

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

15 FEBRUARY 2021

DAY 344



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 15 FEBRUARY 2021

CHAIRPERSON: Good morning Mr Pretorius, good morning everybody.

ADV PRETORIUS SC: Morning Chair.

CHAIRPERSON: If you will be – she is trying to get me one of the files but I think we – we can start. We can start Mr Pretorius.

ADV PRETORIUS SC: Thank you Chair. This morning Mabusa Attorneys representing the former President Mr
10 Zuma addressed a letter to the commission who informed the commission that quote “as a matter of courtesy” unquote our client will not be appearing before the commission on 15 to 19 February 2021 for the reasons set out below.

Two reasons are given. The first is that there is a...

CHAIRPERSON: One sec – one second Mr Pretorius. Yes Mr Pretorius.

ADV PRETORIUS SC: Two reasons are given the first is as follows:

20 “The commission is aware that the Review Application which President Zuma has instituted to set aside the refusal by Deputy Chief Justice Zondo to recuse himself from hearing matters concerning him and his family is yet to be determined by the court”

I just point out briefly at the moment perhaps there will be more to be said about it later Chair by yourself but for the moment that application was put before the Constitutional Court. The Constitutional Court was aware of that application and notwithstanding that granted the order that it did compelling Mr Zuma to appear today.

The second point raised is the following:

10 “The summons issued for our client to appear on 15 to 19 February 2021 is irregular and not in line with the Fourth Order of the Constitutional Court Judgment of 28 January 2021.”

Well Chair that is not for Mr Zuma or his attorneys to decide that is a matter for the Constitutional Court and any contempt application it may emanate from these proceedings but it does seem to ignore the application or potential application of the principle that the issue of summons would be valid until set aside by a proper court and that is a principle applied our court time and time
20 again.

And then in paragraph 5 the letter said:

“Appearing before DCJ Zondo and the circumstances would undermine and invalidate the review application over his decision not to recuse himself.”

Well no doubt the courts in due course will deal with that issue.

CHAIRPERSON: Do they – do they care to explain why if Mr Zuma thought that the fact that he intended to launch a review application against my decision not to recuse myself why they thought he should not put that before the Constitutional Court when the commission applied for an order to compel him to appear.

ADV PRETORIUS SC: Well they say in paragraph 6 that
10 that review application was not before the Constitutional Court. It was not before the Constitutional Court in the sense the Constitutional Court was not asked to decide that application but certainly they are incorrect insofar as they suggest that that application was not properly pleaded and was not put before the Constitutional Court and they were aware of it. So there is no explanation given beyond the bare statement. But that is a matter that the Constitutional Court will no doubt decide on the face of it it has not merit whatsoever but what is not correct in the
20 approach of the former President is that he should come here and express a lawful reason why he should not apply the law or attend in accordance with the summons.

CHAIRPERSON: Well ...

ADV PRETORIUS SC: Or set the summons aside prior to.

CHAIRPERSON: When the commission – when the

commission launched an application – its application to the Constitutional Court Mr Zuma was served with a full set of papers

ADV PRETORIUS SC: Correct.

CHAIRPERSON: And his attorneys were given a courtesy copious as far as I recall from what I was told to say here is a full set of court papers that will be or will – or have been served upon your client.

Now in that application the point is made quite
10 clearly that the commission was aware that Mr Zuma intended to launch a review application in regard to the recusal application and it was contended by the Secretary of the Commission that that would be no grounds for him not to appear before the commission at the meantime.

So he and his lawyers knew that this was one of the points that was being made – that were being made by the commission before the Constitutional Court. And if they contested that it was up to them to file papers in the Constitutional Court and say the commission is wrong. The
20 position is that as far as we are concerned if there is review application we are still intending to file in the High Court the Constitutional Court should not order our client to appear. Mr Zuma chose not to oppose that application notwithstanding the fact that he knew that that was one of the points that the commission was going to make before

the Constitutional Court.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: He – he and his lawyers sent a letter to say he would not participate in those proceedings at all. The question is can he complain about the order made by the Constitutional Court in circumstances where he was given a full opportunity to oppose that application and place before the court his case and elect and he elected not to do so.

10 **ADV PRETORIUS SC:** Yes Chair. Chair the – we could use much stronger language but perhaps that would be appropriate – more appropriate in time but the failure to appear today does not appear to be justified by any valid reasons certainly not the reasons given in the letter addressed to the commission as a matter of courtesy this morning.

20 Firstly the review application matter was before the Constitutional Court. It was raised in pleadings before the Constitutional Court and notwithstanding the Constitutional Court's awareness of it and notwithstanding Mr Zuma's failure to address the issues at all the order was given that he must appear.

In relation to the summons not being a valid summons well that Mr Zuma was free to come here and say today but chose not to and as we know such a summons

must as a matter of law be valid until set aside by a proper court. People cannot just form their own views as to what the law might or might not say and decide what to do in the face of a validly issued summons or even a summons which on the face of it is validly issued.

That is valid until set aside. And there is not basis whatsoever for the certainly expressed day for the President not to be here today.

CHAIRPERSON: If Mr Zuma or his lawyers were of the
10 view that the summons was irregular the law obliged him if he wanted not to be obliged to appear to approach a court and ask that it be set aside on the basis that it was irregular.

And I do not know the law to be that he is an adult to just ignore a summons just because he thinks it's irregular.

ADV PRETORIUS SC: Correct.

CHAIRPERSON: And I think that the principle you have articulated is the same principle that the Constitutional
20 Court told him about in the Nkandla matter. That you cannot just ignore a process issued by a lawful body requiring you to take certain action and just because you think it is wrong you just sit back and ignore it.

ADV PRETORIUS SC: Yes. In any event Chair two points only to be made from what is or what appears to be in the

public domain the real reasons for non-appearance are not expressed in that letter and they are matters that are perhaps beyond the realm of this commission.

This commission has a mandated job to do it must do it. The implications and consequences of this commission doing its job is for those who will receive the report ultimately to decide.

The second point is that whatever merits there might be and we do not see any in the reasons not to appear today will no doubt in due course be decided by our courts once again.

CHAIRPERSON: Have you got the media statement that he issued on the 1st of February? Have you got it at hand?

ADV PRETORIUS SC: Yes we can get it.

CHAIRPERSON: You have not got it. You see the letter from his attorneys this morning says in the last paragraph that in effect his non-appearance should not be constituted to suggest any defiance of the legal process. But my recollection of his media statement of the 1st of February is that in his own words he said he was going to defy.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: The summons of the commission and he was going to defy an order of the – the order of the Constitutional Court. Those were his words. The media statement was not issued by his foundation it appears to

have been issued by him; himself.

ADV PRETORIUS SC: Yes. Chair in fact the statement it is a long statement but...hair in fact the statement it is a long statement but...

CHAIRPERSON: Yes.

ADV PRETORIUS SC: If we could just place on record certain paragraphs.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: Of his statement. He says

10 “I therefore state in advance that the commission into allegations of state capture can expect no further cooperation from me in any of their process going forward. If this stance is considered to be a violation of their law then let their law take its course. I do not fear being arrested; I do not fear being convicted nor do I fear being incarcerated.”

 And then the last paragraph reads:

20 “In the circumstances I am left with no other alternative but to be defiant against injustice as I did against the apartheid government. I am again prepared to go to prison to defend the constitutional rights that I personally fought for and to serve

whatever sentence that this democratically elected government deems appropriate as part of the special and different laws for Zuma agenda”

Well certainly...

CHAIRPERSON: Yes.

ADV PRETORIUS SC: That is to put it at its mildness – mildest this statement of defiance.

10 But once again Chair it does appear that the true reasons for not appearing are beyond these strict Terms of Reference which we must investigate and they are of a political nature.

CHAIRPERSON: Well we – we – the commission is interested in what reasons have been given insofar as they have been given for his non-appearance and that media statement seems to make it clear that he was – he had decided to defy.

ADV PRETORIUS SC: Yes.

20 **CHAIRPERSON:** The summons, to defy the order of the Constitutional Court and of course ...

ADV PRETORIUS SC: The law.

CHAIRPERSON: That is – and the law and that seems consistent with his conduct before this commission on the 19th of November when he had been issued with a summons; he came to the proceedings and left at a time

when it had been made clear to him and his lawyers that to leave the commission without the Chairperson's permission would be a breach of the summons and a breach of the commission.

His foundation it is in the public domain issues a media statement on the same day saying it had been assured by him that he would have a good day than appear before the commission.

So the media statement that he issued on the 1st of
10 February after the Constitutional Court issued – have handed down its judgment and ordered him to appear before the commission and to comply with all summonses and directives issued by the commission.

The statement of – that he gave is consistent with the Jacob Zuma Foundation's media statement of the 19th of November 2020.

ADV PRETORIUS SC: Yes Chair.

CHAIRPERSON: And in the founding affidavit deposed to by the Secretary of the Commission in the application that
20 was made to the Constitutional Court one of the points was not – that was made was that reference was made to the contents of that statement by the Jacob Zuma Foundation of saying he was going to – he was not prepared to appear before the commission and he would rather go to jail.

And he that is Mr Zuma was invited to distance

himself from that statement by his foundation; he has never distanced himself. Instead in his media statement of the 1st of February he confirmed that he was going to defy not only the summons of the commission but also an order of the highest court in this country.

ADV PRETORIUS SC: Chair in summary the reasons for non-appearance couched in courteous and polite language in this morning's letter from Mabusa Attorneys do not seem to hold any water and are groundless. But those comments
10 there in particular the comment that nothing should be construed goes to suggest any defiance of a legal process must be read in the light of the statements to which we have just referred.

And in part – well particular concern is the reference to their law. In other words not a law by which I will be bound but a law that will bind others and if there is any active defiance it is contained in those two words.

CHAIRPERSON: Yes continue.

ADV PRETORIUS SC: Chair the legal team has prepared
20 an address to deal with the very circumstances that are – have now arisen and if I could take half an hour or so.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: To just inform the Chair and the public of the types of issues that would have been raised.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: Had Mr Zuma elected to obey...

CHAIRPERSON: I think that is – that is important because it is important that everybody understands at least the important features of what has happened.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: And how we have come to be where we are.

ADV PRETORIUS SC: So what this address will deal with is really the evidence before the commission and what
10 issues would have been placed before Mr Zuma for his response or input in order to assist you to come to findings in accordance with your mandate and your Terms of Reference Chair.

We do not intend to deal with the legalities of the non-appearance and the consequences of Mr Zuma's failure to appear as a matter of law.

In short Chair the commission has not been deprived of its opportunity to question the former President in regard to his knowledge of and his conduct relevant to
20 the commission's Terms of Reference which I will detail in a moment.

But by way of summary where we find ourselves now is that we have Terms Of Reference a mandate to you Chair and to the commission as a whole Mr Zuma has is referred to directly by name in four Terms of Reference and

indirectly in two as part of the Executive or at least two.

His evidence is obviously relevant to the commission's work in this regard. There can be no doubt about that.

Mr Zuma has also been implicated to date by the evidence of at least 40 witnesses now. Now whether Mr Zuma believes he has been accused of wrongdoing or not which appears to be the case his responses to those allegations are still directly relevant to the work of this
10 commission.

Numerous statements have been made by or on behalf of Mr Zuma that he has not been implicated in any wrongdoing by any of the witnesses that have thus far come before you Chair.

If that is so – if it is so that Mr Zuma believes he has not been implicated of any wrongdoing or accused of any wrongdoing by any evidence before you Chair then it is difficult to understand why he would need to rely on a right to silence.

20 **CHAIRPERSON:** And also it is difficult to understand why he would be scared of taking the witness stand and subjecting himself to questioning like everybody else.

ADV PRETORIUS SC: Correct.

CHAIRPERSON: By the evidence leaders and the Chairperson.

ADV PRETORIUS SC: And still less Chair would Mr Zuma need to rely on any right against self-incrimination if on his version there is no evidence which indeed incriminates. So the alleged interference with his constitutional rights seems on his own version to be entirely groundless.

Be that as it may what happened during the Presidency of Mr Zuma and during the period under review the details of what he did; the details of what he did not do and importantly his knowledge of the relevant events
10 whether direct knowledge or indirect knowledge are important for the work of this commission.

Moreover he was not only during much of the period under review not necessarily all of the period under review President he was Chair of Cabinet. Cabinet made important – Cabinet on the face of it failed to take importance of this issue.

The exercise of his responsibility in these capacities are important to the work of the commission.

Finally Mr Zuma and members of his family are
20 alleged to have received substantial monetary and other benefits from private and state sources. These also require a response and an explanation.

In short Chair Mr Zuma perhaps more than anyone else is able to assist the commission in understanding what happened in the period under review; how it happened and

what recommendations the commission could make in relation to its findings.

But clearly this assistance is not forthcoming. This is not an attack it is a calling to account and a calling for assistance and information to enable you Chair to – to fulfil your mandate.

The Constitutional Court made a finding in December Chair said on January.

10 “It must be plainly stated that the allegations investigated by the commission are extremely serious. If established they would constitute a huge threat to our nascent and fledgling democracy. It is in the interests of all South Africans the respondent included that is Mr Zuma that these allegations are put to rest once and all. It is only the commission which may determine if there is any credence in them or to clear the names of those implicated
20 from culpability.”

There are two aspects to a commission of inquiry certainly in these circumstances Chair.

The first is to investigate its Terms of Reference. To hear evidence in relation to its Terms of Reference and to make findings and recommendations in relation to that.

But it is also there – there as a matter of public concern and this was stressed by the Constitutional Court. The public have a right to know what happened. The public have a right to know what their President did or did not do. The public have a right to know what their President says about this. Not in the streets outside residences in KwaZulu Natal but here in this commission.

So the duty to assist the commission there is not only a legal duty arising from the summons issued by the
10 commission but the narrow legal issue which is before you Chair. It is a cross..

CHAIRPERSON: Well in – in talking about the duty to assist if I recall correctly paragraph 3 of the Terms of Reference of the commission which were signed by him while he was President in paragraph 3 of the Terms of Reference he said all organs of state will be required to cooperate fully with the commission.

ADV PRETORIUS SC: That is correct.

CHAIRPERSON: One would have thought that he would be
20 the first one to cooperate fully with the commission.

ADV PRETORIUS SC: Yes. Well at the time too he made a public statement announcing the establishment of the commission and urging all South Africans to cooperate fully and that clip is in the media.

CHAIRPERSON: Hm.

ADV PRETORIUS SC: Apart from the duty to obey the summons; apart from the duty to abide by regulations, Terms of Reference and the like there is a constitutional duty there arising from the position that Mr Zuma held as President of the country.

It is also a public duty owed to the citizens of this country. Manifestly this commission's work is a matter of public concern.

So Chair whatever the politicians and commentators
10 might have to say about the commission's work it remains our duty to fulfil the mandate that you have given in accordance with your Terms of Reference and it is these Terms of Reference that guide its work. We simply have to do our duty so whatever the noise out there Chair we – yourself as the sitting Justice and ourselves as evidence leaders and the investigators we have a mandate it is a legal mandate and we must obey that mandate and that is our duty – then we must fulfil it.

The legal consequences of Mr Zuma's failure to
20 appear will no doubt be dealt with separately and perhaps Chair we can – you will deal with those in due course.

But I would appreciate Chair and have been requested by yourself to inform yourself the commission and the public of the issues the legal team intended this week and perhaps an additional time to raise with Mr

Zuma.

Chair there is a need for a caveat however it seems that many do not understand really how the commission goes about this. But here is evidence. It does not tell people what to say of – it may highlight topics that need to be covered but ultimately the witnesses come here to give their evidence.

That evidence can be contested by other witnesses in the fullness of time and when you do your report Chair
10 you will decide who is telling the truth and who is not telling the truth and we can assist you in that regard.

But the allegations that we will outline now in this address Chair are based on evidence presented as well as evidence still to be presented; allegations which have emerged and investigations, statements which have been taken.

The correctness or the veracity of that evidence will only finally get examined after you Chair have considered all the relevant versions received in respect of the
20 evidence including what we thought might be the version of Mr Zuma.

Some of the allegations as I have said that will be referred to have not yet been led in evidence but Mr Zuma has been notified of such allegations in voluminous correspondence and his attorneys. All those allegations

would in the ordinary course be the subject matter of notification to Mr Zuma before being questioned thereon at a later state.

So even if this week we were constrained to deal with certain issues in relation to which Mr Zuma had already been received information and be notified.

In later – at a later time, he would have to answer other questions or be asked to answer other questions in relation to allegations that are the subject matter of the
10 Commission's investigations.

Chair, but the essential thrust of the questioning and discussions with Mr Zuma this week is based on the ultimate question really that the Legal Team would like to assist this Commission to answer.

In August 2018, the Legal Team made an opening presentation to the Commission and in that opening presentation it was emphasised that State Capture is not just about corruption.

The mandate to enquire as to what is State
20 Capture and whether State Capture was a project which was perpetrated by whomever might have been implicated in the evidence. It is a question that is yet to be answered.

The work of this Commission is not even about widespread corruption. Corruption itself may be a part of a

project of State Capture or an alleged project of State Capture but it is - State Capture is more than that.

State Capture, and this was in the opening statement in 2018, at least in theory would concern a network of relationship both inside and outside government whose objective would be to ensure the repurposing of government departments, officials and state-owned entities for private and unlawful...

In other words, when one puts together all the
10 elements, the evidence that you have heard, the question is: What does this mean? Is it just corruption?

Are these just ad-hoc events that seem to collect in a period of time or is there something more to it than that. And that is what would have been explored with Mr Zuma and that is ultimately a finding that you would have to address in your report Chair.

So the submission was made that the work in 2018
Chair by the Legal Team that the Commission was obliged to investigate circumstances where the allocation and the
20 distribution of state resources is firstly determined by a network of persons outside and inside government acting contrary to constitutional and legal norms.

Secondly, directed not in terms of our laws and policies to what should have been the outcome but for the promotion, protection and private financial gain of

beneficiaries of that network of that business inside and outside government.

And facilitated that project, the question arises: Was that project – and this was put as a question, not as an answer – was it facilitated by deliberate effort to exploit or weaken key-state institutions for example law enforcement agencies or even Parliament in its oversight duties?

Finally Chair, what would have been at its borders, 10 the question, not the answer, the question put to Mr Zuma is how does one make sense of it? What really happened? Not the little pieces of the jigsaw but looked at globally in its whole conspectus. What happened?

And secondly, how could that have happened? How could it happen for example that this corruption was not picked up and prevented by law enforcement agencies?

How could it happen that the various constitutional oversight bodies failed, at least initially, to deal with what was going on? Really what happened and how could it 20 have happened?

And only with the full understanding of that with the assistance of Mr Zuma, honestly and openly speaking to the Commission, could one take the next step towards recommendations.

To go into some detail now Chair against that

general background. Mr Zuma would have been asked to respond in detail to allegations regarding his relationship with the Gupta family in South Africa.

And there are many factual issues which arise under this head that would require some discussion and some examination.

So, and obviously, in the short time that we have this morning I am not going to deal with every issue but mainly to highlight certain important issues.

10 There has been evidence led over three years Chair relating to the knowledge and involvement of the Gupta family in actual or contemplated ministerial appointments and dismissals.

We have heard the evidence of Ms Mentor, Mr Jonas, Ms Hogan, Mr Gigaba, Mr Mbalula, Mr Gordhan, Mr Nene and Mr Des van Rooyen to name but a few. All of them ...[intervenes]

CHAIRPERSON: You said Mr Gigaba. Well, I have not heard him yet.

20 **ADV PRETORIUS SC:** Yes.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: Well, there are allegations ...[intervenes]

CHAIRPERSON: Yes, there is evidence ...[intervenes]

ADV PRETORIUS SC: ...that have been put to him.

CHAIRPERSON: ...media allegations.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: And ...[intervenes]

ADV PRETORIUS SC: There are allegations that he would answer in this realm.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: As I said in the beginning this includes evidence already led and to be led on the understanding that before been called to answer, he would
10 have been informed of it for a later appearance.

Chair, in relation to the appointments and dismissals of ministers; now this is just one piece of the jigsaw, what flowed from the appointments and dismissals of ministers, I will deal with in due course but that is the starting point in the centre of the jigsaw puzzle Chair.

The evidence has been that the Gupta's had in some cases prior knowledge of executive appointments and dismissals in our Terms of Reference specifically...

The Gupta sought to influence executive
20 appointments on occasion through bribery or attempted bribery. The Gupta sought to gain business advantage from relationship with and access to ministers and I will come to the detail in a moment. That is at a general level.

What is also clear, and that is the next step in the puzzle, the Gupta's and Gupta related entities ultimately

benefited substantially from manifestly corrupt or irregular procurement deals. That is the evidence. Those are the allegations made before you. You will make a finding on the correctness of those allegations and in due course.

And this followed what may be termed a new level of repurposing, not at executive level but at the level state-owned entities.

And the allegation that would have been put to Mr Zuma is that by reorganising or repurposing state-owned entities, principle who appointments and dismissals in relation to which, at least in some cases, Mr Zuma's involvement was direct.

That as arranged to redirect state resources into hands of select individuals and entities including Gupta entities. And these beneficiaries included members of Mr Zuma's family. So the allegation goes and I stress this, the allegations. Principle Mr Duduzane Zuma.

So Chair there is substantial evidence requiring an answer before you make your final decision and I stress that once again that we are dealing here with allegations that are before this Commission that must be dealt with in the fullness of time.

Mr Zuma involved himself ...[intervenes]

CHAIRPERSON: Well, strictly speaking, where evidence has already been given, it is really more than allegations.

It is evidence.

ADV PRETORIUS SC: Chair but ...[intervenes]

CHAIRPERSON: It is evidence now. It has been given under oath and some of those witnesses have subjected themselves to questioning on their evidence. So it is evidence that has been placed before the Commission. It is no longer just mere allegations that are made in the streets.

ADV PRETORIUS SC: Yes. Well, perhaps it would be fair
10 to say that in the course of evidence under oath before you.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: It has been tested to an extent.

CHAIRPERSON: H'm.

ADV PRETORIUS SC: Certain allegations have been made which require an answer.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: At the end of the Commission's work insofar as the leading of evidence is concerned,
20 whether in oral or documentary form, you will then determine the outcome Chair.

So there is substantial evidence. Chair, I will detail that in a moment. That Mr Zuma's involvement directly in the affairs of state-owned entities.

Executive appointments were follows and the

executive – I am talking of Cabinet appointments – were followed by appointments of amongst others board of and senior executives in state-owned entities and this happened by way of example, Eskom, Transnet, Denel, PRASA, SAA. All that evidence is before you Chair.

The consequence. What happened then in time is that there has been evidence of vast acts of corruption which took massive resources out of those state entities and placed them in the hands of those very entities and persons who influenced this whole process...

The question is: Was this just a coincidence in time? Is it simply a coincidence in time that after the ministerial appointments of ministers and after the replacement of boards and replacement of executive vast corruption is alleged to have taken place.

Is that a coincidence or was it part – was the outcome intended at the time the reorganisation or repurposing took place? That is the key question in relation to whether State Capture took place or not Chair.

So for example. Chair, if we may ...[indistinct] [mechanical interruption in recording 00:12:08 – 00.12.38]

...as the allegation was in who should be appointed, whether Mr Marogo's(?) resignation should be – have been accepted and for what purpose? Why was this done?

There has also been evidence Chair, substantial evidence more recently, that during the latter years, much later than the incidents revolving around Mr Marogo's resignation, that the former President involved himself directly in the suspension of senior Eskom executives and their ultimate replacements by others.

That evidence, you have asked Mr Zuma to respond to in 10.6 Directives which are legally binding. Those 10.6 Directives asking him to respond to that
10 evidence have been completely ignored.

Once again, why would a sitting President – this would be put before Mr Zuma – involve himself in meetings with executives and others to determine the content of a board, or senior executives in this case, of a state-owned entity? What was the purpose of that?

We know what happened afterwards, after the repurposing under Mr Zuma's watch as that corruption occurred, redirection of state resources occurred. The question is: Was there a link? Was the outcome intended
20 by the repurposing or through the repurposing and reorganisation?

So evidence has also been led. One will recall at the beginning the influence or alleged influence of the Gupta family in ministerial appointments and dismissals and others too.

We know that ultimately financial benefits in a reorganised state-owned entity flowed to the Gupta's and Gupta related entities. Again, was this just coincidence entirely or was it this a planned series of acts to achieve the outcome that actually happened? And in this, Mr Zuma could have assisted you in answering that question.

We also have evidence Chair of cash during this period under review in giving to and taken away from the Saxonwold residence of the Gupta's by a number of key-
10 personnel in the state-owned entity stable or stables.

Now if one takes these events, the attempts to influence executive appointments, the attempt to – and I mean Cabinet executives at Cabinet level, appointments and dismissals, the consequent effect that those – that reorganisation at the highest level had on the composition of boards and executives in state-owned entities.

The outcome of that, the allegation of the illicit flow of monies out of these state-owned entities to the very influencers that sought in the beginning to set the train of
20 events in motion.

The question is: Are these random and ad-hoc occurrences in a sequence of time? Or are they part of an organised project to redirect state resources into private and individual hands where these are illicit and receipts?

Transnet, Chair is another example. Again,

Mr Zuma appears to have involved himself directly in executive appointments.

Mr Hogan led extensive evidence, some of which had been dealt with but not entirely by Mr Zuma of Mr Zuma's actions in the contemplated appointment of Mr Siyabonga Gama.

According to the evidence, Mr Zuma went to great lengths to bring this about despite what was happening at the hands of the board within Transnet.

10 The appointment of Mr Brian Molefe as Transnet Group CEO appears to be known beforehand by the New Age Newspaper, a Gupta entity. Now could this happen? What are the implications of this evidence? Was there an organising hand in this whole sequence of events?

Again Chair, there is substantial evidence of a repurposed Transnet being exploited through corrupt procurement deals for personal gains, including that of the Gupta related entities.

20 Denel, by way of example Chair, there is evidence that through appointments and dismissals at board and executive level, Denel was reorganised under the Minister at the time, Minister Lynne Brown.

And that includes the appointment of Mr Dan Mantsha, Mr Zuma's former attorney as chair of the Denel Board. Did Mr Zuma have any hand or know of it? What

was the position there? But again, after the reorganisation, after the change in personnel one has – is it a mere coincidence entirely?

You have the VR Laser matter where at great cost to state-owned entity, Denel, a Gupta related entity, VR Laser Asia is dealt with by Denel. They cost Denel but great benefit to the related entity.

Again, is this merely a coincidence entirely or was it part of an intended plan and then was it an intended
10 consequence? Because now the evidence is building up Chair. You have Transnet, you have Denel.

At PRASA the same pattern occurs. Evidence of appointments of the chair and CEO under whose watch significant acts of corruption have been alleged and reported.

There is also been evidence of attempts to “clean-up PRASA” being hampered by a lack of support from the ANC Top Six that including Mr Zuma. And that is an explanation required, not only from Mr Zuma but from
20 others as well who were part of the Top Six at the time.

It is not enough to say: Well, they had the power to deal with it. They should have dealt with it. I mean, that is the most extraordinary statement that emerged from that evidence by a senior ANC politician who simply said: Yes, we were told of the corruption by Mr Molefe but they

had the power to deal with it. It is really extraordinary.

And then there has been evidence of a company and this company would – is part of the evidence, quite separate from evidence that was sought to be led in relation to benefits that a company is linked to Mr Zuma or a company linked to someone who paid Mr Zuma money, received benefits under the PRASA banner but that is another issues that would have been raised.

But again, there is evidence that payments were
10 made to Mr Zuma arising out of the procurement deal in the PRASA stable.

SAA, similar evidence, South African Airways particularly the protection that has alleged to have been afford to Ms Dudu Myeni as chair of SAA who we know had a very close relationship with Mr Zuma. And these allegations would have been put to him and he would have been asked for an explanation in this regard.

Now Chair these examples in relation to state-owned entities are by no means exhausted of the evidence
20 led before the Commission but as I have said what requires consideration, ultimately by you Chair after evidence from all concerns is, what is the connection between the attempts to influence appointments and dismissals by Cabinet.

The appointments and dismissals that actually took

place at Cabinet ministerial level. The appointments and dismissals that took place at state-owned entity, board and executive levels and the substantial corrupt dealings, evidence of substantial corrupt dealings which followed.

The question that would have been put to Mr Zuma is: What was your involvement, your knowledge, your action, your lack of action in relation to this?

Was this just, as I have said, a coincidence, a sequence of coincidental actions which began with
10 attempts to influence appointments at the most senior government level through to board executives and – well, board and executives of state-owned entities by corruption to the benefits that came back to those that sought to influence this course of events in the first place?

Was that an organised project? Was the outcome intended when these appointments and dismissals were made? Were the persons who were appointed subject to influence that could have assisted in the redirection of state resources in a manner in which it was done?

20 That is as far as state-owned entities are concerned. As far as government departments are concerned, similar evidence, similar pattern of evidence has been put before you Chair.

There has been substantial evidence of attempts to reorganise or repurpose government departments. Again,

the evidence appears to state that this was done for the improper business advantage of select individuals and entities.

Now that is put at the most general level. Some of the detail in Minerals and Energy you heard evidence Chair from former Minister Ramatlhodi that he was pressured to meet with and to favour Gupta linked operations. Again improperly within the mining sphere Chair.

The allegations are to the effect that reports were
10 made to Mr Zuma in relation to these offences. Did he approve? Did he act? Did he fail to act? In each case, why? What was the purpose of that approach?

These attempts were resisted by Mr Ramathlodi. He was removed as Minister. Mr Zwane was then appointed as Minister. Attempts were made to appoint Mr Jimmy Manje as Director-General. These attempts failed.

But these figures appear in other aspects of the evidence too, particularly in relation to communications
20 and government Communications And Information Service, the New Age Newspaper and the like. I will deal with that in a moment.

So after Mr Zwane's appointment, there is evidence that steps were taken to favour the Gupta's mining interests. Some of those activities the evidence

appears were irregular and unlawful.

There is the remarkable evidence of one of the former members of the SAA to the effect that – to the knowledge of the President.

A meeting was held in the President's private study in his residence in Pretoria where one of the Gupta brothers accosted Ms Susan Shabangu about her failure to meet the desires of the Gupta family and its entities in relation to the mining issue.

10 That evidence is quite extensive but again shows that to the knowledge of the pressure, the pressure was put for elicit and unlawful favoured treatment within the Minerals and Energy Department.

National Treasury, the matter of great controversy especially beyond the four walls of this venue Chair. But as was made clear by Mr Nene.

National Treasury – it is important because its finances deal, procurement deal of a large nature, it does have a supervisory procurement role to play and it is in a
20 sense an oversight body in this regard. It does have regulatory powers over how it governs financial resources.

So Treasury is, and the evidence is that it was, a stumbling block to irregular procurement deals and the irregular expenditure of state resources.

And what is clear is that again the former

President, the evidence goes, sought to influence or exert pressure on Treasury officials. Ultimately removed two ministers and the evidence goes, stood in the way of a deal involving Petro SA where it wish to buy Engen Refinery.

Or it did not wish to, the pressure came from above that a deal should be done at great cost without due diligence exercised for an overpriced Engen refinery from the Malaysian owner of the furnace.

10 That evidence would have been explored. The New Clear deal and the activities in Russia where Minister Nene was involved and gave evidence as to, pressure put on him. What happened at Cabinet?

Why was this deal contemplated in the first place without sufficient background information? Why would the information only be investigated after an in principle decision was made in Cabinet?

20 This is something that not only Mr Zuma would have to answer to but other members of Cabinet as well and it will in due course be done Chair. Mr Zuma is not the only one who was part of such decisions.

Chair, that is a matter that could have cost the country dearly as we have heard. Why? The request by the chair of the SAA Board, Ms Dudu Myeni to open a new SAA route. Again, direct involvement in placing pressure

there. There are other examples Chair.

The closure of the bank accounts is another area where private banks took steps to close Gupta and Gupta related entities' bank accounts and there was a ministerial task team appointed.

In essence, the evidence goes to propose and to prevent that outcome and there has been substantial evidence in relation to that.

The interestingly and significantly there was – there
10 were at least two incidents of centralisation of power under the Presidency and under the State Security Agency and I will come to the latter point in due course. But there has been evidence that Mr Zuma initiated a process to remove the National Budget process from Treasury and to place in the hands of the President and the reasons for this require some investigation and explanation.

Chair, the removal of Mr Nene as Minister of Finance by Mr Zuma has been dealt with in evidence. That took place in December 2015 and that took place at the time
20 when according to the evidence Mr Nene stood in opposition to the new [indistinct – dropping voice] 00.53. Was there a relationship? That question needs to be put and needs to be answered.

The stated reason that Mr Nene's deployment was required to the BRICS Bank as being seriously questioned in

evidence by more than one witness. That simply was an unconvincing and some say spurious reason. There were other reasons. What were those reasons? And were they part of this overall plan that emerges or possibly emerges from all the evidence?

It also appears that the Guptas had full knowledge of Mr Nene's removal and there was an alleged complaint on their part that Mr Nene would not "work with them." That evidence before you, Chair, needs explanation and answers.

10 And it was shortly before Mr Nene's removal that according to Mr Jonas there was an attempt to bribe him to take up the role of Minister of Finance, again that evidence is before you and that evidence needs to be dealt with.

These are the friends, close friends of Mr Gupta, close friends with Mr Zuma and his son and others in the family, particularly Mr Duduzane Zuma. What was going on here? What are the links, what was the purpose behind all these appointments and dismissals and were they to facilitate the outcome that we know actually happened?

20 Then there are the circumstances surrounding Mr Gordhan's removal by Mr Zuma, his sudden recall from London. There has been that evidence. Those too require clarification.

Where did the supposed State Security document Operation Checkmate come from? What was its status?

We know the evidence is that that document was put before the top six but its contents were rejected and then other reasons were stated but what was – why was this done? Why was it necessary to change the incumbent of the ministry there? The outcome and consequences, were they intended?

So the access to and use of a supposed intelligence document in an apparent attempt to justify Mr Gordhan's dismissal requires some explanation or clarification. We
10 know that Mr Zuma then sought to replace Mr Gordhan with Mr Brian Molefe and we know that he had had a recent and eventful journey through Eskom and Transnet with all that happened during that time.

We know that the top six objectives probably and that Mr Gigaba was appointed instead but those questions need to be explored.

Again to answer the question as to whether these are all coincidental, these individual pieces of evidence which ultimately pile up and appear to point in one direction. Is
20 that a fair conclusion? Was the outcome intended?

The appointment of Mr Gigaba's deputy, Mr Buthelezi, is another one issue that requires some investigation particularly as Mr Buthelezi had been implicated in allegations of serious malfeasance at PRASA and Mr Zuma was aware of it.

South African Revenue Services, another example, Chair. We know that there is evidence, perhaps to come, of Mr Zuma's direct relationship with Bain Incorporated and the firm of Mr Moyane as the SARS head and the involvement of Bain and Company and the supposed restructuring of SARS is well-documented in the Nugent report as having a disastrous outcome. But why, you know, Mr Zuma, did you have any personal involvement? What was the object of your personal involvement in your dealings with Bain and
10 with Mr Moyane? The outcome, was that an intended outcome?

We know, for example, that the Gupta family benefited from dubious decisions at SARS regarding controversial tax treatment. But that is just one of the outcomes.

The Waterkloof landing, Chair, that is another question.

When all the evidence before you is considered and all the evidence that was not forthcoming before you is
20 considered, the probabilities will have to be considered by you and this is a direct issue that needed to be raised with Mr Zuma. The Guptas are your friends, there is this huge logistical even to occur prior to the Gupta wedding.

These are your confidantes, your friends, your son is in close business relationship. Not only an aeroplane but

helicopters, police escorts and Mr Zuma knew nothing about it? On the face of it, it seems probable and some explanation needs to be given. His office was involved in compiling reports thereof and there is a brick wall between any knowledge that the Presidency had prior knowledge, knowledge at the time, post-knowledge. And then why would he obviously concur in the appointment of the alleged wrongdoer, the person who took the hit, Mr Koloane getting an appointment to the Netherlands as ambassador?

10 All those facts need explanation because they raise many more questions than just warrant putting the evidence to rest of the level that was given before you, Chair.

Just one small issue, here is a person who facilitated a most serious breach of national security by, on his version, lying and on his version facilitating the Gupta landing at Waterkloof. He goes with no doubt top security clearance as ambassador to the Netherlands. Lots of questions that require answers, Chair.

20 Then there is the Department of Communications and GCIS, the appointments and dismissals that took place there, the need of GCIS to in effect finance New Age newspaper to advertising revenue and the like. That evidence also with the apparent action or non-action of Mr Zuma that requires to be put and explained.

But, once again, as one goes through all these

individual events, a bigger picture against the build-up and the question we come back to all the time was this a complete course of action designed to benefit certain parties illegitimately and beyond the prescripts of the law and the Constitution.

There is another example, Chair, that is the activities of BOSASA and the Department of Prison. Chair, the evidence has been that BOSASA relied heavily on government contracts worth on average R2.5 billion. There
10 has been direct evidence as to how BOSASA bribed officials, scale of about R66 million per annum, by estimate.

Mr Agrizzi claims that Mr Zuma had a close relationship with BOSASA's main shareholder and Chief Executive Mr Gavin Watson and they met frequently and there have been a number of allegations that have arisen out of that evidence.

BOSASA appeared to benefit Mr Zuma and the governing party in many ways. There is evidence that R300 000 a month was paid in cash to the Jacob Zuma
20 Foundation, usually by handing it to Ms Dudu Myeni but at least on one occasion directly to Mr Zuma.

Mr Agrizzi and others testified that BOSASA paid for and catered for functions worth millions of rands for Mr Zuma, his family and the governing party. We know of the

election core facility and at least one or even more generous donations to the ANC.

Now in themselves, companies do donate to political parties, we know that. The framework within which that takes place, the legal framework may change very shortly, but at the time donation was made. The question is, was there a *quid pro quo* there? And in this case there is evidence of the support, the monies paid directly and indirectly, the bribery.

10 The *quid pro quo* involving Mr Zuma, support was sought from Mr Zuma, protection from prosecution by the NPA. We know that BOSASA was not prosecuted despite evidence being before it for a period of many, many years, that seems to have changed now but for a limited period after being investigated by the Special Investigations Unit. That file lay dormant for almost a decade.

20 That file, concerning the investigation into BOSASA's allegedly corrupt facility, was handed over to Mr Koppies at that time by Ms Dudu Myeni, whose expenses, we know, in evidence, had been paid for by the Jacob Zuma Foundation. What was the former president's knowledge? He had been asked directly by Mr Watson to deal with this investigation and prosecution, so the evidence goes. What happens is that there is no prosecution, the matter lies dormant and the file then Ms Dudu Myeni hands over. What is going on here?

Is this yet another example of protection – and I will come law enforcement agencies in a moment – of protection of malfeasance, of allowing a system to operate without consequence.

And so we add BOSASA to the list, we add BOSASA to the file of allegations and it is difficult, Chair, to contemplate that this was all just matters happening in a coincidence of events over a period of time and that there was not a plan and intent and a guiding hand or guiding
10 hands behind it.

The Karoo fracking example is another example where Mr Zuma was asked to intervene to facilitate a change in regulations to allow that deal to go through. That evidence has been given but an example of Mr Gavin Watson on the one hand getting an organisation that obtain benefits to the tune of billions of rands from state owned or from government departments but gave donations and other benefits to members, senior officials within government and the executive and asked for a *quid pro quo* and
20 appear to have received a *quid pro quo* particularly in relation to the prosecution.

Who benefited from this all, Chair? There is evidence that Mr Duduzane Zuma benefited substantially from dealings and his involvement with the Guptas and Gupta-related entities.

Again the question may appear to some to have an obvious answer but the question needs to be asked, was it intended in the scheme of events when one looks at all the occurrences together, again beginning with attempts to influence appointments and dismissals at cabinet flowing down to the repurposing of SOEs followed by the corruption, the benefits of that flowing back to Guptas, Gupta-related entities and entities in which Mr Duduzane Zuma had an interest.

10 Was that consequence intended? Was it known? Did you do anything about it? Did you allow it to happen or did you cause it to happen? Those questions need to be answered and ultimately answered by yourself, Chair, with as much assistance as you can obtain.

There is evidence of direct payments to Mr Zuma, Chair. The Gavin Watson/BOSASA payments, R300 000 per month to the Jacob Zuma Foundation. Those require an answer.

20 The approximately R3 million paid to the Jacob Zuma Foundation by Ms Dudu Myeni, that evidence. The payments received in relation to the contract with Royal Security, evidence would have been given and a chance to put that before Mr Zuma would have been afforded. The evidence, again Mr Zuma would have been presented with this evidence, and given an opportunity to respond or to

think about how he would respond of monthly payments.

What we know is that there was a project initiated to make payments in a monthly amount of several million rand from SSA funds to Mr Zuma. There was a project.

The question is, was that project implemented to its fullest? The evidence is that that money went to a minister and it was the minister's – idea was that the minister would hand that money on. There is no direct evidence that money been handed on but it is an obvious
10 question to ask Mr Zuma, please tell us what happened there?

There is also evidence in relation to what happened with the sale of three farms or the purchase on sale of three farms, I will not go into detail there for the present, and other benefits. Certainly there is evidence of benefits to the ANC and it would have been asked were the Guptas ever asked for favours and did the Guptas ever grant favours?

We know that money was paid by BOSASA for ANC
20 events and that there is evidence of PRASA assets being used by the governing party at the time of elections.

But be that as it may, Chair, there are numerous pieces of evidence, do not give that full picture, particularly the use of cash which is untraceable by its very nature and we have evidence and more evidence to

come, Chair, that evidence comes to light, that much of the benefits, or many of the benefits received as a consequence or outcome of corrupt dealings in order to maintain – clearly in order to maintain the cooperation of all those involved in this network of individuals. Cash was used, cash is untraceable. There has been evidence and there will be more evidence. That requires an answer. This use of cash, the allegations in relation to the use of cash of [indistinct] 18.49, something that we have only
10 scratched the surface of in the investigations, Chair, and it is something that by its very nature is difficult to reveal.

Then we come to law enforcement agencies, Chair. I see I am way over time.

CHAIRPERSON: We can take the adjournment, tea adjournment, now or if you prefer we can – you can – we can go on, let you finish and then we take the adjournment. Maybe we should take it now?

ADV PRETORIUS SC: Yes, Chair, okay.

CHAIRPERSON: Okay, alright. We will take the tea
20 adjournment now, it is nearly twenty five to twelve. We will resume at ten to twelve. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: You may continue Mr Pretorius.

ADV PRETORIUS: Thank you Chair. Chair just to

summarise we have evidence, and you have heard evidence led before you of attempts of particular networks of individuals and entities to influence appointments and dismissals at the highest level. Both decisions ultimately were made by Mr Zuma in the period under review.

That then filtered down to appointments and dismissals and reorganisation of State Owned Entities and government departments. The benefits from illegal unlawful illicit dealings that occurred during that period was a consequence of that period and I have dealt with is that coincidence or was that intended come back to the very source where the influence was sought to be originated in the first place, but the question then arises Chair where were the defenders of our legal order whilst this was all happening, where was Parliament in its oversight role, where were the various oversight bodies, we know that the Public Protector intervened eventually, but very late, and where in particular were the law enforcement agency and the question arises were those law enforcement agencies deliberately disabled, deliberately influenced to allow this project, if it was a project, to continue to its logical outcome, to fruition, or is there some other reason why what happened within the sphere of law enforcement agencies, in relation to the evidence that you have been given Chair to explain it, and

that must be explained Chair and there are many who can explain, but Mr Zuma is one who could assist you in coming to a conclusion in that regard.

The evidence is reasonably overwhelming Chair, you can make a finding, but to get a complete picture one needs the complete evidence. The most stark example is the BOSASA example, I have dealt with it, the investigation, rampant corruption, SIU investigation, dormant for almost a decade, and we know that certain key
10 individuals appointed directly, or indirectly by Mr Zuma or persons acting under Mr Zuma, to interfere with that prosecution. I will come to some detail in a moment, but that's the starkest example, but there are others, so we know from evidence led before you Chair that Law Enforcement Agencies failed to detect, prosecute and prevent wide scale corruption during the period under review.

Why? Was this just coincidental yet again or was it intended that it be so. Law enforcement agencies the
20 evidence has been were considerably weakened in the fight against corruption and crime during that same period. It is instructive Chair that beyond the period that this commission has been concentrating on, we refer to it as the period under review, we know from evidence, and it is a fact that the National Director of Public Prosecutions has

a ten year plan. The intent of that is stability and effectiveness and independence. Not one National Director of Public Prosecutions has lasted that ten year term.

There are examples Chair of the law enforcement agencies being used to target persons who were intent on combating corruption, a list of them, days of evidence have been given before you in that regard. Conversely Chair there are several examples of persons or entities not being
10 prosecuted for corruption when they should have been. Again sheer coincidence or part of an intended plan?

Executive interference in the operation of law enforcement agencies there has been evidence before you that that has occurred, and again several previous appointments and dismissals have been placed before you by way of evidence within law enforcement agencies.

Now we know Chair that as President Mr Zuma had the power to appoint many of the most senior officials in law enforcement, including Ministers of Police, the National
20 Director of Public Prosecutions or Provincial and Special Directors of Public Prosecutions, the head of Special Investigations Unit, Commissioner of Peace, Commissioner of the South, so those all were direct appointees, I think that is correct Chair.

We know for example, you have heard extensive

evidence of the tenure of Mr Nxasana as head of the NDPP and it appears according to the evidence that Mr Nxasana was determined to hold Ms Jiba and Mr Mgwebi accountable for their conduct in a number of cases, including interference in the BOSASA prosecution. Their conduct has been criticised by the Courts over and over again. The very person who sought to hold them to account we know of the circumstances surrounding the termination of his employment as NDPP.

10 Chair we have numbers of examples in evidence of politically connected individuals being protected from the law, General Mgwebi is one example, you have heard extensive evidence about that. The interference in the prosecution of the BOSASA entity, the investigation and prosecution and the interference in the investigation and prosecution of Mr Panday, you have got that evidence. It is clear Chair, who was a business partner of two of Mr Zuma's family members, this needs – this is something that needs to be raised, it needs to be answered, why were

20 politically connected individuals apparently protected by law enforcement agencies. From the very top why were those appointments made, why was this not detected, why was it not dealt with? The glaring question of course is there can be no doubt that those in power knew about corruption taking place and the obvious question that ought

to have been asked by those in power, by oversight bodies at Parliament, is why is this happening and why is nothing being done to stop it happening.

Where is the accountability? We have got a range of – a powerful constitutional institution with vast powers and yet nothing is being done. Again, is this mere neglect, is it mere coincidence that at the time all the events highlighted by the evidence as happening law enforcement agencies are ...[indistinct] or is this part of an
10 overall and deliberate plan, and the evidence appears to indicate the latter was the case Chair and that requires an answer.

As the Constitutional Court said ...[indistinct] to the fundamental institutions of our democracy.

We also have a number of examples Chair of the prosecution of persons intent on combating corruption, the North West Unit for example and its activities.

CHAIRPERSON: Your voice is dropping, I don't know whether it is because – maybe the aircon is too high.

20 **ADV PRETORIUS SC:** Social media pointed that out to me in the break, and it has been reported, so it is a habit that I have built up for over 40 years it is difficult to break, I apologise.

CHAIRPERSON: Do your best. Ja, but I think the aircon the noise is just too high, so if somebody can turn it down

a little bit, even if not turn it off. Okay.

ADV PRETORIUS SC: So we have the contemplated prosecutions of Generals Dramat, Shadrack, Sibiyi, those were persons investigating the Mdluli case, the Nkandla case, the Panday case, there are a range of examples but they fall under two heads Chair. Quite apart from the inaction and the failure to act, which itself is an important issue that needs to be canvassed, not only with Mr Zuma but with others too.

10 The prosecution of persons intent on combating corruption, a range of examples under that head, and secondly the protection of politically connected individuals from the law. Those two happened in tandem, they were positive acts on the part of law enforcement agencies. So law enforcement agencies were not asleep, they were entirely active, they had in charge of them persons appointed by Mr Zuma. So it is not enough to say this happened by default Chair, an active finance capacitated series of law enforcement agencies, not one, allowing this
20 to happen under its watch.

 Again it is difficult to conclude that this was just yet another coincidence in the chain of events that is the subject matter of our terms of reference Chair and the evidence led before you, and it is something that needs to be explained by persons who were in charge.

Then Chair with regard to the Intelligence Agencies you heard substantial evidence, there was evidence previously from Messrs Shaik, Njenje and Magathuka in relation to the reorganisation of the State Security Agencies under Mr Zuma's watch. He issued a proclamation creating the amalgamation of which – of State Security Agencies under one director general about which you have heard evidence and the findings of the Mfumadi panel are stark, if I may just quote this something again
10 that would be for the former President. This panel of experts thereafter serious investigation and deliberation reach the following conclusion:

“Our key finding is that there has been a serious politicisation and fractionalisation of the intelligence community over the past decade or more, based on factions in the ruling party resulting in an almost complete disregard for the Constitution, policy, Legislation and other prescripts and turning our civilian intelligence community into
20 a private resource who serve the political and personal interests of particular individuals. We are concerned that the cumulative effect of the above led to the deliberate repurposing of the SSA.”

Now that finding in itself mirrors the evidence that you have of the reorganisation and repurposing at cabinet

level, at SOE level, in government departments and here you have the same terminology used in relation to the State Security Agency, and we have heard that evidence in the past two weeks, I won't repeat it but in time it would have been put to the former president for his input/comment and for his evidence in that regard because he knew. Now that finding Chair is a finding that says this was no coincidental, it was a deliberate repurposing. The same question then will be asked in relation to the

10 purposing and reorganisation in SOE, repurposing and reorganisation in the cabinet, repurposing and reorganisation in relation to the Revenue Service, the Department of Mineral Resources. All that evidence that has piled up before you over three years and the question is are those words appropriate, is that finding appropriate, not only for the SSA but for all the other evidence that you have heard, that the cumulative effective the above all the evidence before you can only be explained by reference to

20 illicitly to benefit persons through the unlawful acquisition of State resources.

That is the essential question on which we would be concentrating with Mr Zuma, and all its component parts, because it is only when one puts all the component parts together one asks the question but didn't this happen in

that department, didn't this happen in that SOE, didn't it all happen at the same time? Was it not a consequence of a series of events that initiated this process in the beginning?

It may be that conclusion is unavoidable Chair, but one must hesitate before drawing that conclusion and look at a conspectus of evidence first to see whether it is the most reasonable or only conclusion that can legitimately be drawn.

10 I am not going to repeat the evidence of the SSA personnel, it is recent and well known to you Chair and the public, but what is important to in particular is the extent to which Mr Zuma is alleged to have benefitted himself in a way that according to the evidence acceded the mandate was not part of the mandate of the State Security Agency. Personal protection, the project in relation to money which we haven't heard all the evidence yet and we don't know all the evidence yet, but there will be further evidence in relation to payment of those monies at least to the first
20 stop in the journey intended for that money to the Minister concerned, and other projects.

If one will recall a speech that Mr Zuma gave to students at a university over a year ago, perhaps three years ago, where he emphasized that State Capture can only exist if government, the executive, Parliament and the

Judiciary are all captured or sought to be captured.

Well the obvious answer to that is you don't need to capture the judiciary because matters never get to it, they are halted at the law enforcement agencies, but it seems that some people thought that that might be appropriate to do, whether that finally came to fruition or not will be the subject matter of further evidence, but the project it extends further than just SOE's and particular government departments in relation to procurement. So the allegation
10 would go and so it would be put to Mr Zuma.

We had evidence of the Principal Agent Network Project and an investigation into the activities of that project and its association with Mr Arthur Frazer and that the evidence goes was shut down on the direct or indirect instruction of Mr Zuma. That is something that needs to be investigated, is this coincidental or is it part of the overall project.

Then Chair one has the attempts to influence appointments, appointments and dismissals being effected,
20 the consequences of those in government departments and SOE's, the flow, the illicit flow of money and the – basically the alleged theft of State resources flowing back to particular beneficiaries. One has that. One has outside of that whole process the questions that arise over the activities or failures of the law enforcement agencies from

at least Crime Intelligence, State Security Agency, the NPA and the like questions and many answers that have been put before you, but again in answer to the question how could this happen. As you have directed Chair one needs to look at the oversight body.

How could it happen that Parliament did not deal with this issue. How could it happen that Parliament failed or apparently failed according to the evidence, in its own constitutional duty. Those are questions that the Head
10 of State needs to deal with so that you can understand Chair what the answer is to that question, and there would be an answer, but the answer to that question is either found by you on the evidence before you, without answers from Mr Zuma or you have the benefit of their input. It is a collaborated effort to assist you to meet your terms of reference, it is not a war. It is not an attack on anybody, you want that evidence before you, you have taken every step possible, including steps that the – might have been seen as conciliatory but Chair the – this Commission is
20 not, as many have sought in defence of their own positions to paint it as an aggressive single-minded body that seeks to make premature finding. It has asked all concerned to contribute to its deliberation and it has invited or commanded a range of people from all sectors of the community to come before it to assist you, made repeated

calls for people to come forward Chair.

The one outstanding track in the evidence before you is that of the person that is head of the ship, the captain of the ship and it is a great pity you may be compelled to make findings in the absence of the person at the wheel of the ship, but so be it, it is not through lack of effort that that position has been reached.

The Regulatory Environment ...[intervenes]

CHAIRPERSON: Well you were mentioning earlier on
10 about – you were mentioning the stance taken by Mr Zuma,
you might not have referred to him by name, in regard to
the whole issue of State Capture that he was saying well
nobody says Parliament was captured, or the judiciary was
captured, but one wonders within the context of our
electoral system and the ...[indistinct] representation
system or maybe irrespective of that, whether those who
may have pursued the agenda of State Capture could have
said well if you capture the head of State, if you capture
the President you know that he is also the President of the
20 ruling party and if he is powerful in the ruling party then
members of the ruling party in Parliament might make sure
that – the party might instruct them not to pursue certain
matters, and therefore if you capture the President of a
country indirectly you can render even Parliament – you
can ensure that Parliament does not investigate matters

that it should investigate and I heard evidence about proposals or requests that were made that the Guptas be investigated and the committee did not do that.

We also – I also heard evidence how despite the fact that the SIU had conducted a certain investigation into BOSASA and had presented to the Correctional Services Committee, Portfolio Committee a report that members of that committee itself found to reveal – I can't remember the adjective they used or the Chairperson of the Commission
10 used to describe how horrific they found its way in terms of the conduct but nevertheless nothing was done by Parliament itself, by the committee itself to stop what was happening at Correctional Services, between Correctional Services and BOSASA.

ADV PRETORIUS SC: Yes. There is no doubt – well perhaps one should not put it that strongly, but there has been fair and convincing evidence that the Gupta family at the very least, let alone those in charge of the BOSASA and other institutions sought directly to influence or even
20 exercise a degree of control over the former President, that evidence is there. The degree to which he can explain the apparent cooperation that was lent to those efforts through appointments and dismissals, non-prosecutions, prosecutions and the like, the SSA evidence to the effect that the SSA investigation into the Gupta influence was

shut down, that evidence all requires explanation but there is just one point that needs to be made and that is that this would not have been possible it may be only through the influence of one person, but there are others too that perhaps should be called to account in that regard, and that is another issue that needs to be dealt with.

CHAIRPERSON: Yes, yes, and one should recall that early in 2019 I announced publically that I had a meeting with the current President and I had indicated that this
10 Commission could not be said to have properly completed its job without the executive, members of the executive who served under Mr Zuma, including him because he was the Deputy President, coming to the Commission and saying what they know and dealing with questions that the Commission will have, and I said the ruling party too this Commission cannot be said to have properly completed its job without the ruling party also coming before the Commission and say what it knew, when did it become
20 aware of certain things, what steps did it take to deal with those matters, or allegations of State Capture, and this is important because the party is the one that goes to the voters and say vote for us, and obviously usually there is already somebody that they present to save you if you vote for us in sufficient numbers and we have the majority this will be the President.

Now the ruling party having heard evidence that has been led in this Commission, having become aware of a lot of things that we have had relating to allegation of State Capture and corruption during Mr Zuma's presidency, they ought to come to the Commission to say what do they have to say about the fact that they were the ruling party at the time and this was somebody they presented to the voters to say this will be the President, and of course there are other matters in relation to them being the ruling party.

10 They need to come now – I mentioned that publicly early in 2019 that I have mentioned it to the current president and he had not hesitated to say he would lead the government delegation to come and give evidence to the Commission.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: He has never changed from that position and it is the question of the Commission establishing the dates for that but he also told me that the ruling party, the ANC, also agreed that it would come and give evidence before the Commission.

20 **ADV PRETORIUS SC:** Yes.

CHAIRPERSON: So they have indicated that and arrangements will be made for that.

ADV PRETORIUS SC: There has been plenty of evidence to answer the first question that you pose frequently, Chair, and that is what happened but the question that needs to

be answer in relation to what you have just said, could it happen.

CHAIRPERSON: Yes, exactly.

ADV PRETORIUS SC: How could this happen?

CHAIRPERSON: Exactly, yes.

ADV PRETORIUS SC: Chair, the picture that has been painted thus far is not the end of the story and I will summarise what other elements there are to – the regulatory framework, the banks attempting to close bank
10 accounts because of what were perceived to be dealings fraught with risk and other questions arising over them, why would parliament – or not, sorry, why would the cabinet, why would the task team interfere with it? Those are questions that need to be answered.

Another question, the Financial Intelligence Centre, these illicit dealings somehow ought to have been picked up earlier. Why were they not picked up? The Financial Intelligence Centre, the evidence has been, gave plenty of information through to law enforcement agencies, that was
20 not acted upon.

But importantly, in the light of evidence that has been given in the last two weeks about the role of the State Security Agency, there was an attempt to delay the passing of the Financial Intelligence Centre Act which would have strengthened the activities of the – the

capacity and activities of the Financial Intelligence Centre Act but there was also a proposal that would be put to Mr Zuma that the Financial Intelligence Centre should be moved away from Treasury's jurisdiction into the security cluster. Now the significance of that on its own is one thing but seen in the light of all the other evidence, it is significant and it is something that requires answer.

And then, Chair, the importance of what the legal team has termed the narrative, an informed electorate is
10 essential to the operation of the democracy that our constitution seeks to establish and protect and to the extent that news or information is distorted, to the extent that population is misled as to what really is occurring, to that extent the fundamental aspects of our electoral democracy may be undermined.

So serious questions arise as to the attempts to influence the media, attempts to establish alternative and sympathetic media using state funds, all that evidence has been before you with relation to the New Age newspaper,
20 ANN7, the activities of the former President in attempting to deal with editorial policy in relation to ANN7 and their New – Sundaram's evidence you will have recalled. That whole conspectus of evidence needs to be put into the picture because the components of what might be alleged to be the state capture project would be incomplete if it did

not have its public relations arm and there is evidence that indeed it did have a public relations arm ranging from attempts to influence media, to obtain what is euphemistically called positive news as opposed to negative news or critical news, to the involvement of Bell Pottinger in its campaign. All that evidence too will in due course be collated and put before you but it is an important part of the big picture.

10 So, Chair, there is more detail particularly in relation to the lack of accountability that appears to have been a concomitant series of events accompanying everything that you have heard over the last three years.

In summary, and I am not going to go through them all because of far beyond my allotted time, and the evidence will come to the fore in due course, but the question of accountability or the lack of accountability, the lack of detection, action and accountability is central to the question as to whether this was just a coincidental series of events from beginning to end or whether it was the – the
20 outcome was intended and planned as part of what might be termed – you will in due course decide what is state capture and whether the evidence points to that conclusion.

Chair, when all the evidence before you, including evidence led and evidence still to come, is considered, at

least provisionally certain conclusions need to be tested if not made and those conclusions, provisional conclusions, questions even need – or have needed to be put to the captain of the ship, the person at the wheel, during the period under review, even if they are not final findings, provisional, question asked.

The various appointments and dismissals of ministers, state officials, SOE board and executives had consequences such as the corrupt appropriation of state
10 resources on a massive scale. Were those consequences coincidental or were they intended consequences? Among the beneficiaries of the alleged corruption were the very persons who influenced or attempted to influence the course of action right from the very beginning with the National Executive cabinet appointments and dismissal.

Vast amounts of state funds then flowed to a network of individuals and entities some of whom were associated with the very persons who sought to influence the project or alleged project in the first case. Was this
20 coincidental or planned?

No responsible state entity, parliament, at least for a time, law enforcement agencies, Chapter 9 institutions, at least for a time until the Public Protector report, were able to, were allowed to or did detect and put a stop to this pattern of contact(?) and its various component parts.

On the contrary, oversight and law enforcement mechanisms appear and the allegations are that they were deliberately harnessed to support the project or at least to prevent it being halted. All this was accompanied by public narrative or an attempted public narrative which attempted to defend and justify what was occurring and to undermine those who opposed it. Chair, this Commission has been the victim of that narrative as well but that is something for another day.

10 Other elements of our society colluded or appeared to collude or are alleged to have colluded in the success of what might be termed a project or enterprise.

The auditors profession, elements of the legal profession, was such collusion merely passive? Was it a failure to act or ought other elements of our society have been called to account in the overall scheme of the evidence that has presented?

And in the end, Chair, Mr Zuma through – and I stress, honest cooperation, might have assisted the
20 Commission to understand fully not only what happened but how it could have happened, Chair.

CHAIRPERSON: We are at twenty five to one. You are done. I am thinking that whether we should – I should say something now or until we finish or whether we should rather take the lunch break and we come back at two, so

before I announce what the Commission is going to do about what has happened. Have you got suggestions?

ADV PRETORIUS SC: Chair, considering the circumstances and what you as Chair would say about the nonappearance today and its outcome and consequences, they are significant and it is not for me to say, Chair, but some consideration perhaps ought to be given.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: Although, Chair, on the other hand,
10 the consequences seem to be fairly clear.

CHAIRPERSON: No, we are very clear about what needs to be done. There is no confusion about what should be done, our law is not deficient in this respect at all but it might be appropriate to adjourn and then come back at two and then I will make my remarks about some of the matters that have been raised and then announce what the Commission – what next the Commission will do.

ADV PRETORIUS SC: At two, Chair?

CHAIRPERSON: Ja, at two.

20 **ADV PRETORIUS SC:** Thank you.

CHAIRPERSON: We are going to adjourn and we will resume at two o'clock. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: I am not delivering a judgment or a ruling

because there is no ruling that I need to make but I do need to indicate what is to happen as far as the commission is concerned in the light of these latest developments involving Mr Jacob Zuma.

In terms of a summons that was issued by the Secretary of the Commission Mr Zuma was supposed to appear before the commission from today up to Friday to give evidence and to be questioned on various matters which have been investigated and are still being investigated by
10 the commission. Some of which were indicated by Mr Pretorius in his address to me this morning.

Because Mr Zuma had previously walked out of the commission or fled the commission when he was supposed to take the witness stand on the 19th of November 2020 even though he knew that he had been served with a summons to appear before the commission and to give evidence and be questioned and to remain in attendance until excused by the Chairperson he had walked out without permission and had not offered any explanation for his conduct to the
20 commission.

The commission feared that he would not comply with any further summons that could be issued against him by the commission and for that reason the commission applied – lodged an application to the Constitutional Court in the Constitutional Court for various orders but mainly for orders

that would compel Mr Zuma to comply with the summons issued by the commission and appear before the commission and answer questions that would be put to him and to remain in attendance and not leave without permission – without the permission of the Chairperson of the commission.

When the commission launched its application it served Mr Zuma with a copy of the papers and he was informed in those papers that if he wanted to oppose the application in other words if he did not want the
10 Constitutional Court to grant the orders that the commission was asking for he should file – he should indicate his intention to oppose and file before – in the Constitutional Court affidavits where he would set out his case and state why the Constitutional Court should not make an order compelling him to appear before the commission.

In the affidavit of the Secretary of the Commission one of the points that was made quite clear which Mr Zuma and his lawyers would have seen is that it was going to be argued before the Constitutional Court that the fact that Mr
20 Zuma was going to be pursuing a review application in the High Court to have my decision not to recuse myself reviewed and set aside by the High Court would not in law be a ground to justify him not appearing before the commission or not complying with the summons. That issue was placed in the papers. Mr Zuma and his lawyers would have seen

that and it was up to Mr Zuma and his lawyers if they thought that that was not correct in law or that that was wrong to have participated in the proceedings in the Constitutional Court and to have placed their argument that the fact that he was in – going to pursue a review application was a ground for him not to comply with the summons and not to appear before the commission.

They knew that that point was to be argued. They knew exactly what the commission would argue. They chose
10 not to contest that in the Constitutional Court. They chose not to participate in those proceedings.

One of the points also that was made in their founding affidavit deposed to by the Secretary of the Commission in that application to the Constitutional Court was the point that no witness before this commission including Mr Zuma has a right to remain silent once they take the witness back.

The commission raised this issue because when Mr Zuma's counsel presented his argument in support of the
20 recusal application on the 16th of November 2020 his counsel at some stage said that he could put Mr Zuma on the witness stand and ask him to say nothing.

So the commission realised that there seemed to be a view on the part of Mr Zuma's lawyers that a witness before this commission has a right to remain silent after

taking the witness stand.

So the commission raised this issue in the papers before the Constitutional Court and made it clear that it was going to argue that there is no such right in proceedings before the commission. And that such a right belongs to an accused person in criminal proceedings not in this commission.

So when Mr Zuma and his lawyers were served with the papers that the commission lodged in the Constitutional
10 Court they knew that this is what – this is part of what the commission would argue before the Constitutional Court.

What the commission said was that the only part which they could indicate is that the privilege against self-incrimination is available in appropriate circumstances to a witness who appears before the commission and that as far as Mr Zuma is concerned that privilege would apply to him as well but not the right to remain silent.

When therefore Mr Zuma and his lawyers decided that they were not going to oppose the commission's
20 application to the Constitutional Court and that Mr Zuma was not going to participate in those proceedings they knew that this was one of the issues that were going to be raised and if they believed that they had a case to the contrary it was up to them to place their arguments before the Constitutional Court to enable the Constitutional Court to find in their

favour if they were able to persuade the Constitutional Court. They chose not to do so either.

Mr Zuma had a full opportunity to put whatever reasons he believed to put before the Constitutional Court whatever reasons he believed justified him in not complying with the summons for him not appearing before the commission and allowed the Constitutional Court to decide whether those reasons were sound or not. He chose not to do any of them.

10 He was free to also say to the Constitutional Court you cannot compel me to appear before this Chairperson of this commission because of the following reasons if he thought that his reasons were sound and would be regarded as acceptable by the Constitutional Court.

It is not clear why if he thought he had good reasons why he should not be compelled to appear before the commission why he chose not to put those reasons before the commission – before the Constitutional Court.

20 The Constitutional Court handed down its judgment and made an order that he should appear before the commission. It made it clear that he has no right to remain silent once he takes the witness stand.

In doing so the Constitutional Court did not take away any rights that Mr Zuma may have had because even before the judgment of the Constitutional Court he did not have the

right to remain silent in these proceedings. Actually those who follow the proceedings of the commission closely may remember that early in November I think on the 6th of November in the – or on the occasion when Ms Dudu Myeni appeared before the commission the evidence leader Ms Kate Hofmeyr addressed the question of the right to remain silent and the issue of the privilege against self-incrimination.

10 In that address which can be accessed by anybody who would like to access it in the transcripts she made it clear that as far as the evidence leaders are concerned there is no right to remain silent. There was only the privilege against self-incrimination and indeed she referred to cases – to case law that is with the issue of privilege against self-incrimination by our courts and in this regard the re – she referred to a judgment of the Appellate Division in Magmoed which – or Magmoed versus Janse Van Rensburg and Others 1993 Volume 1 SA777 A for Appellate Division which dealt with that issue.

20 In that case too as long ago as that time the Appellate Division had made it clear that the privilege against refusal to give evidence on the strength of the privilege against self-incrimination is not there for the taking and that there must be reasonable grounds for an apprehension that the witness may incriminate himself or

herself.

That the Constitutional Court also said so it is not something that really had not been there before. There might be one or two aspects that were emphasised or added by the Constitutional Court but that the – there must be reasonable grounds before the privilege can be evoked had been dealt with by our courts before.

In fact either on the last day when Ms Myeni gave evidence or towards the end of her evidence I specifically
10 dealt or requested the legal team and it is in the transcript that they should carefully go through Ms Myeni's evidence to see whether all the questions that she refused to answer on the basis of a privilege whether there were reasonable grounds of that.

So I – in effect I did not make a ruling – any final ruling that she had correctly invoked it. I allowed that the legal team should go through the transcript carefully and then where they believe that there are no reasonable grounds she can be called back and she can – that issue can
20 be dealt with. Ms Myeni has not dealt with certain issues relating to Eskom and she is supposed to come back and when she comes back you can – once the legal team has carefully gone through her evidence and all the questions she refused to answer she can be asked questions about the existence or non-existence of reasonable grounds for her

apprehension that she would not incriminate herself if she answered certain questions.

Do I repeat my request to the legal team to please go through that evidence and come to a – take a view so that it can be dealt with properly?

So with regard to Mr Zuma the law would be the same that would apply to his evidence. The Constitutional Court has not taken away any rights of his as far as that privilege – the privilege against self-incrimination is concerned.

10 It is a pity that Mr Zuma has decided not to appear before the commission today. In defiance of the summons issued by the commission and in defiance of the order of the Constitutional Court our highest court in the land.

It would be a pity if anybody did it but that it was – this was done by a former President of the Republic someone who twice stood before the nation and took an oath that he would uphold the constitution of the Republic and protect it is a great pity.

20 The commission did not just rush to issuing summonses against Mr Zuma to compel him to appear before it. The commission did not just rush to the Constitutional Court to get an order to compel Mr Zuma to appear before it. The commission did so when it was clear that he really was not prepared to comply with the summons.

And the Constitutional Court has made it clear in its

judgment that a witness who has been summoned to appear before the commission is not supposed just to come to be present here. He or she must come to testify and answer questions and that he or she may not leave before the proceedings are completed or before he or she is excused by the Chairperson.

On the 19th of November Mr Zuma left the proceedings of the commission before they were completed and without permission from the Chairperson even though a
10 few minutes before he left he had been reminded by Mr Pretorius that it was not up to him to just up and go.

An order of any court is binding on those to whom it applies. A summons is also binding on the person to whom it is directed and if a person has been issued with a summons – has been served with the a summons to appear in court or in any forum or tribunal and he and she thinks that the summons should not have been issued or the summons is irregular it is not up to that person to just ignore the summons or to defy it.

20 His or her obligation is to approach the courts and tell the courts why he or she says the summons should not have been issued or why he says the summons is irregular and should be set aside.

And only if he or she succeeds in getting the court to set the summons aside is he or she entitled not to appear.

But as long as the summons has not been set aside it is valid and binding on the person and he or she must comply with the summons.

That principle was stated by the Constitutional Court in the context of the Public Protector's Remedial action in the Nkandla matter and Mr Zuma should know that principle.

In this case he has decided to ignore the summonses issued by the commission and not to go to court to have them set aside if he thought they were invalid or they were
10 irregular but to just ignore them as if they do not exist.

First he walked out of the commission proceedings on the 19th of November.

Second despite having been served with a summons to appear before the commission in the week beginning on the 18th January 2021 he decided to not – not to appear even after he had been reminded by the commission that the fact that the judgment of the Constitutional Court had not been given did not mean that the summons had been suspended or set aside and that he should appear he decided not to
20 appear.

He has done the same thing again.

This is very serious because if it is allowed to prevail there will be lawlessness and chaos in the courts. Because there may be others who will decide to follow his example when they are served with summonses and other court

processes and decide that they can ignore them. Summonses and subpoenas get issued in our courts every day throughout the breadth and length of 00:24:04 in the Magistrate Courts in the High Courts and in other tribunals and if the message that is sent out is that people can ignore or disregard or defy summonses and orders of courts that get issued by various courts every day in our country and that they can defy those with impunity there will be very little that will be left of our democracy.

10 Our constitution tells us in – tells us that we are all equal before it. We are all subjects to the constitution and the law and we are all required to obey orders of office and if we are not happy we are not supposed to just sit back we should take steps to approach appropriate courts to appeal or to have those orders reviewed and when it is the highest court of the land that is the highest court of the land and we – you are bound whether you like the order or not you are bound by it and you must comply.

20 There should be no two legal systems in regard to business. There should be no rules for some and other rules for others. We should all be subject to the same rules.

 Whether I am the Deputy Chief Justice of the Country or I am the Chief Justice of the Country; I am the President of the Country; I am the former President of the Country we should all be subject to the same rules.

That is the constitution and all our laws.

There are witnesses who are supposed to appear before the commission next week and in the weeks after that. Some may be wondering what will happen because they too may have been issued with summonses by this commission.

There are more than 250 witnesses who have come – who have appeared before me over the past 3 years. Many of them have appeared without being compelled. Some have
10 been compelled and they subjected themselves to the law and appeared.

None of those more than 250 something witnesses has asked me to recuse myself. Only Mr Zuma has done so. I have been – I have just completed 24 years of service on the bench as a Judge and many litigants have come and gone and appeared before me literally thousands in trials, motion court and appeals and only Mr Zuma out of all these has ever asked me to recuse myself.

But it is fine because he is entitled to raise whatever
20 issues or concerns he has but then they must be dealt with within the legal system and if he is not happy with my decision he is free to take the next steps in terms of review but as we understand the position he is not entitled because of that to refuse to appear before the commission and to refuse to comply with the summons and to refuse to comply

with an order of our highest court.

Even all of these circumstances as I said earlier on before lunch I have to indicate what the commission will do and our law is clear there is no luck 00:29:25 on this matter.

The commission views Mr Zuma's conduct in a very serious light particularly because it is repeated conduct. The commission has not treated Mr Zuma 00:29:52. He has no valid or sound reasons for not appearing before the commission.

10 The commission has taken note that in this type of situation the law makes provision that it may apply for what is called – it may institute what is called contempt of court proceedings. The commission will do so.

What that entails is that the commission will make an application to the Constitutional Court which is the court that made the order that Mr Zuma has defied and seek an order that Mr Zuma is guilty of contempt of court and if the Constitutional Court reaches that conclusion then it is in its discretion what to do.

20 One of the things it can do is to impose a term of imprisonment on Mr Zuma. Another would be for it to impose a fine. The commission will approach the Constitutional Court and ask it to impose a term of imprisonment on Mr Zuma if it finds that he is guilty of contempt of court.

It will be up to the court what it considers appropriate

but that is what the commission's position is.

Mr Zuma will be given a full opportunity to oppose that application if he wishes to and place before the Constitutional Court whatever facts or arguments he wishes to place before it and the Constitutional Court will decide.

That is all I wanted to say. I think it clear what the commission will do.

ADV PRETORIUS SC: Noted thank you Chair.

CHAIRPERSON: We are going to adjourn the proceedings.

- 10 There will be no proceedings tomorrow. If the commission is able to make arrangements to bring some witnesses and make use of some of the days this week it will announce but this whole week has been set aside for the hearing of Mr Zuma's evidence and he is not here – he will not be here the rest of the week.

We adjourn.

INQUIRY ADJOURNS SINE DIE