certainly cannot remember but I do know that if we went to the quarterly engagements that it would not be inconceivable that it was raised by members in the engagement with the minister and the accounting officers but I would not go on to say so now categorically

because I just do not remember, Chair, but it would not be inconceivable that we would have raised it in our quarterly engagements with the minister and the department.

**CHAIRPERSON:** I would imagine that the purpose – and you must just tell me when you are struggling to hear me again, Mr Smith, tell me. Okay? I would imagine that the purpose or at least one of the purposes of the so-called legacy reports that committees when their terms of office end prepare and hand over to the next committee is to say  
10 to the next committee here are matters that need follow-up, that need you to follow them up or that need you to keep an eye on or matters that you need to do something about. Is that a I misunderstanding on my part on the purpose of a legacy report?

**MR SMITH:** No, it is not a misunderstand, Chair. My understanding – it is not a I misunderstanding, let me say that. My understanding also is that it assists with institutional memory because certainly in my time the turnover of MPs every new term is about 60%, so you have  
20 very many new MPs. So part of the legacy report, as I understand, would be to assist in terms of institutional memory.

But I also want to state, Chair, that I think it is Rule 167 that says that committees are expected to draw up their own work method or their own focus areas and not

necessarily bound by any previous parliament. In fact that applies even to parliament but it does not necessarily – it does not mean that we should ignore what has come from the previous parliament. So my understanding, it assists with institutional memory for new members, it should give us some sort of indication, as you say, Chair, on what maybe we should look at and any wise man should be able to say well, let us look at that thing and if it has merit, let us take it, but I do not think it is binding but certainly is a  
10 resource that any new arrivee, if there is such a word, should consider.

**CHAIRPERSON:** Now obviously I would think that if one committee prepares a legacy report in which it includes very important issues which require, in their view, oversight or further attention by the next committee and the next committee for all intents and purposes does not do anything about such an important issue it defeats at least one of the purposes of a legacy report, would you not agree?

20 **MR SMITH:** I do, Chair.

**CHAIRPERSON:** Yes.

**MR SMITH:** I do agree with you that – that yes, that is why I said earlier on that a wise person would look at that.

**CHAIRPERSON:** Yes.

**MR SMITH:** Present it to the new committee and the new

committee then to apply its mind to the contents of that legacy report.

**CHAIRPERSON:** Yes. Now you said the function of parliament, the function of parliament as far as oversight is concerned, you said it is persuade the executive. Do you remember that?

**MR SMITH:** I do, Sir, I do, Chair.

**CHAIRPERSON:** Now there may be different ways of persuading. One way is for me to say Mr Smith do you not  
10 think it would be a good idea to take action against so and so and I say whatever.

Another way is that I may start like that but we engage in a discussion, if you are not convincing, you do not want to do what I believe is the right thing to do, I may start to be quite robust, I am not instructing you but I may start to be quite robust and show that I am horrified at you not doing the right thing. But from what I have heard from what you have said and from what I have – reports that I have seen, to the extent that there may have been any  
20 attempt to persuade on behalf of your committee must have been a very superficial attempt, would you not agree?

**MR SMITH:** Chairperson, I... I do not want to say something that, whatever...

**CHAIRPERSON:** Ja, but ...[intervenes]

**MR SMITH:** I do not think, Chair...



**CHAIRPERSON:** But feel free because you must feel free to defend your committee, feel free to defend yourself but obviously I expect you not to defend something if you do not feel it is defensible, you must just speak freely in terms of what you believe to be true.

**MR SMITH:** I do not think, Chair, that the committee was docile. I am using my own words and not your words. I do believe that the portfolio committee on Correctional Services, during my tenure anyway, was very robust with  
10 the minister, with the department and I am sure that if we went to all engagements including the budget – and I am talking about all members of the committee. I do think – and of course we could have been maybe robust, of course we could have been more – but I do think that we were – we were not shy of pointing out our dissatisfactions.

And I take the point, Chair, that pointing them out is one thing but pointing them out and following them up and continuing to nag, for want of a better word, would have probably been more effective but I would not say that that  
20 committee was docile. I am not sure, I forget the word that you used, Chair, but I do not think ...[intervenes]

**CHAIRPERSON:** I used superficial. I used superficial.

**MR SMITH:** Oh, yes.

**CHAIRPERSON:** Ja.

**MR SMITH:** No, I do not – the committee's oversight was

superficial, that is my response to Chair.

**CHAIRPERSON:** But I am not talking about their general performance of oversight work in general. I am more focused on in regard to these matters of allegations of corruption between, involving BOSASA and Correctional Services. I am saying that from what you have told me and from the evidence of others in the reports about what the committee was doing, it seems to me that if the committee sought to persuade the executive to do something about  
10 these matters it seems that in regard to BOSASA its attempts were superficial.

Maybe in regard to other matters they were quite robust but in regard to BOSASA it seems that if they were then they were superficial because even from your side you were not sure, even whether they raised these issues, sharply. But what you could remember is that in SCOPA they were raised but in this committee that you Chaired, my impression of your evidence is you were not so sure that these issues were raised sharply.

20 **MR SMITH:** Chair my words, were if I had benefit of the quarterly reports and the budget speeches I might be more sure.

**CHAIRPERSON:** Yes, yes.

**MR SMITH:** But I agree with you Chair, that it would not have been as robust as it would have been at SCOPA. But

on that one I concur 100%.

**CHAIRPERSON:** Then just two further matters. I - would the Portfolio Committee, maybe would your Portfolio Committee this one on Correctional Services when you are aware of problems, serious problems in the department or in a portfolio and you have maybe you feel that you have limitations as members of the committee because you cannot instruct the executive what to do. But you are concerned that, for example, taxpayer's money is wasted  
10 and so on or is being stolen and so on.

Would you go back to your party the ANC, the majority party and say to them, you know, we are faced with this problem. But in our capacity as members of Parliament we cannot instruct comrades so and so's, Minister of Transport to take steps, to take action. But you are the people who go to the electorate every five years and ask the electorate to vote you into power and this is going to give you a very bad name.

We are now reporting to you, do something about  
20 this. Would your party - would that be part of what members of the ANC, for example, in their capacity as members of the ANC would report back to the party to say comrade so and so is Minister of this and that is not really doing his job. We are concerned and it is taxpayer's money we are talking about here.

**MR SMITH:** Maybe not in the fashion that you raised Chairperson but you know, when I speak for the ANC and I would imagine it is the same for all other parties, including in the Western Cape where the opposition is Chair, I mean a majority party.

In our case, Thursdays we have caucuses and members are then able to raise that matter in the caucus because our linkage with the leadership of the ANC would be through the Chief Whip. I do not think it stops members  
10 from going directly but I think the more discipline members would go via the Chief Whip because it is the Chief Whip that is the link between me as an ordinary MP and the leadership of the ANC at HQ.

So yes Chair it is possible to go and say look comrades, this is what we think we are seeing and maybe as a party let us look at it but I do not know that members will go directly and undermine the role and authority of the Chief Whip who is the link between members of Parliament and the leadership at HQ.

20 **CHAIRPERSON:** Yes. Then the last one is you were not in agreement with Mr Freund when he suggested that your committee was culpable in terms of not performing its oversight function properly in relation to the BOSASA matter. I just want to give you a chance to say whether you stand by that or whether you would like to reconsider it on

the face of it, it seems to me that the committee could have done and should have done much more. Maybe I should not say much more, but certainly more. Are you not in agreement with me that it should have done more over the five years?

**MR SMITH:** I am not a legal fundi that is why I got scared when you use the big word culpable, Chair.

**CHAIRPERSON:** Yes, let forget about culpable let us say, in terms of doing its work ja, let us leave out the legal  
10 terminology. Would you not agree that it fell short of what can reasonably be expected from a Portfolio Committee performing its oversight functions properly?

**MR SMITH:** Chair no I would not think it fell short and my defence for that, although I am not being defensive, is that I think Chair we must all understand that Portfolio Committees are for want of a better word, a Sub-committee of the House. So even if the Portfolio Committee was not doing whatever it was doing, all committee reports go through the National Assembly.

20 And I believe that the 400 members of the National Assembly, if there was there was blatant not doing your work should be the ones that would correct us because ultimately it is the report of the National Assembly, we are only but tasked with doing work on behalf of the National Assembly. So I do not want to be defensive, we could have

done much better as a committee I believe everybody could have but I do not think it was for the lack of trying.

**CHAIRPERSON:** So is your position that you believe that the Portfolio Committee on Correctional Services over the five-year period in 2014, in regard to the matters affecting BOSASA and Correctional Services, is your position that you believe the committee performed its oversight function satisfactorily?

**MR SMITH:** There could be much more improvement  
10 Chairpersons from where I am sitting now but with the resources at our disposal, both financial and also warm bodies and the resources at the disposal of the executive, I think we did our best. I do want to emphasise Chair and I do not want to make excuses, I do want to emphasise that, you know, Parliament in terms of its capacity to research and do whatever it wants to do.

Parliament has 11 lawyers as an example for forty committees. Any department would have at its disposal any number of senior counsel, researchers and so on. So I  
20 do think that more than just the Portfolio Committee, I think there is a fundamental structural problem.

If we want to improve oversight, there is a real structural problem in terms of the funding of Parliament as a whole. The resourcing of members of Parliament and committees and the whole budget. How do we fund

Parliament? I really do think Chair that there needs to be a debate around the funding model. It cannot be correct that the oversight body as Parliament must be dependent on the executive for its budgets and be expected then to oversee Parliament. So I am saying there might be weaknesses Chair, individual committees and individual members but I do think there is a structural problem that needs to be addressed.

And my understanding is that you engaging us to  
10 make recommendations and one of the recommendations that I am making is that the funding model of Parliament is fundamentally flawed when the executive are the ones that determine the budget for Parliament who needs to oversee it. That is just one of the points and there are many more that I could raise, if given the opportunity, but not taking away the fact that we could have done more Chair but I do think we have done the best under the circumstances.

**CHAIRPERSON:** Yes, well although we are under time constraints if they are important points, other important  
20 points that you would like to make I can give you five minutes to make them.

**MR SMITH:** I am very grateful for that, Chair. Chair you know, in preparation for this hearing, I went to do some research on what happens in other jurisdictions. In India, for instance a multi-party committee of MP's decides on the

financial requirements of Parliament and then go and say this is what Parliament requires and the executive are not able to dispute that. And that talks to the economic independence of Parliament to be able to do its work properly.

The second point that I wanted to make Chairperson you know, I have heard many of the witnesses before you saying that one of the solutions to this thing is going the constituency route. Now, I did some research myself  
10 again, you know, in the UK not in the UK, in the USA they have the constituency system.

But if you look at the recent events that are happening in the USA even with the constituency model, the party bosses still have power. Look at what is happened now recently in the USA, so I am saying Chair that is why I am saying we need to have a real talk about what is happening around Parliament's ability, both not Parliament, the legislature whether it is local, whether it provincial, or whether it is national, the role of party  
20 bosses, the role of constituency, the role of the list committee.

And the last point that I would want to make Chairperson is that - and again it was my sums I speak under correction but I did some homework and just by way of comparison, I am looking for my document. In the



English Parliament the ratio between committee what we call the committee section, and what in the UK they have as support for MP's. In England of the - more than then R560million that Parliament has R19million goes to what we would call member support.

That is about a 33% of the national budget in South Africa, of our R2billion budget that Parliament has, committee section or research capacity is only R50million I think it is, that is less than 1%.

10           So I am saying we need to capacitate MP's to ask relevant questions to be confident to deal with an executive that has all the resources to defend themselves. So I want to leave it at that point Chair and I do think that a debate is required on the funding models of our Parliament versa vie what the executive have at their disposal.

**CHAIRPERSON:** Well, I certainly do think that in seeking to ensure that going forward Parliament's oversight, the performance by Parliament of its oversight functions will be  
20 effective. A number of things need to be looked at some of which are the ones you have mentioned funding, researchers and so on and so on, enough, you know, capacity.

But I at this stage and I am still going to hear more people I might change my mind but at this stage it seems

to me that no matter how much money can be poured into Parliaments oversight function and the researchers and whatever. If there is not enough protection for members of parliament, particularly those who belong to the ruling party to be able to be protected against any adverse consequences from their party should they stand up for what they believe is right for the country.

If we do not provide a proper protection for them then I am not sure that anything we do will really be  
10 helpful. Unless we reach a point where the ruling party, well at this stage it's the ANC, but one can talk about any ruling party in the future, unless we can reach a stage where the position of the ruling party would be.

We believe that our members of Parliament who belong to this party, know what is in the best interests of the people of South Africa and what is in the best interests of the people of South Africa is what we do as the parties stand for and if there is anyone among ourselves, who is posing a risk through his conduct or her conduct to the  
20 interests of the Republic our members must take part, for example in supporting a vote of no confidence in that person if his President or she is President, we are not going to protect and we are quite happy to leave the judgment to our members.

But maybe because I am not a politician Mr Smith,

maybe I am just being theoretical and I am talking about things that will never happen. Some people who are listening, say look at the Judge his talking about things that will never happen, you know. But as long as a member of Parliament who belongs to the ruling party is not able to say I am going to vote and I am going to perform my functions of oversight, as I see them to be in the interests of the people of South Africa, to be in the interests of the Republic.

10           And as far as I am concerned that will coincide with what my party wants and there will be no consequences for me. As long as they fear that if they do what they believe is right there will be adverse consequences. I am not sure that we are going to be able to have proper oversight but it may well be that there are other ways.

          But at this stage it seems to me that if we do not have proper protection - of course mechanisms are important, oversight mechanisms that are available to Parliament but oversight mechanisms that are good and  
20 that can be used quite well do not help if there is no willingness or commitment on members of Parliament to do what is in the interests of the people of the country.

          You are a politician, so you I give you a chance, you might say, ja, you see these Judges they do not know what they are talking about.

**MR SMITH:** No, Judge I think you are correct. In the ideal world that is what really should happen that members should be protected to do what they think is right but that is in the ideal world. In the real world of politics Chair, it seldom happens, whether it is at national, whether it is at province, whether it is at local or even internationally. I mean not so long ago there were three members that voted against the Mayor in Johannesburg. Those members were summarily dismissed because they voted not to support the  
10 Mayor.

Now, that is the kind of pressure that we all face, Mr Selfe raised the issue of Feinstein, that when he voted against he was systematically worked out, it works across political parties. The DA does all the time, the ANC does it all the time, the Republican Party or National Party or Democratic Party...[intervene]

**CHAIRPERSON:** I think the EFF does it...[intervene]

**MR SMITH:** It's just tough Chair, it's tough.

**CHAIRPERSON:** But we have got to - if we say these  
20 things, this scenario is in part responsible, if at the end of the work of the Commission we say this situation is in part responsible for why Parliament did not stop the corruption or State Capture and so on and so on.

We need to say, so what must we do to make sure that we never again find ourselves in this same situation

where these levels of corruption happen again, or State Capture happens? We have got to identify things that we need to sacrifice in order to try and make sure that certain things do not happen but as you say, it might be very difficult. But we as a nation might have to choose, you know do we choose to take the risk that these things could happen again and we are not prepared to make certain sacrifices to make sure they do not happen during our children's time or our grandchildren's time when we might  
10 not be here. And they will look back and say, why did not take measures to make sure these things do not happen again? But I think it is important that all of us, put our heads together and makes make suggestions as to how these things should be done but I guess you have you have made your points Mr Smith, I thank you for having come to assist the Commission. Thank you very much but you are now excused.

**MR SMITH:** Thank you, Chair.

**CHAIRPERSON:** Mr Freund.

20 **ADV FREUND SC:** Chair, I was going to ask for leave just ask a couple of questions but if you feel that we have had enough then I leave it to you.

**CHAIRPERSON:** No, you can you can ask him.

**ADV FREUND SC:** Yes, I just wanted really to follow through on one point. On this issue of persuasion, I think

you accept that there is nothing to be found in the Legacy Report that indicates an attempt by you or your committee to persuade the executive to act differently than it was acting on the BOSASA issues. I think you will be me thus far; do you agree?

**MR SMITH:** I do.

**ADV FREUND SC:** But what I heard you suggesting, admittedly without any detail was that you thought that you might have raised certain things in - what are the budget  
10 meetings?

**MR SMITH:** SCOPA?

**ADV FREUND SC:** DCR?

**MR SMITH:** I cannot hear you Chair, in?

**ADV FREUND SC:** The budget...[intervene]

**MR SMITH:** The BRR Report.

**ADV FREUND SC:** The BRR Reports?

**MR SMITH:** Yes.

**ADV FREUND SC:** Okay, the BRR Reports or BRR meetings or something. You might have said we might  
20 have raised things but what I want some clarity on is raised, what? Now what I want to put to you is that to the best of my knowledge, nowhere did you or your committee raise with the executive - and when I say your committee I mean the majority because I think opposition parties did say certain things.

That nowhere did your committee put to the executive whether in the form of the Minister, the Commissioner, or DG or senior personnel. Nowhere did you put that the way you are continuing to do business with BOSASA in the light of the serious allegations against it, is inappropriate. Do you agree with me and if you disagree with me, can you give me any detail?

**MR SMITH:** In your words sir I do not want to belabour this thing, in your words sir, we did. But I am saying to  
10 you that even in 2013 and we might not have followed it up but in 2013 we did say to the department look guys, what you are doing we can tolerate for now but going forward we think you should change your mind.

And maybe we were not harsh enough I am accepting that but - and of course, in hindsight, much more could have been done I am accepting that also, sir. But I do not think there should be an impression created that there was a deliberate downplaying of onus, that is all that I am saying.

20 It should not be; I do not want us to or I do not want the impression to be created that we just did not do anything. And as I said earlier on in my own words it was not from the lack of trying but if we had a chance to do it all over again now, I think we would have done it differently.

And I am saying so because post 2019 there was a Precedent set in Parliament that changes things and we cannot change what happened in the past but we certainly can improve going forward. So I do not want to dispute what you are saying, sir but I do not think that I would not want to defend the committee as a whole because in that committee, there is no opposition or whatever.

It is the Portfolio Committee's decision. So I will defend the Portfolio Committee to the extent that I think  
10 they have done as best as they could, sir and I take the point that much more could have been done. I do take that point and I do think that going forward much more will be done by all Portfolio Committees and by Parliament as an institution.

**ADV FREUND SC:** Thank you, Mr Smith. I have no further questions.

**CHAIRPERSON:** Thank you, Mr Smith you are excused.

**MR SMITH:** Thank you very much Judge, Deputy.

**CHAIRPERSON:** Thank you very much. Mr Freund.

20 **ADV FREUND SC:** Chair, I have available Mr - Associate professor Richard Calland, if you wish to hear him or at least to commence with his evidence. As you have said earlier it may be that we can get through a substantial proportion of it in the time available or you may feel that we should defer, I am in your hands.



**CHAIRPERSON:** I think we should – we might not be able to use an hour but maybe we could use about 40 minutes. What do you think?

**ADV FREUND SC:** I think we can make useful progress in that time, Judge.

**CHAIRPERSON:** Ja, up to half past six.

**ADV FREUND SC:** Indeed.

**CHAIRPERSON:** Ja, okay alright.

**ADV FREUND SC:** If you just bear with me, maybe Mr  
10 Calland if he is here he might come on screen.

**CHAIRPERSON:** Is Professor Calland available?  
Professor Calland are you there?

**MR CALLAND:** Yes Chair, Mr Freund I am here. Can you  
hear me?

**CHAIRPERSON:** Yes. Good afternoon to you.

**MR CALLAND:** Good afternoon to you, Deputy Chief  
Justice.

**CHAIRPERSON:** Thank you very much, welcome. Thank  
you for coming to assist the Commission. We might not be  
20 able - actually we will not be able to do all your evidence  
this evening but we would like to do what we can, up to  
half past six and then arrangements will be made subject  
to your availability and the availability of Mr Freund to  
complete it as soon as possible, preferably this week if  
possible. Do you understand?

**MR CALLAND:** I do indeed, thank you very much.

**CHAIRPERSON:** Okay, thank you.

**MR CALLAND:** I am in your hands and I am available tomorrow morning at your disposal.

**CHAIRPERSON:** Okay thank you registrar, please administer the oath or affirmation.

**REGISTRAR:** Mr Calland will you be taking the oath of the affirmation?

**MR CALLAND:** I am comfortable with the oath.

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

**MR CALLAND:** Richard James Tristan Calland.

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

**MR CALLAND:** No, I do not.

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

**MR CALLAND:** Yes, I do.

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

**PROF CALLAND:** So help me God.

**CHAIRPERSON:** Thank you very much Professor Calland. Mr Freund you may continue.

**RICHARD JAMES TRISTAN CALLAND** [duly sworn, states]

**ADV FREUND SC:** Thank you Chair. Chair Professor Calland has submitted a report, an affidavit and accompanying documents which jointly are to be found in Bundle 3 and form what is intended to be Exhibit ZZ9.

**CHAIRPERSON:** Yes thank you.

**ADV FREUND SC:** Right. Professor Calland can I take you firstly to the confirmatory affidavit which appears at Bundle 3 pages 3 to 5? Can you confirm that that is an affidavit to which you have deposed and the signature is your  
10 signature?

**PROF CALLAND:** Yes I have it in front me Mr Freund and I confirm that that is my affidavit that I deposed and that it is my signature.

**ADV FREUND SC:** Thank you. Chair I would then move that Exhibit ZZ9 in its entirety be admitted as an Exhibit.

**CHAIRPERSON:** I am sorry Mr Freund. Has Professor Calland confirmed his signature?

**ADV FREUND SC:** Yes I have confirmed his signature which is at page – page 5.

20 **CHAIRPERSON:** Okay and this will be Exhibit ZZ?

**ADV FREUND SC:** ZZ9

**CHAIRPERSON:** 9. Okay. The affidavit of Professor Richard Calland which starts at page 3 will be admitted as Exhibit ZZ9.

**ADV FREUND SC:** Thank you Chair. Now Professor Calland

is it correct that really the substance of your contribution is an annexure – Annexure A to your confirmatory affidavit?

**PROF CALLAND**: Yes it is.

**ADV FREUND SC**: That starts at page 9 of Bundle 3 and is a report that you submitted to the commission in July 2020, is that correct?

**PROF CALLAND**: That is correct.

**ADV FREUND SC**: As the title Parliamentary Oversight and Executive Accountability in a time of State Capture.  
10 Diagnosis of an Institutional Failure and Ideas for Reform. And not only is that the title that is really a synopsis of the whole point of your submission, am I correct?

**PROF CALLAND**: Yes that is correct.

**ADV FREUND SC**: We will of course come back to that shortly in some detail. You have provided certain annexures for the moment the only annexure I want to deal at the outset is Annexure 4 and Annexure 4 as I understand it is your Curriculum Vitae – I am just looking for the page reference. Perhaps you could just take the – the Chair very briefly  
20 through those parts of your CV and experience that in your view qualify you to give the evidence that you are intending to give and to make the submissions you are intending to make. And if I could make clear that they really fall into two categories.

There are – there are observations that you make as

a close observer of the South African Parliament and then there are positions that you propose as it were wearing the hat of a lawyer who looks at questions of constitutional law, accountability in the proper place of Parliament.

So against that background if you could just take the Chair very briefly through your professional background and experience so that we can understand from which vantage point you make these assertions.

**PROF CALLAND:** Certainly. So the first part of career was  
10 spent as a member of the Bar in London as a practicing  
Barrister with the general common law practice. I mention  
that simply because it also means that I was familiar with the  
British political system and indeed although this is not in my  
Curriculum Vitae maybe personal to some of the  
conversations we might have about other Parliaments and in  
particular of course the British House of Commons.

That because I was an active member of a British  
Political Party the Labour Party I was very familiar with the  
British Political System and its electoral design.

20 In 1994 I came to this country supposedly for one  
year sabbatical which has become somewhat extenuated and  
in 1995 I found employment with the Institute of Nocsi [?] in  
South Africa as it was then known IDASA as it later became  
known.

And I was employed to set up what was became

known as the Parliamentary Information and Monitoring Service. And the mandate of the new unit was to watch the new South African Parliament in its first years to disseminate information about it; to advocate for change or reforms as the Institution built itself up during those extraordinary early years of the 1990's; to watch the constitution making process unfold in the constitutional assembly and so on.

So that was then a very significant part of my own professional development and of course during that period of  
10 time I spent a great deal of time in Parliament. Barely a week would go by often barely a day would go by when I was not in Parliament watching the proceedings in particular the nascent Parliamentary Committee system which became the engine room as many of us describe it during that founding period of the 1990's.

Those I think are the most important parts. I should just briefly add that during that period of the '90's I along with two other people founded the Parliamentary Monitoring Group and I must say it is gratifying to see and hear the  
20 PMG refer to so often in these proceedings. It is an organisation which clearly has stood the test of time fills an important gap and provides a very useful service to the public and to commissions such as this.

In 2007 I think it was I joined the University of Cape Town as an Associate Professor of Public Law. To teach

Constitutional Law which I have continued to do for the last thirteen years to take the 00:06:48 course in Constitution making and litigation under the Bill of Rights and for ten years I headed a unit called the Democratic Governments and Rights Unit concerns in particular the judicial appointment and we leave it there.

**ADV FREUND SC:** And if you would just refer very briefly to your publication where more in particular publications of any relevance to the issues that we are now concerned with.

10 **PROF CALLAND:** Well I think my first academy publication long before I joined the University was back in the '90's I think '97 when I wrote a paper called All Dressed up with Nowhere to Go which was about the new Parliamentary Committee System in the South African Parliament.

Since then I have written extensively on the Constitutional design features of South African; I have written a number of books which primarily about politics, anatomy of South Africa 2006 was the first such book. The Zuma Years in 2013 and a book called Make or Break in  
20 2016. And I have been a political columnist for the Mail and Guardian newspaper since 2001.

**ADV FREUND SC:** Alright now if we can turn to the substance of your report which starts in Bundle 3 at page 11. It seems to me and correct me if I am wrong but really the first three pages are simply a summary of where you are

going to be going in due course.

**PROF CALLAND**: Yes.

**ADV FREUND SC**: And perhaps there may not be any need at this stage to deal with that and can maybe deal with that as a conclusion to the extent necessary.

And the first substantive issue you deal with in your Part 2 is headed Parliamentary Oversight and Executive Accountability under the Constitution and the Law and you deal initially with Parliamentary Oversight under the  
10 constitution and it seems to me we do not need to belabour that you are addressing a constitutional court Judge but nonetheless it might be helpful just to – just to cherry pick as it were the essence as you see it of the constitutional position.

**PROF CALLAND**: Well what I think what is significant and this is a very obvious point in comparison with this one such as the British one. But the rules of the game in South Africa are very clearly expressed in law.

And most importantly perhaps they are enshrined in  
20 the constitution itself. And I think that is very significant because it means that the authority on which Parliamentary Oversight is faced has very, very sturdy roots. There can be no doubt in my view that Parliament has the power, it has the authority, it has all the legal means necessary to pursue an oversight over the Executive if it has the will to do so.



Now there are a number of provisions which I think are well-known but to the commission I set them out in the report that has been set out in many other reports over the years. I think it is almost trite to say what I have said but the mandate of Parliament to exercise oversight is very, very clear. It is very well established.

And more over it is not just a mandate I would argue that it is a duty it is a responsibility.

For example Section 55 says that the National  
10 Assembly must provide for mechanisms to ensure that all Executive organs of the state are accountable. So there is a – there is a responsibility on Parliament to organise itself in such a way that it can hold the Executive to account in an effective meaningful fashion.

**ADV FREUND SC:** Now I think you made the point yourself that your early years as a junior Barrister in England gave you some insight into the position in Westminster. Is there a relevant point of comparison between the South African Constitutional provisions in point and as it were the  
20 traditions that have emerged slowly and in fits and starts in the Westminster system?

**PROF CALLAND:** Well I think the – it is obvious that the British Parliament has been around a lot longer in its democratic forms why it is often described as the Mother Parliament. And it has strengths and weaknesses.

One of its weaknesses was that the – the rules were often this is going back some time I think they have been clarified somewhat since but certainly in the '90's when I was as you said a junior Barrister and certainly a junior member of a political party was that the oversight system in fact at Westminster was weak.

For similar reasons to South Africa in that the whipping system was strong and it was often hard for back bench members of Parliament to stand up and take a stand  
10 against their brothers and sisters in the Executive. That is a commonality.

The difference is where I think as follows:

Firstly there was even at that point an established conventional – set of conventions that in fact was probably more important than the rules. And what I have listened to Mr Freund over the last week or so listening to much of the evidence with members of Parliament is a sense that despite the rules being written down in South Africa, despite the authority and mandate as clear as I have suggested to you  
20 that is that that convention, that practice of oversight has simply not embedded itself, has simply not developed and that in many ways it has been – it has been crushed at various points.

There have been moments where committees and individual MP's have stood up and been counted but I have

to say that they have in general been exceptions to the rule.

The other distinction I think that needs to be borne in mind and I will not attempt to dwell on the point because I think you will probably want to return to it later is the difference in the overall political system and in particular the electoral systems. So I do not know Mr Freund if you would like me to make that point now or to come back to it?

**ADV FREUND SC:** I think we can come back to that at a later stage. Now having sketched in your report as it were  
10 briefly relevant constitutional provisions you refer firstly to – be known as the Corder Report and thereafter to what it had come to be known as the OVAC Model the Oversight and Accountability Model. It is intended in due course to call Professor Corder the author of the Corder Report but nonetheless if you could refer briefly to its origin and its significance in the unfolding story of the development of Parliamentary Oversight practice in South Africa.

**PROF CALLAND:** So as I recall it and I was observing  
20 Parliament closely at the time but there are others such of course as Professor Corder an author also others who were working in Parliament or the Speaker's office at the time but I think what happened – this is my recollection is that during the First Parliament which was in many ways a golden age of legislative reform the emphasis inevitably was very much on the law making function of Parliament in the sense that there

were hundreds of apartheid era pieces of legislation that need to be repealed or substantially changed and of course that is what happened.

At an average of a hundred pieces of law a year Parliament for five years overhauled the legal system of South Africa so inevitably the preoccupation of Parliament and its committees its new committees was in that law making function.

And in the sense too it was probably too early for  
10 Parliament to really get its teeth into the oversight role because there was not that much to oversee. The new government as new, it was unlawfulness[?] new programs and so as I say the emphasis, the bias was very much on law making.

But as those five years came to an end I think there was a very sage recognition from the leadership of Parliament and I am thinking here of Speaker Jinwala that actually Parliament needed to start thinking about its oversight role for various reasons.

20 And so that led I think to the commissioning of the report by Professor Corder and later following of that the OVAC Model.

I should say if it is helpful that my view on both reports is that they both contain excellent material. They are full or they are ripe 00:15:07 with very useful ideas about the

reform of a system where in which the system could be tinkered. I no doubt will come back to perhaps some of those ideas.

But my overriding point perhaps Chair and this is the – goes to the core of my evidence I think is that whilst you can tinker with the system as much as you like there are some bigger structural issues in relation to the institution and to the political conventions and climate that are more important.

10           So you can change the rules of Parliament, you can tinker with the system of accountability from a technical sense, you can even improve the budget and I am picking up very much on the exchange between Justice Zondo and Mr Smith a few minutes ago. You can throw money at the problem, you can resource Parliament better but all of it will be a waste of investment, a waste of reform time if you do not tackle those big structural issues and I am sure we will get to those. But I am talking really about the leadership, about the political climate and about the willingness of  
20 individual members of Parliament in the particular Chairs of Committee to really stand up and take their responsibility seriously.

**ADV FREUND SC:** Right now just for the record the – the Corder Report is in the Reference Bundle at page 49 and having placed that on record and I do not propose to take

you there to it and it – it proposed a set of reforms with a view to improving oversight practice. It was followed some years later by a further exercise the OVAC exercise and you say at page 15 in the report – that is using the Commission's pagination system.

**PROF CALLAND:** Yes.

**ADV FREUND SC:** That Corder Report had essentially gathered dust. None of its main recommendations were taken up but then in 2009 which is some ten years after the  
10 Corder Report a committee of Parliamentarians essentially developed what is called the OVAC model which was then adopted in Parliament according to other evidence we have heard in the course of 2009. Would that be a fair synopsis of the chronology here?

**PROF CALLAND:** It would. Can I add one thing to my earlier answer and to partly response to what you have just invited me to comment on and that is this.

The Corder Report it is number 1, it is primary recommendation. There should be legislation to support  
20 oversight. That there should be a piece of law that co-defined the responsibility that would set with members of Parliament and Parliamentary Committees to do that oversight role.

Now what I can tell you is that at the time and I am talking here about the Second Parliament so 1999 to 2003

the Corder Report was sitting there. It was taken seriously but it was not acted upon and one of the reasons I do not think it was acted upon was because at the time there was not an appetite for more law. There was a sense amongst some leading Parliamentarians in the ruling party that what needed to happen was the building of practice and conventions of the sort I have referred to earlier.

In fact I can remember a conversation with an ANC member of Parliament Fatima Chohan I hope she will not  
10 mind me referring to this but she was part of a group of members of Parliament that I accompanied on a trip to London to examine the way in which oversight took place in the British House of Commons.

I remember a particular conversation with her where she said and I am – it is not about her it is about I think the prevailing the mood was that we do not need to legislate this what we need to do is become more practiced at oversight. We need to develop conventions.

So that when a member of Parliament stands up and  
20 asks difficult questions of a Minister from his or her own party it is treated as normal practice rather than as an act of ill-discipline or lack of loyalty.

And that was the thrust of her thinking and I think I am right in saying she was the Chair of the Ad-hoc Committee whose job it was to as it were process the Corder

Report.

And that may be one of the reasons probably one of the less political reasons why the Corder Report did gather dust over a period of time.

**ADV FREUND SC:** But the essence as I understand it of the OVAC model was to propose that the Portfolio Committee system be strengthened better regulated by the existing rules of Parliament and that certain specific improvements were recommended. Would that be a fair summary?

10 **PROF CALLAND:** Yes I think there is a great deal of merit in both reports but the OVAC report takes it further – it is a very systematic look at the – the approach that Parliament needed. A sort of belt and braces, nuts and bolts in some of the engine approach to what oversight entails.

It deals with a range of issues including training, capacity building. It creates what they call as an oversight cycle. It is a very technical report and I think there are some people perhaps including myself who would recognise the merits and the value of what it is suggesting but with – and I  
20 am sorry if I am repeating myself would say yes that is all very well but it will not succeed unless the political leadership creates a climate and a culture in which that kind of system can prosper.

**ADV FREUND SC:** Now I am going to come back to that point which I know is very central to your views. But just



while we are talking a little bit more technocratically if I can you to the foot of page 15 of your report and we are in Bundle 3 at page 15. You will see there that you refer to the proposal in the OVAC model about the need to create an oversight and advisory section whose responsibility would include tracking and monitoring mechanisms. I think you may have heard some debate about that in the course of the hearings thus far. But that was an idea emphasised in the OVAC model.

10           You will see at the top of page 16 the proposal that rules should be developed to assist Parliament further in sanctioning Cabinet Ministers for non-compliance after all existing avenues and protocols have been exhausted.

          Another idea that we have discussed to some extent already in the course of these proceedings. And another point that I would highlight or the last bullet point near the top of page 16 the recommendation to integrate Parliament public participation function within its overall oversight mechanism.

20           And I mention that because the evidence of Mr Johnston comes to mind. I do not know if you saw Mr Johnston's evidence who is from OUTA but one of his points of concern as a representative of a body that has taken an active interest in the state capture allegations, corruption allegations on the role of Parliament is the need to facilitate

the participation of – of the public in the oversight process.

And that was – that was an idea that had the support of the authors of the – of the OVAC model as I understand it, am I correct?

**PROF CALLAND:** That is correct yes.

**ADV FREUND SC:** And of course the OVAC report was adopted by Parliament but I think you make the point that only implemented in part.

**PROF CALLAND:** That is right and I think Mr Frolick the  
10 other day conceded in answering some of your questions that that was the case that Parliament had not made a great deal of progress in really executing the main ideas in the OVAC model.

**ADV FREUND SC:** Now you refer also at page 16 in your report to the report of the Independent Panel Assessment of Parliament in 2009. I do not think there has been any mention thus far as that in these proceedings. If you could just crisply take us to what that was about and why it has any relevance if it has any relevance?

20 **PROF CALLAND:** Well it was appointed if I – if memory serves in a sort of period of time where I think the political terrain was more fluid and so there was a sense that Parliament and some people called it a sort of proud sprain. There was a sense that Parliament could – could have some kind of renaissance and that part of that renaissance would

need to be giving much more active attention to this oversight role. It needed to get out and about. It needed to see for itself what was happening in the country and that is where I think the point that you say Mr Johnston made about the relationship of public participation is a good one. Because often it is the public and not with respect members of Parliament who know what is going on on the ground, in hospitals, in schools and so on.

And so the need for members of Parliament to  
10 actively connect with communities find out what is happening in terms of policy execution and implementation is really perhaps where the – where the tyre hit the road in terms of oversight rather than simply sitting in Cape Town asking difficult questions of Ministers and DG's although that is also a very important part of the function.

It seems to me that if you are a member of Parliament if you have actually garnered the information accumulated real knowledge of what is happening with policy execution you are going to be in a much better position to  
20 put questions of meaning and value and substance to a Minister or a DG appearing before a committee.

So I think the independent panel assessment as I say came about through in a period between around 2006/7 and 2009/10 when there was a great deal of political change going on within the ruling party in particular and therefore in

Parliament.

And so there was some more I think political space for some new ideas to gain root. It is a good report, it is another good report with good ideas but I do not believe it has been properly taken up.

**ADV FREUND SC:** Now the very first point that you – bullet point out of that report is the idea that Parliament should consider – consider the impact of the party list electoral system. The panel being of the view that the current  
10 electoral system should be replaced by a mixed system.

We can come back to that later but that is – that is one of the ideas that was – that was being taken seriously at that time, is that correct?

**PROF CALLAND:** Well I think it is a question of electoral reform has raised its head at various points since 1994 or on every time it does raise its head there is a brief debate and then it is kind of pushed to the back burner.

I do not think there has ever been sufficient political support for it particularly within the ANC to really get  
20 momentum going behind it and of course there is the Wentzel Slabbert report which we will probably refer to later.

But it does seem to me that the electoral system the way in which members of Parliament are elected and the – the authority and political power that they have in a relationship with not just the executive but with their own

party is absolutely critical to us understanding the system and the limitations that are placed politically on Parliament and MP's from doing their work.

**ADV FREUND SC:** As you say we will come back to that. I note that the second bullet point you make the point that they too recommended the putting in place of an extensive monitoring schedule to ensure that the recommendations of the oversight model found expression in Parliamentary processes.

10           And here we are in a more than a decade later and we have still got nowhere with that or so it could be argued.

**PROF CALLAND:** Well clearly their idea of a proper tracking and monitoring system for recommendations made by Parliament and if we – if we accept and I do not accept but let us for a moment we accept what I heard Mr Smith say a few minutes ago that Parliament's power is merely advisory. I think it is more than that but let us say it is merely advisory then the very least Parliament needs to do is keep track of its advice, monitor the extent to which that advice is taken or  
20 not and then follow up. And if it cannot do that it seems to me that it is – its oversight if I may pick up a word used by the DCJ is really superficial. It is preying lip service to oversight. It is asking questions, it is making recommendations but if you do not follow up in the face of a recalcitrant or inefficient or incompetent or perhaps corrupt

Executive then you are really not doing your job.

**ADV FREUND SC:** Now I want to move on. You deal in point 2.6 with Parliamentary Committees as the engine room of Parliament talk to that point very briefly because it now seems the truism the – it had to evolve.

**PROF CALLAND:** Well in – I was not here but what I learnt was that in the pre-'94 Parliament there was no system of committees to speak of. And that is primarily because of course the old Parliament was a rubber stamp.

10           So when the new Parliament was created post-'94 and particularly with the new constitution in place it was clear that Parliament was going to be a serious place of work.

          Now if you add to that the political factor which was as I set out in report the fact that the ANC for various reasons decided most of its senior leadership, most of its talent, most of its experienced people into Parliament at that time you had this abundance of experience of talent and of political clout all inside the ANC caucus.

20           Now Mandela's Administration, his Cabinet could not accommodate all of those people so what you have on the back benches of the ANC caucus in that First Parliament was this extraordinary array of really significant political leaders who many of whom were appointed to be Chairs of the new committees.

And of course being very dynamic ambitious and far sighted people that they were what they did was to make their committees affective and gave them real meat and real legs. And that is why some of the most I think effective work certainly even on the oversight side but certainly on the legislative side was done by committees in the early '90's and it created a really I think important precedent established the practice that the committee system was meaningful, it was here to stay and it was, to use the cliché,  
 10 it has become the engine room of Parliament. It is where most matters of Parliament really takes place. What happens at the National Assembly, with no disrespect, is often for sure it that of the Parliament and politics. The real work when it is done, it is done in the committees.

**ADV FREUND SC:** Now I want to take you to a point you made at page 18 in the second last paragraph. You say that – and I am just picking up in the middle of the sentence, about ten lines from the bottom.

20 “The political leadership needs to encourage a culture of independent mindedness not in an oppositional paradigm but in the spirit of ensure the Executive remains loyal to the mandate given to by the electorate.

This requires real leadership and a profound commitment to the Constitution and its system

and accountability which in turn begs the question. Do turkeys have a vote for Christmas?

My answer is yes. Why? Because at various times in the past 25-years I have heard senior ANC politicians speaking in such terms.

10 Their identity is not material. What is important is that there had been the insight, essential said perspective within parts of the ruling party that it is in fact in the ANC's political interest to Parliament to do it constitutional job and to hold the Executive to account."

Now are you prepared to elaborate any further or was the point fully made there?

**PROF CALLAND:** Well, I think it is because I can make it even simpler than what I said in my report; it is that real oversight can lead to political embarrassment for the ruling party.

20 Because if you are asking difficult question and if you accept, as I certainly do, that governing is difficult particularly in a country such as South Africa with a myriad of complexities and problems with a mountain to overcome in terms of rebuilding the economy, overturning the injustices of the old order, the apartheid era. Governing is



very, very difficult.

You are going to make a lot of mistakes. And I have got a huge amount of sympathy for those who have the garden of governing.

If you exercise oversight in that context in a way that is not superficial but is probative then inevitable you are going to reveal all of those mistakes.

You are going to expose the vulnerabilities in the Executive. And that requires courage then from the  
10 Executive. It requires courage from the ruling party to say we still need to do that. A, because the Constitution tells us but also because we have the wisdom to say it is in our interest because it will make us govern better.

And here I do not – I revert to say is that that has been the prevailing attitude. So the people I am referring to in the paragraph that you have read from my report, unfortunately have been in the minority.

There have been exceptions to the rules. There have been people I think with real perspective, with a  
20 deeper understanding of the role of oversight but I fear that they have been lost voices in the wind.

And that as the political climate changed over the years and as 2006 and 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> Parliaments kicked in, those voices have been largely extinguished.

**CHAIRPERSON:** Well ...[intervenes]

**ADV FREUND SC:** I want to move ...[intervenes]

**CHAIRPERSON:** Mr Freund, just one second. You know Professor Calland, you may have heard what may be described as a little bit of some idealism on – in regard to some of the points that I was raising with Mr Smith.

But why is it idealistic to think – and I am not saying you are saying that – to think that a ruling party, I am talking in general, and this ruling party right now that we have in South Africa could take the view that says.

10           You, Mr President, you are the President of the country and the President of our party. Your ministers are part of this party.

We want to tell of you in the Executive and we want to tell the DG's and everybody, the CEO's in SOE's and the boards that we want you to be at the forefront of fighting corruption in your departments from now on or from a certain date.

And if you do not – if you allow corruption in your department as a Minister, as a DG we are instructing  
20           members of the ANC who are in Parliament to say you must expose DG's and Ministers who fail to act in accordance with what we, the ruling party, have said would happen. Deal with corruption effectively.

So maybe somebody who is listening says: Well, that is not going to happen. But I do not know. What

would you say Professor Calland to that? Why ...[intervenes]

**PROF CALLAND:** Thank you Chair ...[intervenes]

**CHAIRPERSON:** Is it a risk that exposing corruption might pose to the members of the ruling party itself and to the ruling party that would deter it from taking that stance?

**MR CALLAND:** So think there many ways in which one could answer that question. Let me make just one or two brief points.

10           Firstly, I do not think it is either idealistic or naïve to adopt that position. I think that is the position that the Constitution takes.

          I also think it is a – it reflects a profound democratic finding which is the representatives of the people should be there to serve the people and not to serve the interest of a particular political party.

          And indeed, the Constitutional Court has said as much in more than one judgment but all of that comes up against the hard rock of kind of political reality, which is  
20   that political animals and political parties, whether it is in India or in South Africa, tend to be – have exaggerated sense of their own vulnerability.

          And tend to, in my experience, to exaggerate a political harm that could afford one where they do open up to acknowledging and even revealing their own mistakes

and weaknesses. Now that is the most generous interpretation.

When it comes hardcore corruption then of course one is up against a hard core, let us call it economy but is connected to that corruption but the corrupt people inside the system will do everything that they can, will exploit the system to ensure that the people who are charged with the responsibility are asking the difficult questions of making the inquiries and leading the charge to expose them, will  
10 not be able to do so but they will be hung-strung.

And that is why it is necessary to look, in my view, at the system as a whole to see why that is and to see what reforms could be adopted but would – the word you used in your exchanges earlier with evidence and again with Mr Smith just now, is to protect.

The word that I use in my report is insulate. How does one protect or insulate individual members of Parliament and committees from doing their job so that they do not succumb to the political pressure points that I  
20 have referred to?

The last point which is more particular I think to South Africa is first of all the political culture of the ruling party. Now it may be, as you have pointed out, that other political parties in office were either behave in a similar fashion or would behave in a way that had the same impact

or the same outcome.

But certainly the hierarchical nature of the ANC, I think, and its tendency towards royalty and discipline in terms of how they put it, means that it is even harder, I think, for members of Parliament from the back benches to raise issues.

Mr Selfe, rather elliptically, made reference to the fact that the caucus which meets every Thursday – he mentions this, meets at the Old Assembly Chamber Room  
10 of Parliament. Clearly the last six Parliaments that caucus have been between 200 and 300 people.

Very, very difficult for a back bench MP to raise their hand – and I am talking in practical terms here Chair – raise opposition, challenge a leadership that is so much more senior and more powerful to it within that particular culture.

That is why Mr Smith said: Well, the way one would do it is to have a chief whip. The chief whip would be the channel but to channel any concerns to the  
20 leadership.

And then lastly to add onto this, the fact that the MP's of Parliament is extremely exposing and vulnerable because they do not own the seats in Parliament, the party does.

I am sure that Mr Freund will take me to this in due

course but Section 47(3) of the Constitution is a really, I think, chilling provision in this context.

Because what it does is remind – if reminding is necessary – everybody concerned of where the power really sits in that relationship between the individual members of Parliament and the leadership and senior leadership and hierarchy of the particular party.

**ADV FREUND SC:** Well, Mr Calland you have a capacity to foresee where I am going because in fact that is the  
10 very issue that you start to deal with at page 19 which is where we were before you were asked the last question.

Maybe let me just read into the record for those who do not know it. Section 47(3)(c).

**CHAIRPERSON:** As you do so Mr Freund. I see that we have gone half-past six but let us take the next five minutes to ask one or two further questions.

**ADV FREUND SC:** So that provision provides:

“A person loses membership of the National Assembly if that person:

20 c) ceases to be a member of the party that nominate that person as a member of the assembly.”

And then there is a qualification which is immaterial. So the point you were making is that you do not own your seat. And you maybe – if you lose your

membership of the party, you lose your member of Parliament.

And the question is, what could lead you to lose your membership of the party? And that I suppose is an issue that we can take further when we resume but perhaps if you could just comment, just in brief, on the problem there?

**PROF CALLAND:** So I suspect that a very few of members of society know that this provision exists. I have  
10 to say that although I am very troubled by that provision and had been for many years and although I recommend at the end of my report that it should be repealed, albeit in the context of electorate form.

I should add that the provision is not illogical. It is not incoherent. It is align with, I am sure as a result of the fact, but of the particular choice that was made in terms of South Africa's electorate system.

So South Africa falls at one of end of a long spectrum. It is a simplest form of proportional  
20 representation through a list system in which the public has no say or influence over the list system. The party determines who is on the list and it determines the ranking on the list.

And it is used in very particular political ways and it is used to bring people into Parliament and it is used to

exclude people from Parliament.

And we heard about the fate that befell Ms Rantho after she, late in the day perhaps, did her job as the Chair of the Public Enterprises Committee from 2017 onwards. She was not returned on the ANC list in the 2019 Election.

But the point is that because of that electorate system, if the ANC wins 60% it gets 60% of the seats and 60% of the list of 400 names that gets put forward will get elected into Parliament and the party owns those seats.

10 And if a member of Parliament starts to conduct him or herself in a way that is inconvenient of the leadership of the party, then he or she will be reminded.

And I know of many, many occasions, people – sources have told me that that is often used to remind members of Parliament of their responsibilities to be loyal to the party.

And so it is a sort of dangling thing. It hangs over the head of all members of the party. And I think it was Mr Selfe from the opposition party who admitted that this  
20 of course is a very valuable tool for the party managers. It gives them all the power in the world. It means that they can control the membership of the caucus so easy.

If I contrast that with the British system and I want to be very careful what I say here. The constituency representation system and I think Mr Smith suggested in



the United States was a lot as South Africa, it is at all – it has a very different system of government and elections and Parliament.

But the British system of parliamentary democracy are based on purely constituency of representation. No proportional representation. It is not a kind of to all and I will be very cautious in approaching evidence from anybody who say that reform of the electorate system will solve all of this.

10           It will not but it may be an important measure. It may be a necessary extent in fact if one is serious about how to solve this difficult problem.

But what constituency system does do and I speak from direct experience as an active of the British Labour Party in the late 80's and early 90's. It gives the member of Parliament elected in that constituency some kind of shield against the party bosses and the whips in Parliament.

20           He or she, and in my case it was a she, would say to me I can say to the Chief Whip in the House of Commerce, of course I want to be a loyal and obedient member of Parliament, and the Labour Party but back down in ...[indistinct] in South London.

The constituency Labour Party is very unhappy about this issue, wants me to vote in a particular way,

wants me to ask difficult questions of the Prime Minister, et cetera, et cetera.

So it provides some level of the kind of insulation or protection that I think should be the driving principle to govern any reform.

**ADV FREUND SC:** Yes, thank you Professor and Chair. I imagine that might be the convenient moment?

**CHAIRPERSON:** Yes. I think Professor Calland said from his side he will be available tomorrow morning if we  
10 thought that that is when he should continue. Did you say that Professor Calland?

**PROF CALLAND:** Yes, I am at your disposal from 08:30 onwards.

**CHAIRPERSON:** Yes, okay. Mr Freund, how is your situation tomorrow morning?

**ADV FREUND SC:** No, I can manage that.

**CHAIRPERSON:** Okay.

**ADV FREUND SC:** For a limited period.

**CHAIRPERSON:** I am thinking that we could start maybe  
20 at half-past nine and we will eat into the time of the Eskom work stream who would have started at ten but we could see whether we – an hour or on an hour and 15-minutes would not be enough for us to finish.

And then I can – we can – I can sit a little longer later in the afternoon to pay that back to the Eskom work

stream, to pay whatever time we took from them.

So if that is fine with both of you, I will suggest that we continue at 09:30 tomorrow morning and we could ...[intervenes]

**ADV FREUND SC:** Chair, I cannot hear you clearly but it is certainly fine with me, 09:30 for an hour or an hour and a half at the most, would certainly be fine with me.

**CHAIRPERSON:** Yes, okay. Professor Calland, that would be fine from half-past nine tomorrow morning?  
10 Maybe an hour, maybe an hour and 15 minutes or thereabout that we could finish?

**PROF CALLAND:** Certainly would be DCJ.

**CHAIRPERSON:** Okay.

**PROF CALLAND:** With pleasure.

**CHAIRPERSON:** Okay. No, thank you very much. We are going to adjourn then for the day and then we will continue with Professor Calland's evidence at half-past nine tomorrow morning and thereafter, I will hear evidence relating to Eskom. We adjourn.

20 **INQUIRY ADJOURN TO 9 FEBRUARY 2021**