

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

22 FEBRUARY 2021

DAY 347



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DATE OF HEARING:

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 22 FEBRUARY 2021

CHAIRPERSON: Do you not wish me a good morning this morning?

ADV VAS SONI SC: I always wish you a good morning.

CHAIRPERSON: [laughs] Yes, are we ready?

ADV VAS SONI SC: Yes, we are.

CHAIRPERSON: H'm.

ADV VAS SONI SC: Chairperson, for the first few days of this week, it will probably be ...[intervenes]

10 **CHAIRPERSON:** Yes but remember to speak up a bit. I know your voice is soft. So... Yes.

ADV VAS SONI SC: It needs to carry, yes.

CHAIRPERSON: Yes.

ADV VAS SONI SC: Chairperson, for the first few days of the week, we will be leading PRASA related evidence. And just to give you a roadmap for the week and then I will tell you what is going to happen today.

We are first going to lead evidence relating to the response of the former Minister Dipuo Peters to
20 matters raised by Mr Molefe when he gave evidence and in his affidavit. Ms Peters will be our first witness.

The second issue that we will be dealt with this week Chairperson, would be concern raised about the contract as implemented by Werksmans. Oh, there have been – we have got many affidavits, we have got

memorandums and so on.

And it is a concern that has been expressed and the Commission is of the view – well, the Investigating Team is of the view that those should be aired whatever the evidence is in regard to that so that a decision can be ...[intervenes]

CHAIRPERSON: Yes, I remember because there have been all kinds of issues raised about whether Werksmans appointment to conduct the investigation, that they
10 conducted in PRASA, was legal.

And after Mr Montana had been given us his affidavit that, as far as I understand, still does not have correctly completed or marked annexures.

ADV VAS SONI SC: Yes.

CHAIRPERSON: He has raised that issue again and I said that that issue should be investigated.

ADV VAS SONI SC: Yes.

CHAIRPERSON: So that once and for all it is known whether that appointment was legal or not and that is what
20 the investigators have done.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Ja.

ADV VAS SONI SC: And Chairperson, in fairness, I need to record that Werksmans itself has filed a comprehensive affidavit dealing with these and I will make that affidavit

and its contents available to you.

CHAIRPERSON: Yes, yes. No, that is fine.

ADV VAS SONI SC: And ...[intervenes]

CHAIRPERSON: From what I have read, it looks on the question on the legality of the appointment; there might not be much in dispute in terms of facts.

ADV VAS SONI SC: That is...

CHAIRPERSON: Yes.

ADV VAS SONI SC: And Werksmans in its affidavit looks
10 at the law and says ...[intervenes]

CHAIRPERSON: Yes.

ADV VAS SONI SC: ...that look at PRASA's SCM policy, they believe that it was within the policy and accordingly lawful in terms of Section 216...

CHAIRPERSON: Yes, yes, yes. Well, the latest affidavit that – or the affidavit that I read, as far as Werksmans is concerned, seems to suggest that the appointment was lawful. I have question marks about that.

ADV VAS SONI SC: Yes.

20 **CHAIRPERSON:** But we will look at it. But it looks like in terms of facts that there is not much in dispute.

ADV VAS SONI SC: Indeed.

CHAIRPERSON: It is a question of whether, if an appointment such as the one that was given to Werksmans, was done in the manner in which it seems everybody

agrees it was done.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Whether that is lawful or not.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Ja. Okay alright.

ADV VAS SONI SC: That is the second area that we will be exploring. The third area that we will be exploring Chairperson is. You might remember and you will see from the evidence that we lead today that the Swifambo
10 Contract which was both locomotives for a contract price of R 3.5 billion.

There are two reports. One is a preliminary report done in 2017 and handed to the police at the request of the police prepared for by PRASA and saying that these persons who are named in this report, probably need to be investigated and here is all the information.

They were then told, the forensic investigator was told that his next brief would be in respect of Siyangena and that is R 2.8 billion contract. After he filed
20 his report on Swifambo, he never heard from the police again.

In other words, there is not an equivalent report to Siyangena but the report that he presents will be presented to you through the investigator who will be one of the witnesses.

We also have the end product of that being the report of the liquidator, the final report of the liquidator and he will to a large extent confirm that what he found three years later is more or less what had been found by the investigator in two, one, seven.

And the question we will be asking at some stage Chairperson and the Commission would need to ask is. Why is that when the police knew in 2017 that there were people who probably received these monies
10 unlawfully, why are they still at large?

And the disturbing thing Chairperson, and it is a point that would be raised by Ms Ngoye when she gives evidence, they are using those very funds to fight the liquidators in an attempt to get those monies but that is the – those are the concerns that we would be raising Mr Chairperson.

CHAIRPERSON: Okay, okay. No, that is fine.

ADV VAS SONI SC: Chairperson, then we will deal today at this point with the evidence of Ms Peters. And again for
20 your benefit Chairperson and for Ms Peters' benefit, I did explain to the legal representatives that there in fact four issues relating to her evidence.

She has given an affidavit. There are four issues that arise. One is. You will recall there was a meeting, and there is no dispute about it, on the

26th of August 2015 with the President.

CHAIRPERSON: Was it not 20 August?

ADV VAS SONI SC: It is... Oh, sorry it is the 20th.

CHAIRPERSON: Ja.

ADV VAS SONI SC: Yes. And that meeting was between the President on Minister Peters, Mr Molefe, former Minister Gadebe and later on Mr Montana. We will explore what happened at that meeting in relation to what Ms Peters says.

10 And then there are three related issues. One is the appointment of the acting CEO or the appointment of Mr Letsoalo as the acting CEO of PRASA which Mr Molefe complained about. Then the concerns that Ms Peters raised about the Werksmans contract, and finally, the dismissal of the board.

 Now I have told Ms Peters' representatives that there are two different versions on those matters. The facts may be the same but as to what moved people. And what I am going to do Chairperson in this evidence that
20 only came up before the Commission in the last two weeks.

 So when the persons you heard the concerns about parliamentary oversight, I will look at what was said in Parliament to the developments at PRASA and at some stage would want to make submissions as to whether there was a relationship between what Mr Molefe said where the

cause is or what Ms Peters says were the reasons for the appointment of Mr Letsoalo and also for the dismissal but those are the issues we will be dealing with.

CHAIRPERSON: No, that is fine. One of the issues, I thought Ms Peters would also address is the question of and the delay in the appointment of Group CEO.

ADV VAS SONI SC: Yes.

CHAIRPERSON: So I am very keen to hear what she has to say about that because – of course, I cannot remember
10 how long she stayed as Minister when there was no permanent Group CEO but we know that it has taken years for a Group CEO of PRASA to be appointed.

And as I say that, I am not even sure whether in fact, as I speak one, there is one but maybe there is on who is – whom may have been recently appointed but for a number of years the evidence has revealed there was no permanent Group CEO.

So for the time that she was Minister, I will be interested in knowing why there was a delay in filling that
20 position.

ADV VAS SONI SC: I did omit to mention to you Chairperson that one of the issues I will raise with Ms Peters is that fact that there were no appointments in senior positions at PRASA was raised by the Auditor-General, the then Auditor-General as a reason for what

was called the shambolic state in which PRASA found itself eventually.

CHAIRPERSON: H'm, h'm. Okay. No, that is fine. You mention that there are legal representatives ...[intervenes]

ADV VAS SONI SC: Yes.

CHAIRPERSON: ...who may need to place themselves on record.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Let them sanitise before you go there.

10 We do not want lawyers to sue the Commission because they got Covid in the Commission.

ADV MAJAVU: A very good morning Chair.

CHAIRPERSON: Good morning.

ADV MAJAVU: And I hope the Chair is strong and well?

CHAIRPERSON: Well, I am strong and very well.

ADV MAJAVU: Thank you Chair.

CHAIRPERSON: I do not have to ask you. I can see you are very strong and well. [laughs] Yes?

20 **ADV MAJAVU:** And I went to church yesterday. That is why I look strong.

CHAIRPERSON: Oh, okay. [laughs]

ADV MAJAVU: Chair, for the record. I am Zola Majavu. I appear on behalf of Ms Peters. And I have been instructed to place some comments on record or rather make some submissions on instructions of Ms Peters, just purely as

her own observations.

CHAIRPERSON: Yes, okay.

ADV MAJAVU: And the starting point is that her preparedness and determination to be of assistance for the Commission remains unshaken and she wanted that out of the way for the reasons that will follow.

Just in terms of chronology Chair. She was the Minister of Transport at the time and within her span of control reposed 12 entities of which PRASA is one. And
10 the relevance of this very brief submission is as follows.

Chair would remember that in the early stages of the Commission, some evidence was led by other people in relation to SA Express and the Mafikeng International Airport.

And in respect of which she received a formal Rule 3.3, and she intends to reciprocate that formally. And then later there was a further 3.3 in relation to the current Premier of the North West Province to which she reciprocated.

20 And then there was a further testimony arising from the evidence of Mr Molefe and she reciprocated fully, I think on or about October last year.

And later there was another affidavit by Mr Montana to which she also formally responded. There may be some disputes regarding the status of the Montana

affidavit but as matters stand, she has played open cards to the Commission and indicated her preparedness, wanting to testify and to her desire on application and if so granted, to cross-examine both these effected persons who have implicated her.

And none of these other than being acknowledged have ever come to a point where Chair we have been enrolled and we have made a submission and whether or not we are successful. A ruling has been made.

10 But what had happened a week and a half ago is that we received a notice of enrolment in respect of today's proceedings. And we took the stance or rather I gave advice which advice was accepted, that let us go to the Commission and deal with that which you are called upon to meet and then express your concerns so that the Commission can take that into account when we prepare for your subsequent returns in the fulness of the time.

20 So that at least we do not squander an opportunity as it currently stands. However, I would be failing in my duty if I do not state that she feels aggrieved by the fact that we are standing here today on allegations that appeared much later in terms of the continual. But be that as it may.

We understand that the scheduling has its own challenges. But I explained from my own understanding as

a lawyer that I am acting on instructions and she said: Look, in as much as I wanted to be of assistance to the Commission, I believe that there must be a balancing act to avoid what we call a piecemeal approach.

With that understanding, she is happy to proceed. She came literally on her own because we have been pushing. So to the extent that she might not be able to deal infinitely with specific detail, it must be seen in that context.

10 Because what we then did, and I am indebted to my elder and my learned brother, to say of our own, we did have extra discussions to find means and ways to make sure that we structure her testimony notwithstanding these challenges, in a manner that will be beneficial for the Commission but at least gives us some of ground to say what she has to say.

 Because she has a fear that the Commission is fast running out of time and therefore if she does not get a chance to cross-examine those who implicated here
20 previously, she may have this thing hanging over her head like a sword.

So that is the really the nub of the concern. We are not taking a swipe at anybody. We accept that it is what it is. And from my view Chair, I did indicate to have that when I appeared here on a previous occasion. We

debated with the Chair and we agreed without holding each other to any respective positions that as far as possible time must be made to deal with issues holistically.

But I have come to learn that there are different workstreams and sometimes it might not be possible to reconcile. But from my discussion that my learned friend and I had, we then agreed that he would broadly cover those topics that he had so eloquently explained.

We also anticipate that the Chair may also throw
10 one or two issues and she is more than ready to deal with those but what I thought that that context needed to be given so that if she does come back on the next occasion, could we please try and accommodate that request as far as possible but that is really how I would mark off the submission.

Lastly Chair. With regard to the issue that the Chair indicated that she would want to hear her own, the delay with the appointment. It is something that she is perfectly capable to deal with unrestrained to the best of
20 her ability.

So she will be able to deal with the PMG report even though that was sent to us late. We understand that those issues that are been raised in there are not have been happened in line.

So she has indicated that she will also be able

to deal with that and so she will with all these other topics that my learned friend has indicated. And of course, depending on the question and answer session, she is more than willing to deal with other issues.

The only qualification might be. She does not know the current standing of the Montana affidavit. However, she has filed a substantive affidavit in relation thereto. So if the need arises, she may want to refer to that as she engages on these whole issues around PRASA.

10 So she is not asking to be treated with gloves. She is simply saying: I am here. I am coming in an unstructured manner but we have tried with the evidence leader to try and make it as structured as possible.

And I think with that out of the way, I am more than happy to go and sit and watch as she engages with the Commission.

CHAIRPERSON: Yes.

ADV MAJAVU: Those were the instructions that I was pertinently asked to place on record Chair.

20 **CHAIRPERSON:** Yes. No, no. Before you go and sit. I think that what you have said in terms of your instructions from Ms Peters is very constructive. She places on record her concerns, that she is very prepared to cooperate and do the best she can to be of assistance to the Commission and answer whatever questions.

She accepts also that there may be challenges in terms of the Commission hearing everything that she would like to deal with at once.

And you were right in explaining to her that the Commission has got different workstreams. You will find that witnesses who have given evidence on different workstreams have maybe implicated you and you have received 3.3. Notices but one workstream is ready to hear your evidence but another one is not ready yet.

10 So that is why quite often a number of witnesses have had to come back to the Commission a number of times. So one accepts that the best way would be where one would come and deal with everything but it just has not been possible because of the way the Commission started working.

 You know, if you start by investigating and finalising your investigations and then start hearings, it is easy to do it that way but the Commission in 2018 was quite under pressure to start hearing evidence and...

20 So as investigators continue with the investigations, the Commission was hearing witnesses who were ready and that is why we have the situation.

 I am aware that there is or is an application or there may be more than one application that she has filed. I think one that came to my desk recently is where she was

reserving the right to apply for leave to cross-examine but she wanted to place her version before the Commission.

There are a number of application for leave to cross-examine and application for leave to just adduce evidence or place one's version before the Commission without asking to cross-examine anybody that are being dealt with right now.

So soon all concern, including her, she will know what the outcome thereof is. So they have not been
10 forgotten.

ADV MAJAVU: No.

CHAIRPERSON: But it might be helpful if you were to send a note maybe to Mr Vas Soni just to say in terms of your instructions these are the ones on which you have not heard from the Commission in terms of outcome so that we make sure we have got all of them.

If something has falling through the cracks we can pick it up. So if you could do that that would be helpful but we appreciate the spirit of operation.

20 **ADV MAJAVU:** Chair, thanks. From my side, we have already anticipated and that I have done exactly that and between the two of us, we will be able to find each other.

CHAIRPERSON: Yes, yes. Okay.

ADV MAJAVU: And yes.

CHAIRPERSON: Yes.

ADV MAJAVU: So it is not something that I am raising for the first time.

CHAIRPERSON: Yes.

ADV MAJAVU: My learned brother is fully aware of it.

CHAIRPERSON: No, no that is ...[intervenes]

ADV MAJAVU: And we are quite confident that we do not need to detain ...[intervenes]

CHAIRPERSON: Yes.

ADV MAJAVU: ...this hearing any longer about than the
10 logistical arrangements.

CHAIRPERSON: No, that is fine. Because then Mr Soni can be in touch with evidence leaders in other workstreams such as the matter relating to North West would have fallen under Advocate Hofmeyr for example.

ADV MAJAVU: Ja.

CHAIRPERSON: So he can be in touch with them so that we make sure that nothing has fallen through the cracks.

ADV MAJAVU: Yes. Then as a parting part Chair. That part is firmly under control. I think there was also – we did
20 indicate to the Commission that insofar as Professor Mokgoro is concerned, having perused the supplementary affidavit.

He simply says what are recorded is basically what was passed on to me and on that it will be silly of us to persist with an application to cross-examine him. In any

event, he is simply reporting as an official.

The two applications that I can tell the Commission right now and that she feels very strongly about that she will wish to persist with her application to cross-examine. It is with reference to Messrs Montana and Molefe.

CHAIRPERSON: Ja.

ADV MAJAVU: The others, we – before the next enrolment, would have resolved before we start.

10 **CHAIRPERSON:** Yes.

ADV MAJAVU: We thought, she is here it may well be after she has testified today.

CHAIRPERSON: Yes.

ADV MAJAVU: She might recalibrate instructions differently.

CHAIRPERSON: Ja, yes.

ADV MAJAVU: And I will convey that similarly to my brother.

CHAIRPERSON: Yes, okay.

20 **ADV MAJAVU:** So that we can proceed on that basis.

CHAIRPERSON: No, that is fine. That is fine.

ADV MAJAVU: Thank you. Those are my submissions Chair. If I may now be excused?

CHAIRPERSON: Thank you very much. You may sit. Thank you very much.

ADV MAJAVU: Thank you Chair.

CHAIRPERSON: Thank you. Yes, Mr Soni. Would this be the right time for the registrar to administer the oath?

ADV VAS SONI SC: Yes, Chair.

CHAIRPERSON: Good morning Ms Peters.

MS PETERS: [No audible reply]

CHAIRPERSON: The registrar will administer the oath or affirmation to you now.

MS PETERS: [No audible reply]

10 **CHAIRPERSON:** You can switch on your mic.

MS PETERS: [No audible reply]

REGISTRAR: Please state your full names for the record.

WITNESS: It is Elizabeth Dipuo Peters.

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

WITNESS: No.

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

WITNESS: Yes.

20 **REGISTRAR:** Do you swear that the evidence you are about to give, shall be the truth, the whole truth and nothing but the truth? If so, please raise up your right hand and say, so help me God.

WITNESS: So help me God.

ELIZABETH DIPUO PETERS: (d.s.s.)

CHAIRPERSON: Thank you. Thank you very much. You may be seated. If we can hear you well with the mask on, it will be fine. If we cannot hear you, we will ask you if you mind taking it off because there is sufficient social distance.

MS PETERS: [No audible reply]

CHAIRPERSON: Okay alright.

MS PETERS: Thank you.

CHAIRPERSON: Thank you for coming to give evidence
10 Ms Peters.

MS PETERS: Thank you Chair.

CHAIRPERSON: Mr Soni.

EXAMINATION BY ADV VAS SONI SC: As you please
Chairperson. Ms Peters, it is correct that you have made
two affidavits in relation to PRASA related matters. Is that
correct?

MS PETERS: It is.

CHAIRPERSON: I am sorry Mr Soni. Just make sure you
are not too far from the mic.

20 **ADV VAS SONI SC:** The mic.

CHAIRPERSON: Because your voice is naturally very
soft. So if you are far we will not hear.

ADV VAS SONI SC: [No audible reply]

CHAIRPERSON: Okay alright.

ADV VAS SONI SC: The first affidavit Ms Peter is the one

you have made on the 16th of October. And if you look at Bundle L, it is Exhibit SS-22.

MS PETERS: SS-22. Yes?

ADV VAS SONI SC: I would like you to look at that affidavit Ms Peters. Is that your affidavit?

MS PETERS: Yes, Chairperson, this is my affidavit.

ADV VAS SONI SC: And if you look at page 13 of the affidavit, page 16 of that bundle you will see a signature. Is that your signature there as the deponent?

10 **MS PETERS:** Page 18.

ADV VAS SONI SC: If you look at the right hand side it is page 13 but the bundle number is on the left hand side, it is page 16. Is that your signature?

CHAIRPERSON: Hang on, Mr Soni, we normally use the black numbers, are we going to follow that, are we going to...?

ADV VAS SONI SC: No, we follow the black numbers.

CHAIRPERSON: Okay, then Ms Peters, whenever he refers to any page you only look at the black numbers on
20 the left hand corner at the top of each page. Forget about the red numbers on the right hand side.

ADV VAS SONI SC: Are you happy with that?

MS PETERS: I can see the page.

CHAIRPERSON: So the page he has referred you to is – we just refer to it as page 16, we will not say PRASA

bundle L-016, we just say 16.

MS PETERS: Yes, Chairperson.

CHAIRPERSON: Okay, alright. You have confirmed that signature that appears before the word deponent is your signature?

MS PETERS: Yes, hundred percent, Chairperson, that is my signature.

CHAIRPERSON: Thank you.

ADV VAS SONI SC: Do you confirm that what is contained
10 in this affidavit is true and correct?

MS PETERS: I can confirm, Chairperson, that it is true and correct.

CHAIRPERSON: Yes.

ADV VAS SONI SC: Now you have made a second affidavit and that is in relation to allegations made by Mr Montana. We do not need to look at that for the time being, I am just trying to orientate you. We are not going to deal with that matter today.

MS PETERS: Yes.

20 **ADV VAS SONI SC:** So we are now going to deal with your affidavit of the 16 October 2020. Now can I – I just want to allow you to say what you want in relation to this affidavit, but before I do that, would I be correct in saying that there are four main issues you address in this affidavit responding to what Mr Molefe said in his affidavit to which

you respond and I just name for the four for you, one
...[intervenes]

CHAIRPERSON: Or maybe before you do that, Mr Soni,
do you ask me to admit this affidavit as an exhibit?

ADV VAS SONI SC: Oh, sorry, I ask, Chairperson, that it
be admitted as EXHIBIT SS22.

CHAIRPERSON: Did you say FS?

ADV VAS SONI SC: SS, S for Soni.

CHAIRPERSON: Okay. The supplementary affidavit of Ms
10 Elizabeth Dipuo Peters which starts at page 4 of PRASA
bundle L is admitted – does it have annexures? It does,
together with its annexures as EXHIBIT SS22.

**SUPPLEMENTARY AFFIDAVIT OF ELIZABETH DIPUO
PETERS TOGETHER WITH ANNEXURES HANDED IN AS
EXHIBIT SS22.**

ADV VAS SONI SC: As you please, Chairperson. Now,
Ms Peters, is it correct it addresses four matters? The one
is the meeting on the 20 August 2015 that Mr Molefe refers
to at the presidential guesthouse. That is the first main
20 issue that you address, is that correct?

MS PETERS: It is correct, Chairperson.

ADV VAS SONI SC: Then there are three related issues
and related because Mr Molefe says that they are probably
related and that is the appointment of Mr Letsaolo as the
Acting Group CEO. Then there were concerns you raised

about Werksmans' investigation and then the fact that you then dismissed the board. Those are the four main issues that we deal with.

MS PETERS: Yes. Yes, Chairperson.

ADV VAS SONI SC: Now I just want to – and I want to move as expeditiously as possible. In paragraph 6 of your affidavit you give the background to the affidavit. You briefly summarise with the Chairperson what you want, so I do not want to deprive you of the opportunity of setting out
10 the context that you regard as important.

MS PETERS: Chairperson, I think if I have to start off from the statement that was issued by my legal representative with regards to my preparedness and readiness to cooperate and work with the Commission to be able to unravel some of the challenges that have been raised with regard to PRASA, I should, through you, Chairperson, probably start by indicating that I was deployed to PRASA by former President Zuma on the 9 July 2013, it was exactly on a Monday like this and I had
20 the opportunity to apprise myself with the workings of all the entities, 12 of them, and two councils. The one is called the Licensing Council and the Regulating Councils that deals with aviation and, Chairperson, I would want to put before the Commission that PRASA, being as big as it is, was one of the biggest actually because of the

importance of the service that it was providing to the people of South Africa.

It is not easy to be a mass carrier and PRASA had to transport commuters who were going to work, going to look for work and at the same time transport students who were going to school, some people who are new qualified people who went to look for jobs. So it was a very important institution that I found under the stable under transport.

10 When I arrived in transport, Chairperson, transport was regarded as a family and taking into the consideration the challenges that you would find in a family, I then said to the team of men and women that we were working with, being those in the department of transport and equally those who were in the 12 entities plus those who were in the councils and together with those who were external stakeholders like the taxi industry and others, like the Road Freight Associations and all those.

20 I said to them let us work like a team because in a team everybody has got a functional role to play, everybody has got a particular responsibility that contributes to the whole and that is what informed our work in PRASA – I mean, in the transport stable.

In engaging with PRASA one realised that we were busy with an organisation that was faced with massive

responsibility or modernization. They were looking at the new rolling stock, they were looking at building stations and making sure that signalling is being addressed. And, Chairperson, we would know the important of signalling because of the challenges that we have also seen in the past with the trains derailing, the train crashes and all those and many others.

One of the other things that we were busy with under the transport stable was to say how do we make it possible based on the President's SOE Review Commission Report. How do we look at trying to be able to make sure that we bring these entities together.

I will make an example, Chairperson. In the roads branch you had entities that were dealing with road traffic management, entities dealing with road accident, entities dealing with traffic infringements and all those and all of them were reporting to one branch, one DDG and it did not make sense to have this fragmentation and that is why there was a need to put all this together.

Equally so, Chairperson, in my engagements with PRASA we looked at the issues that were happening and I am happy to indicate to you that because of the contribution of PRASA to an important draft policy that was before government since 2005, the rail policy, we could be able to finalise that rail policy and today we have in the

Department of Transport a rail policy that speaks to the challenges of a hundred years back and also futuristically looking at where do we take rail in this instance.

So, Chairperson, in dealing with the issues under PRASA you need to really have a more bigger picture of a company, PRASA itself, which had subsidiaries, Autopax, Intersite, PRASA Cres which was dealing with properties and all those, quite a number of others. The others was dealing with buffers(?) because they were transporting
10 passengers on the road as well as on the rail. So we were very excited at that particular stage that we are entering an important, important phase in the passenger rail space and PRASA was that catalyst, that instrument in the hands of the African National Congress government to make it possible that we can then be able to achieve that.

So I wanted to put that into that particular context, Chairperson, that we were already at another plane ready for probably taking off, I would want to say. Equally, the rail policy was going to address the challenges of a
20 situation that exist in our country where part of the network that PRASA trains are running on belongs to Transnet and part of the other network belongs to – which is our 20% of the network belongs to PRASA and about 80% of the network belongs to Transnet.

Chairperson, I would advise you that as part of the

process of evaluating the challenged PRASA faced, look at what happened in Braamfontein in the morning when goods trains gets preference to passenger trains and the rationale for the rail policy was to bring these two together and I am happy to say there was conventions, there was working together, PRASA and Transnet was working together. But if – well, it is so, President Zuma had a responsibility to be the National – the AU champion for the North South corridor, looking at the network from Mombasa
 10 to Durban.

And, Chairperson, if you look at the challenges that happened recently, that Minister [indistinct] 13.04 was talking about, the kilometres and kilometres of trucks that were waiting at Beit Bridge, you would also understand that it was one of those things that led to us to review these institutions or these parastatals of SOEs that were operating under Transport where we took a decision that CBRTA must join the BMA. CBRTA, Chairperson, is the Cross Border Road Transport Agency to join this thing so
 20 that we can look at a way in which we reduce the trucks from the road and put the trucks - and put the goods on the rail.

So I am bringing this background so that I can help even myself to take you to the point of the issues that we are raising here because if we just look at these issues in

isolation we do not get the full picture of what it was that we are dealing with. I acknowledge, Chairperson, that the issues that are being raised here under paragraph 6 as indicated by Advocate Soni is exactly what I said in response to the matters that were deposed by Ntata Molefe and I thank you.

ADV VAS SONI SC: Now you emphasise – and I could just look at paragraph 6.4 on page 6, this is the black page 6:

10 “I wish to emphatically deny that I was used by anybody to aid state capture in general and with specific reference to PRASA.”

You say:

 “I was never involved myself in the award of tenders.”

And at paragraph 6.6 you say:

 “I never protected or sought to protect anyone accused of wrongdoing from the rule of law or any other applicable process.”

20 That is your position and that is what you have come to say to the Chairperson.

MS PETERS: Yes, Chairperson, that is my position.

ADV VAS SONI SC: Now, Ms Peters, I just want to ask you, you are saying all of that because you read into what Mr Molefe said in his affidavit that these are the

accusations he made [indistinct – dropping voice]. Is that – I am just trying to understand why you would say that.

MS PETERS: I am saying this because in his affidavit he does mention individuals, institutions of government that he believes were responsible or were intending to be instruments for state capture. So I want to indicate – and even today here, indicate that I have never been influenced by anybody to be – to either determine tenders. Both Mr Molefe and later on probably Mr Montana would
 10 indicate that I have never ever participated in processes, in tenders, in any of their establishments or even in PRASA itself and, Chairperson, I would also want to vouch that the 12 entities that I spoke to can also vouch for that, that it was not culture, it was not my style of work and fortunately for me, as a deployee of the African National Congress, I had an opportunity to be deployed in various areas of responsibility, Chairperson, and anyway, in those areas of responsibility, I have never been a person that determines because it was the ANC government that consciously
 20 resolved that politicians should not participate in tender processes. So why would I, being a politician, want to be in that particular space?

But also, Chairperson, if I, as a politician, participate in tendering processes, if there are any comebacks, what recourse would be – would those who are

aggrieved have if I have already been implicated or – I do not know, or what to say.

CHAIRPERSON: Well, implicated is the right word.

MS PETERS: If I have already *ingemeng in die hele storie in*. I am sorry for the Afrikaans.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Ms Peters, I want to be fair to you but I also need to be fair Mr Molefe, forget Mr Montana for the time being. I have read his affidavit very carefully, he
10 has never made those allegations. His allegations are of a different nuance. These allegations and I am going to take you through there are that by some of your acts – this is what he alleges, you allowed people to stop matters that person concerned about corruption at PRASA would not. Now I just want to place that in context so that we do not – we do not deal with matters that are not before this Commission.

MS PETERS: Chairperson, that is the view of Mr Molefe and unfortunately, he had not crossed facts with me on
20 those particular issues. So in my response I was responding to what was in the document before me, not something that I was sitting and discussing with Mr Molefe.

ADV VAS SONI SC: So just against that background, want to deal with firstly is the meeting with President Zuma on the 20 August 2016. You have set out in paragraph 8, that

is paragraph 8.1 to 8.6 your response to what Mr Molefe said, is that correct?

MS PETERS: Yes, Chairperson, that is correct, I confirm I was invited to the meeting of the 20 August.

ADV VAS SONI SC: No, I am asking a different question, I am asking that in paragraph 8, the whole of paragraph 8, you respond to what Mr Molefe said happened at that meeting, is that correct?

MS PETERS: Yes, Chairperson.

10 **ADV VAS SONI SC:** Now I tell you why I ...[intervenes]

CHAIRPERSON: I am sorry, before you proceed, Mr Soni, have I got Mr Molefe's affidavit here in this bundle that Ms Peters is responding to here because I would like to go there.

ADV VAS SONI SC: Yes, yes.

CHAIRPERSON: Do I have it in this bundle or is it somewhere else?

ADV VAS SONI SC: It is bundle D, EXHIBIT SS6.

CHAIRPERSON: Ja.

20 **ADV VAS SONI SC:** We did give your registrar the...

CHAIRPERSON: I would like to so one can compare.

ADV VAS SONI SC: Now, Ms Peters, can I just say to you that when you look at the affidavit of Mr Molefe starting at paragraph 74 and ending at paragraph 92 on page 24 of his affidavit, he deals very fully with what happened at the

meeting.

CHAIRPERSON: You said it starts at paragraph...?

ADV VAS SONI SC: Paragraph 74, Chairperson, at page 20 on the right hand side of bundle D, SS6. You will see the heading at the bottom of that page, Chairperson.

CHAIRPERSON: Yes.

ADV VAS SONI SC: It says:

“Former President Zuma’s attempt to intervene.”

CHAIRPERSON: Yes, that is where it starts.

10 **ADV VAS SONI SC:** That is where it starts.

CHAIRPERSON: Oh, okay, thank you.

ADV VAS SONI SC: Now, Ms Peters, I want to again ask so that we are not at odds with each other. Mr Molefe goes into some detail in what happens at this meeting. Your response is a general response. Now let me just say so that you are not taken by surprise and we have a roadmap for we are going. This is what Mr Molefe’s concern was about the meeting as expressed in the affidavit and as expressed when he gave evidence. So I
20 am going to give you that context and then ask you to respond to each of the allegations. This is what he says – the background to the attempt by former President Zuma to intervene is this. Mr Lucky Montana had resigned. The board had accepted his resignation and there appeared to be unhappiness about the fact that the resignation had

been effected and Mr Molefe saw this as a meeting by Mr Zuma to cause the board to revisit its position. I am telling you what Mr Molefe's stance is.

And the importance of that in respect of these proceedings, Ms Peters, is this and I am going to ask, why does a president intervene in a decision of a board to accept a resignation of that board's or that SOE's – that was his question and he raises it, he says he raised it at the meeting. So that is the context in which I am going to
 10 ask you to respond to this and at the end, Ms Peters, if it does not emerge from them, I am going to ask you whether you shared the same concerns.

MS PETERS: Chairperson, I had an opportunity during the period after the resignation of Mr Montana and the acceptance of the board of the resignation of Mr Montana as a member of the executive responsible for transport, out of courtesy I informed the president but I also said to the president, I have made a request to both Mr Montana and Mr Molefe to stop their public spats because they were
 20 going back and forth in the public.

Mr President Zuma said to me he cannot speak directly to Montana but he knows somebody who is very close to Montana and he then said if you can speak to Minister Jeff Radebe he can then opt to Lucky to stop. That is the context, Chairperson.

With regard to the meeting, yes, there was a meeting on the 20th and at that meeting I never got the impression that there is a conscious decision by President Zuma that Lucky Montana or Mr Lucky Montana must return to his position which he had resigned from. In - Lucky Montana's input in that meeting, he makes a statement which might have given Mr Molefe an impression that probably somewhere, where I was not part of, there might have been a discussion to the fact that Lucky will come
10 back because in his reply to what Mr Molefe had said, he then said if I go back. Which was something that I dispelled in that particular meeting.

Unfortunately, honourable Chairperson, even in Mr Molefe's affidavit he does indicate that that meeting was inconclusive because the President was exhausted and we left without any conclusion.

So if you are in a particular space, everybody has got the right to draw his or her own impression of what the objective was. Probably because of President calling Mr
20 Montana into the meeting who was now an ex-CEO, he might have then – Montana and Mr Molefe probably had the impression that the meeting would result in Lucky returning. And if I am given an opportunity, I think, Chairperson, before the resignation – I just need to give context to this whole – before the resignation of Lucky

Montana, I think it was the year before, towards the end of 2014, Mr Molefe informally did tell me that the Group CEO indicated to them as a board that he will be leaving and they made a request to him that they have just arrived, I do not think it will be good for him to leave them at that particular time, if he can give them extra time and all those type of things. And that is why, when the resignation, I was a bit taken aback because I knew that discussion, which was an informal discussion, I did not take it as a

10 formal official decision on my part because Mr Molefe was just briefing me that they had discussion. And incidentally, Chairperson, it is not a very good thing which I subscribe to, Mr Molefe said it will be an injustice to the development of this country to lose some of these young black executives which is something that I subscribe to and me and him were at one with regard to that issue and the meeting of the 20th, incidentally the anniversary of the UDF, it was not intended on my part and I want to correct something, Chairperson, I was appointed by President

20 Zuma, invited by him to serve in his cabinet and whether I am called by the President to a meeting, I do not say why are you calling me? Because the day he called me to appoint me I did not say why are you calling me and why are you appointing me? So I did not see anything wrong because it was not the first time I was called by the

President to a meeting and in any case, Chairperson, there were various instances where I personally had made overtures to the President to request for his ear on matters of the areas of deployment I was at.

So when the President gives you an opportunity sometimes you grab it because he was a busy man and when I got there – okay, according to the affidavit of Mr Molefe, he says when he went to the gents he saw Lucky Montana. I did not see him – he – and so when he was
 10 invited to the meeting, I think Mr Molefe was aware that Lucky is in the presence. For, for me Chairperson, I, I think in that meeting I didn't had the clear sense from the President that Lucky Montana should go back. What I got was Lucky Montana indicating that if I go back, so it means it was his wish. He, he wished that the board should – maybe he should have been upfront to say, my resignation was a bluff. He tried to rescind his resignation, but the board then said no, you have resigned and that is it.

CHAIRPERSON: Okay, alright. Mr Soni you may proceed.
 20 But I think that you know these are important matters and they affect people in different ways, and then an opportunity such as this making as Ms Peters has been looking forward to for quite some time.

ADV VAS SONI SC: Yes.

CHAIRPERSON: She might tend to say quite a lot in

relation to a brief question, though Ms Peters Mr Soni will try and limit you to answering specific questions. At the end if there are matters that you might feel are important that were not covered properly, he might give you a chance, I might give you a chance. But your counsel is here too, he will be noting and he knows your version. He knows your fury, he will know if you – there are aspects that have not been covered properly. So I don't want you to say you are being stopped from having your say, but we
10 just have to strike a balance in order to use the time properly, but at the same time be fair to you. Okay, alright.

ADV VAS SONI SC: As it pleases.

MS PETERS: My apologies Chairperson.

CHAIRPERSON: Okay alright.

ADV VAS SONI SC: And, and ...

CHAIRPERSON: Mr Soni before you proceed, I wondered whether there would be any good that will be served by establishing exactly where, where the diversions is between Ms Peters' version of what occurred or what was
20 said in that meeting and what Mr Popo Molefe says, it may be that you are planning to deal with it in a certain way. I see as you said that Mr Molefe goes into quite a lot of details.

ADV VAS SONI SC: Yes, yes.

CHAIRPERSON: As to what happened.

ADV VAS SONI SC: Yes.

CHAIRPERSON: And he did say that it was a meeting that took again over six hours.

ADV VAS SONI SC: Hours.

CHAIRPERSON: Something like that.

ADV VAS SONI SC: Yes.

CHAIRPERSON: And Ms Peters' version is much more shorter.

ADV VAS SONI SC: Yes.

10 **CHAIRPERSON:** But it is important to know which aspects of, of Mr Molefe she might be taking issue with.

ADV VAS SONI SC: Yes.

CHAIRPERSON: That are important.

ADV VAS SONI SC: That is what I intended to ...

CHAIRPERSON: Okay.

ADV VAS SONI SC: Because if there is an – it will affect if what he has said is not disputed.

CHAIRPERSON: Yes.

ADV VAS SONI SC: By Ms Peters.

20 **CHAIRPERSON:** Yes.

ADV VAS SONI SC: Then it will accept the inference. I mean it will influence the inferences that can be drawn as he drew it.

CHAIRPERSON: Ja, ja. No, no, that's, that's fine.

ADV VAS SONI SC: Okay. Ms Peters and mindful of what

the Chairperson has rightfully pointed out, we must stick to the main issues. You have dealt with paragraph 76 where Mr Molefe says he was told that Mr Montana and Mr Roy Moodley were there and what Minister Radebe said. Is there anything in relation to paragraph 77, 78 and 79 and 80 that you disagree with?

MS PETERS: 79 Of which? Of ...

ADV VAS SONI SC: Of Mr Molefe's affidavit.

MS PETERS: Can I be given a chance Chairperson to go
10 through that?

CHAIRPERSON: Yes, you can have a look.

MS PETERS: 78.

CHAIRPERSON: 78. What do you say 78 Mr Soni?

ADV VAS SONI SC: Yes, 78, 79, 80 and sorry and 80.

CHAIRPERSON: Well it might be helpful Mr Soni if you just tell her what's ...

ADV VAS SONI SC: Just tell her what's ...

CHAIRPERSON: What the letter says, also it will benefit the public then they know because they do not have an
20 affidavit to look at.

ADV VAS SONI SC: Yes, yes. Well Mr Molefe says that an impression was being created by Mr Radebe that he was playing golf and he regarded golf as more important than meeting the President. Is, is that what happened that Mr Molefe – sorry Mr Radebe said, I tried to call you but I was

told you were playing golf. Can you recall whether that happened or not? That's at paragraph ...

MS PETERS: 77.

ADV VAS SONI SC: 77 Yes.

MS PETERS: Hey, I don't understand this because it does seem the person like Mr Molefe recalling exchanges between his office and that of the office of Mr Radebe. And that Mr Radebe got the impression that playing golf was more important. I can't offer an answer for what
10 happened between the two of them ...[indistinct].

ADV VAS SONI SC: Okay, can we then go to paragraph 83.

CHAIRPERSON: Maybe before you do that Mr Soni, I think what Mr Soni is asking you do to, I think what he is asking is that, according to Mr Molefe at the meeting Minister Radebe said certain things about that had happened before, interaction that had happened before between Mr Radebe's office and Mr Molefe's office or Mr Molefe relating to arrangements for the meeting. So as I
20 understand it Mr Soni is saying, Mr Molefe says Mr Radebe said that the things that are mentioned here and created the impression that Mr Molefe regarded playing golf as more important than coming to a meeting with the President. Well the question would be whether you have any recollection of Minister Radebe giving the background

about the interactions that may have happened between his office and Mr Molefe's office in the context of the indication to for Mr Molefe to come to this meeting. And whether it, it's as far as you are concerned it just right to say an impression was created by Mr Radebe that Molefe thought playing golf was more important than going to a meeting with the President.

MS PETERS: Chairperson, before that meeting that there were a lot of pleasantries that happened between the
10 gentlemen that were there. I am saying the gentlemen, because I was the only lady. The gentlemen that were there, and some of those are things that I would not recall now and it was – they usually make their own jokes there. In fact at one statement Mr Radebe said to Mr Molefe that there are people who think that I am closer to Lucky than you, and yet I am closer to you than Lucky because *ub unkhongi wam(?)*.

CHAIRPERSON: Okay.

MS PETERS: I had to go and ask what is *umkhongi* and
20 then I was told what is *umkhongi*.

CHAIRPERSON: Yes.

MS PETERS: So I, I mean for me those were not the things that were said in the meeting.

CHAIRPERSON: Yes.

MS PETERS: When the meeting had started. So ...

CHAIRPERSON: Yes.

MS PETERS: I, I don't recall some of those.

CHAIRPERSON: Yes.

MS PETERS: Because if people stand there and chit chat and then they go there and they laugh and they do all those, and by nature President Zuma likes making jokes before he starts a formal engagement. So it was all those types of things. For me I really, sometimes [speaking in vernacular] [09:25].

10 **CHAIRPERSON:** Yes. Were you told that *Umkhongi* is somebody that the Holmes family sends to the Wrights family for purposes of negotiations of lobolo?

MS PETERS: Thank you Chairperson.

CHAIRPERSON: Is that what you were told?

MS PETERS: Yes.

CHAIRPERSON: Ja. *Umkhongi*, for the transcribers will be *umkhongi*. Okay. Proceed.

MS PETERS: I am just giving a gist that, that the nature of the meeting before it started. So I would not recall this
20 one of the correspondence between the secretaries, the – I did not have sight of that and I don't remember hearing Mr Radebe making reference to that exchange.

CHAIRPERSON: Okay. Mr Soni.

ADV VAS SONI SC: Right, then I ask you to look at paragraph 83 ...[indistinct] where Mr Molefe says that you

had told the meeting that Mr Montana was fighting the board. Is that what you told the meeting?

MS PETERS: Ja. I agree Chairperson.

ADV VAS SONI SC: Okay, alright. And then paragraph 84. That she then asked Mr Zuma to explain the protocol that was being applied where he said that the protocol would have been for him to invite the Minister and the Minister to invite him as the chairperson of the board. Did that happen?

10 **MS PETERS:** I don't recall, but I think there was reference to a procedure of him called to the meeting.

ADV VAS SONI SC: Oh. And then Mr Zuma then said that he had invited Mr Montana to the meeting. Is that correct? Ma'am did Mr Zuma tell the meeting that he had invited Mr Montana?

MS PETERS: Yes, he did say that because we were in his premises and he, he convened the meeting.

ADV VAS SONI SC: Yes. Then he says that, at paragraph 88, Mr Zuma said that Mr Montana was very knowledgeable
20 about rail transportation and he should not be lost to the country that we, meaning the I take it Mr Montana, yourself and Mr Molefe, would sort out our differences and bring Mr Montana back as Group CEO.

MS PETERS: Chairperson I, I don't recollect. You will remember this meeting happened on the 20th of August and

we never had minutes of the meeting, so I don't recollect this.

ADV VAS SONI SC: You see, that is the real issue, but can you say it did not happen?

MS PETERS: I say, I did not – Chairperson I cannot recollect ...

CHAIRPERSON: Ja.

MS PETERS: The exact statement of bring back Montana as the Group Chief Executive Officer. At a later stage I will
10 give a context of a discussion with regards to Montana.

CHAIRPERSON: Yes, okay. I think that it is important to just explain to you that as you answer the questions, remember that they will be, there is a difference between I don't remember, because that means that I don't remember whether it happened or it didn't happen. Or I don't remember whether so and so said that or not, and saying no, it did not happen. I deny that and so and so did not say that. So it will be important that we know when it is a situation where you cannot remember whether it was said
20 or whether it happened, or were you say no, no, I am clear it did not happen, or it was not said. Okay, alright. You say that in the context of this you can't remember.

MS PETERS: I can't remember well whether that was said.

CHAIRPERSON: Okay, alright. And I think Mr Mashaba wants to say something. Let them sanitise first.

MR MASHABA: Thank you Chair.

CHAIRPERSON: Yes.

MR MASHABA: I do not wish to interrupt my learned friend Ndluli. But there is an observation that I have made and I think I would be failing in my duty if I do not place it on record. And seek a way in which to assist the Commission.

CHAIRPERSON: Yes.

MR MASHABA: You see in some instances my learned
10 friend puts a proposition which by its nature is open ended. And dealing with the political animal like my client, it invites her also to go south.

CHAIRPERSON: Yes.

MR MASHABA: When it is not necessary. And I say this with the greatest of respect.

CHAIRPERSON: Yes.

MR MASHABA: In other instances she is invited to comment on paragraph 40 this and that and that, which forces her then to read the paragraph in order to
20 understand what it is that her attention has been drawn to. And it is not assisting the proceedings. And my request would be without being prescriptive on how my learned friend wishes to conduct or rather led the evidence. If a comparison is drawn between what Mr Molefe said and her response, then she must be pointed to that as opposed to

reading the one version. Because what happens is that she then takes time to read what she would have said. This is natural because she does not want to be seen as contradicting her own version. And I am simply asking that perhaps it could be, this is what Montana or this is what Molefe said in relation to you. And this is what you said in your, in your affidavit. You stand by that response so that if we are reading through affidavit by affidavit, let's compare apples with apples. Because otherwise at the

10 rate that we should be going I am afraid you are not going to make progress. And, and I feel the Chair was quite right in one instance, they summarise what is said, and even for the benefit of the public. This is a public official, whose delay might send a different message from the body language point of view. So I am simply making that plea to say, how do you ask this witness to explain why would a President do something? Perhaps it could have been, this is what he said, the President did, do you subscribe to that view or not. Then we get to hear what she has to say on

20 that particular point. I just wanted to put that on record ...

CHAIRPERSON: Ja.

MR MASHABA: Chair. And my apologies for interrupting my learned friend.

CHAIRPERSON: Okay, alright. Thank you.

ADV VAS SONI SC: Mr Chairperson, let me explain the

particular difficulty with what my learned friend is ...[indistinct]. Ms Peters was given the affidavit. She knew what Mr Molefe's version is. She has given a general response and that is why I asked her right at the outset this is your general response, I want to ask you specific things. The matter that I am asking her are about matters she didn't address in her affidavit. And I am going to submit Mr Chairperson that those are all vital matters. Having regard to the context I have described, namely that

10 Mr Mont – for example where at page 86 he said that he specific, Mr Molefe says, the President, specifically said he wants them to sort it out so that Mr Montana is brought back. Now the context is important because the witness says she did not get that impression. Now if she, if this is what was said, then clearly Mr Molefe was quite correct in drawing that inference. And that is why one needs her version about each of the matters that I am trying raise and I am trying to limit them to get to the crux of the matter. But the one observation I accept the person

20 knows, instead of referring to a particular paragraph I should set out the gist of what that paragraph is about.

CHAIRPERSON: But your, your response to Mr Mashaba's concern is simply that you can't put her, you can't tell her what her version is or on her affidavit in regard to the matters you are focussing on ...

ADV VAS SONI SC: That is ...

CHAIRPERSON: Because she has not responded.

ADV VAS SONI SC: She has not.

CHAIRPERSON: Ja.

ADV VAS SONI SC: That is the point.

CHAIRPERSON: Okay, alright. Okay, alright. I think Mr Mashaba will understand. Ja, ja. Thank you. Let's take the ...

ADV VAS SONI SC: Yes.

10 **CHAIRPERSON:** The tea adjournment.

ADV VAS SONI SC: As the Chair pleases.

CHAIRPERSON: And then we will continue. It is 20 past, we are going to resume at 11:35. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: I wonder whether Mr Soni it might not be a better way of dealing with this matter to proceed from the premise that Ms Peters read Mr Molefe's affidavit and when she responded in her affidavit she was fully aware of the
20 full version that Mr Molefe put up.

ADV VAS SONI SC: Yes.

CHAIRPERSON: And if there are certain matters that you believe she did not respond to you can ask her whatever you might wish to ask arising out of that.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Because she has provided a certain response and she obviously had Mr Molefe's affidavit but obviously there may be specific matters that you want to raise but the position is that just given a certain answer to this, okay alright.

ADV VAS SONI SC: Ms Peters, you have heard what the Chairperson has said that effectively this is your response to what Mr Molefe said you heard in his affidavit, you have studied it, and you responded to it. So this is your
10 response?

MS PETERS: Yes, Chairperson

ADV VAS SONI SC: We can accept that as this?

MS PETERS: Yes, Chairperson.

ADV VAS SONI SC: Right, I just want then ask you in relation to the following issue which is not addressed in your affidavit whether you ...[indistinct – no audio]

MS PETERS: But he went further to indicate that they are to look at the different developments that were happening. In fact, at that particular time, there was also a process
20 that I had initiated to invite the President on a site visit to some of the projects, in particular, the modernisation.

So, I took it in that context that, obviously, when the President visit because the President was busy at that time, visiting different SOE's, and PRASA was not visited yet so I took it in that way.

ADV VAS SONI SC: But let me ask you this, Mr Molefe says:

“I invited Mr Zuma to address the Board.”

That did happen.

MS PETERS: To visit the Board and address the Board and see some of the projects.

ADV VAS SONI SC: And explain why he had a problem with the decision to release Mr Montana.

MS PETERS: Chairperson, I do not have a recollection
10 whether it was instructive in that manner but the invitation was sent out.

ADV VAS SONI SC: To address the Board?

CHAIRPERSON: Okay, I am sorry Mr Soni. Your recollection is that indeed, Mr Molefe did invite Mr Zuma, and I think you go one step further and say and the Minister, was he referring to yourself? Oh, okay he did ask, invite the President and yourself to revisit PRASA and address the Board. But your recollection is that in addition to that, he also spoke about the Minister and or the
20 President seeing for himself certain developments. Is that correct?

MS PETERS: Yes, Chairperson.

CHAIRPERSON: Yes, as to the part of the paragraph where Mr Molefe says, he asked Mr Zuma to address the Board, so that he could explain why he had a problem with

the Board's decision of releasing Mr Montana or accepting his resignation. Do you remember that part having been said, or what is the position?

MS PETERS: Chairperson, remember, Mr Montana was – his contract was going to end in November, if I am right and the Board then released him earlier, and it was at that point, where Mr Molefe said that because Mr Montana had resigned, and a he was - he had requested here now himself Mr Montana, that instead of giving in November, he
10 would then leave the end of the financial the next year, which was going to be around March.

So the President then said, but why did you release him earlier than that March? So Mr Molefe then said, he will invite the President to go an address - to be informed by the Board on what their rationale was, because I think Mr Molefe to his credit during that period, there was a view that he is running this show himself alone, it is Molefe show. So he wanted to spell that that it is not a Molefe show but a Board show.

20 **CHAIRPERSON:** Okay, alright, Mr Soni continue.

ADV VAS SONI SC: So Ms Peters I - what we know is that Mr Molefe and Mr Zuma discussed the Board's acceptance of Mr Montana's resignation that was discussed at the meeting.

MS PETERS: Mr Molefe informed the President of the

process that led to the end.

ADV VAS SONI SC: At the meeting?

MS PETERS: At that meeting, he gave - remember Chairperson, can I give a context?

CHAIRPERSON: Maybe before you give that context, please do not forget what you wanted to say. I wanted to say earlier on, as I recall the evidence Mr Montana wished to leave PRASA, I do not know whether it is March or thereabouts.

10 **MS PETERS:** Yes.

ADV VAS SONI SC: March is right.

CHAIRPERSON: But the Board asked him to stay on for a period of six months, I think it was going to be, but ultimately the Board released him around July 15 or June 15. And my understanding of Mr Molefe's evidence is that it was this release of Mr Montana by the Board that was being, this part of what was being discussed at the meeting. Is that your recollection as well?

MS PETERS: Can I just give an indication Chairperson
20 that we were all given an opportunity to say our thing, and the President had not arrived at his response when exhaustion took over.

CHAIRPERSON: Yes, but my question is whether it accords with your recollection, to say part of what was discussed at the meeting, was the Board's decision to

release Mr Montana around the 15th. The rationale for releasing him.

MS PETERS: The rationale for releasing him earlier than they intended date of release, and then Chairperson, also the public spats.

CHAIRPERSON: Yes, okay alright Mr Soni.

ADV VAS SONI SC: Yes, I just want to leave this with - put this proposition to you. It is the last sentence of paragraph 92 where Mr Molefe says:

10 “I left the meeting deeply concerned that the President of the country was personally interfering in the operations of PRASA when the issue at hand, clearly fell within the purview of the Board.”

MS PETERS: Number?

ADV VAS SONI SC: Paragraph 92, it is the last sentence of that paragraph. Did you entertain such concerns?

MS PETERS: Chairperson, like I indicated that everybody raised their issues and then, if this is the impression that Mr Molefe left the meeting, it is his impression.

20 But like I indicated earlier on, there was not - that indication in his input, when he closed after, I think like he had spoken, and when he was dispelling some of the things that like he had said, and then he then said at the end that him as the Chairperson would want to invite the President and the Minister to visit PRASA House and meet with the

Board and meet with the executives, and after that, go on a field visit or a site visit.

And that is the end, if I have to recollect everything that happened in the meeting, and if Mr Molefe left the meeting deeply concerned, I think he should be correct, if that is the impression that he got.

CHAIRPERSON: So are you in a position to say or are you not in a position to say nothing happened in that meeting that should have given him that impression. In
10 other words, are you able to say, well, he says he got that impression, but I think nothing happened or was that justified that impression, or are you going to say, look, I do not know it is the impression he got I am not able to say whether it was justified or not, or, well, I can understand his impression, you know that impression he got. I just want to know what your own understanding is?

MS PETERS: Yes, Chairperson I can understand his impression.

CHAIRPERSON: Yes.

20 **MS PETERS:** Because when Lucky was speaking, he gave a litany of all the things that he did since deployment in the transport sector, and even up to where he left, and even in my own view, there was a statement that he made at the end, which created an impression that he is wishing to return to PRASA, and I am saying that based on other

activities outside this particular meeting.

There was even in my own view, an impression of a wish on the part of Mr Montana to return to PRASA because there was a statement that he made, that he says:

“If I can be allowed back, this is what I can do to take this organisation further.”

And it was at that point that I spoke and indicated that the Board has - he applied for his end of contract, the Board accepted it, and unfortunately, because of the relationship
10 between him and the Board it was then fast tracked, and that is it.

But also, because there were lobbyists outside, outside, not necessarily in this meeting, outside, because the outside the external factors also have bearing in whatever we can think of.

CHAIRPERSON: The lobbying that you refer to that you say was happening outside, and therefore not necessarily in the meeting, but outside. Was it a lobbying for his return to PRASA or what lobbying was it?

20 **MS PETERS:** There was lobbying for him to return to PRASA and he was actively lobbying.

CHAIRPERSON: Yes.

MS PETERS: He himself he was actively lobbying to return to PRASA.

CHAIRPERSON: Okay.

MS PETERS: There were those that gave him a hearing, there were those that did not encourage him, and I think he was aggrieved by the many also who did not encourage him to return, who were not necessarily in favour.

But he, in essence, my own impression was that he submitted his resignation, probably expecting a different outcome, maybe expecting the Board to say, oh, please do not go. But unfortunately, the Board then accepted, and then said, we will - let us give us an additional six months, 10 and before the end of the six months, the Board then - you see my own view outside now outside the PRASA establishment, but as a Minister and seeing what was happening, I thought that because there were marches by people, and calls for him to return. Others obviously saying his return is in their best interest and all those. But in this particular meeting, that is why I am saying the external factors might have had a bearing on the impression that even at the meeting, because Lucky in his statement, made reference to the fact that if I am allowed 20 to go back, and it is at that point that I then said, the Board's decision must be respected.

CHAIRPERSON: Mr Soni.

ADV VAS SONI SC: As you please Chairperson, Ms Peters before I deal with the next set of issues. That is the reappointment of Mr Colin Letsoala as the acting CEO.

MS PETERS: Just a corrections sir, Chairperson Letsoala.

CHAIRPERSON: Yes, well I always say we must all try our best, I know I am not the best at...[intervene]

MS PETERS: Maybe for purposes of this process, we can allow Advocate Soni to say Colin.

ADV VAS SONI SC: No I am going to find my...[intervene]

CHAIRPERSON: It is not complicated, it is easy.

ADV VAS SONI SC: Yes.

10 **MS PETERS:** Oh, okay thank you.

CHAIRPERSON: Okay, alright.

ADV VAS SONI SC: Now, that is the one issue. The second issue is the concerns you raised about advertisements and the third issue is the dismissal of the Board. Now before I go into what Mr Molefe alleges...[intervene]

CHAIRPERSON: Well I am sorry, Mr Soni are moving away from the meeting?

MS PETERS: Yes.

20 **CHAIRPERSON:** Okay, alright no let me ask some questions on the meeting. Mr Molefe says this was a meeting that took very long, I think he says about six hours. I think he says that it was meant to start at five but ended up - or at four or three I cannot remember but ended up starting at 6pm and dispersed around 2am because the

President fell asleep or as you put it, he was exhausted.

Is that number of hours, does it accord with your recollection of how long the meeting took, more or less?

MS PETERS: I do not know what time we were called for the meeting but I remember that there was a stage where Mr Molefe said this meeting is taking too long to start I am leaving.

CHAIRPERSON: Yes, he said that.

MS PETERS: I said to him Dada Molefe ...[speaking in
10 vernacular], we have been called and let us come and here what we have been called for, and then when the meeting started unfortunately, I did not take time to record what the time was. But the meeting did start late. Later than it was intended, and it did finish around that time.

CHAIRPERSON: 2am.

MS PETERS: And unfortunately, like we say, exhaustion took over.

CHAIRPERSON: Yes, so you would not quarrel or would you with his estimate from six to 2am, 6pm to 2am?

20 **MS PETERS:** I would not quarrel with that because for some of us who have been working in the government environment for some time. There use to even be a joke made around that you know what time you start, but you never know what time, you finish.

CHAIRPERSON: Yes.

MS PETERS: So, yes Chairperson the meeting ended very late around 2am because I remember I arrived at my place of residence around past three.

CHAIRPERSON: Okay, alright and he also said, which you probably whether it might not have been in the affidavit, but he also said in his evidence that Mr Montana was allowed quite a long time to address, he had a prepared speech or notes, and I asked him how long he thought Mr Montana spoke.

10 If I recall correctly, he said he, his estimate is that Mr Montana, took about two hours. I hope Mr Soni I am right.

ADV VAS SONI SC: He did, yes.

CHAIRPERSON: Ja, he said he thought Mr Montana took about two hours addressing the meeting, which I thought was quite a long time. Is that, does that accord with your recollection or would you take issue with that?

MS PETERS: Yes, Chairperson he spoke for a very long time. He literally gave us the history and state of PRASA
20 address.

CHAIRPERSON: Yes, did anybody either prior to the meeting or at the meeting state what the purpose of the meeting was, thinking now the President maybe or maybe Minister Jeff Radebe, did anybody say why you were all assembled there? What purpose was sought to be

achieved by this meeting?

MS PETERS: I want to say there it was a very clear indication, because I had made this Minister Jeff Radebe about intervening with a talking and cautioning Lucky about this. I did not know that we are going to be meeting with the former, Group CEO I knew that, there is going to be Mr Molefe, myself, the President and Minister Jeff Radebe there in his capacity as the Minister in the presidency responsible for performance monitoring and evaluation.

10 **CHAIRPERSON:** Yes.

CHAIRPERSON: And I also believe that because I had then said to him, I would want him to caution Lucky to stop this public spats because I am speaking to Mr Molefe on the other side, then he would have succeeded in that and probably give us an indication on that. But other than that, there was a lot of activities also, in the presidency, that Minister Jeff Radebe was easy with that involved work from PRASA and Transnet which was related, he was an envoy of the President on the AU North South Corridor Project.

20 So I did not read a lot into - because the meeting did not have a written agenda. It was a meeting with the President convened by the Minister and the President.

CHAIRPERSON: And the question of the public spats between Mr Molefe and Mr Montana was that discussed at the meeting as an issue, as opposed to he mentioned in

passing?

MS PETERS: It was raised as an issue that they were weakening, they had weakened the organisation because these were two leaders from the institution.

But now that the former Group CEO was no longer there it meant it was another matter that probably Minister Jeff Radebe and the President was dealing with him. At that time, he was already out and in there, because it was - remember he left around mid-July, and it was already the
10 20th of August.

CHAIRPERSON: But you know the meeting took quite long and one is trying to understand what was really covered in such a long meeting, and the impression I get from Mr Molefe's evidence, and maybe it is more than an impression is that an important part of the purpose of the meeting appears to have been that the President wanted the Board to revisit its decision to release Mr Montana, or wanted the Board to rescind that decision, and Mr Molefe's evidence is to the effect that that is why he made that
20 invitation to the President to say, Mr President, you must come to the Board yourself and address this issue because he was not prepared himself to say in that meeting, that the Board would rescind the decision.

He says that is the context, that is how it came about, that he invited the President to come and address

the Board, and that seems to me to tie up with your evidence that says at that meeting, there was an issue of - there was a discussion of what the rationale was, for the Board's decision to release Mr Molefe, what do you say to that?

MS PETERS: Come again Chairperson?

CHAIRPERSON: I am saying that Mr Molefe seems to suggest in his evidence that an important purpose for that meeting, seems to him to have been that the President
10 wanted the Board to rescind or revisit its decision to release Mr Montana, and Mr Molefe says it was because he was not prepared himself there, sitting there as Chairperson to say okay, we will do that.

It was because he was not prepared to say that, that he then invited the President to say, the President should come and address the Board on this issue. And I am suggesting to you that that evidence by Mr Molefe, that suggestion, seems to tie up with your evidence that one of the issues that was being discussed was the rationale for
20 the Board's decision to release Mr Molefe early.

MS PETERS: Mr Montana.

CHAIRPERSON: What do you say to that?

MS PETERS: Mr Montana, Chair.

CHAIRPERSON: Mr Montana, yes. What do you say to that, I saying it gives me that impression that Mr Molefe's

evidence, may well be correct, the President to come and address the Court on the rational of the Court unless somebody wanted the board to revisit or rescind its decision.

MS PETERS: Chairperson I am trying to page through the notes that I have made ...(intervenes).

CHAIRPERSON: That you made.

MS PETERS: ... at that particular meeting and because of time I am struggling to get – because also ...(indistinct) I
10 have got lots of notebooks that I used to use.

CHAIRPERSON: Yes ...(intervenes).

MS PETERS: So in one of the notebooks I do have the actual notes that give an indication of that particular meeting and how – if you can give me just one ...(intervenes).

CHAIRPERSON: No we can give you a chance to get the notes that you wish to have.

MS PETERS: Thank you, 30 seconds. Like I indicated Chairperson, Mr Moli – not Mr Molefe – Mr Montana gave
20 us the history. That is why he spoke so long. The history of his work in PRASA and before then in ...(indistinct) of PRASA and how he transformed it to be PRASA and before then his work in the department as the advisor of Minister Radebe and all that long history.

And also he went into the history of the

modernisation program. How he got involved and what it is that he was doing there. And that in itself Chairperson, if you are sitting there listening, you would have realised that you are sitting with somebody who is building a case on why that organisation needs him.

And if there is an impression on the part of Ntato(?) Molefe that probably before our meeting there might have been a discussion. But in our meeting it was not there. But if the impression was created, I then came in after
10 Montana spoke. It is spelled there to say, you have resigned and the board accepted your resignation.

And I support the stance of the board on this matter. It was a very short statement and I concluded on that. And unfortunately for President Zuma as the person who – in whose premises we were, he had not had the chance to even reply and say anything with regard to these particular issues except for at the point where he was opening the meeting.

So that meeting was inconclusive. It did not have
20 an agenda. There was no minutes. And there was no follow up meeting to – of that nature. Except the invitations that we did to the President to visit PRASA which he did do at a later stage.

CHAIRPERSON: But the discussion that Mr Molefe talks about in his affidavit which he says or let me put it this

way. The discussion about the rational or the board's decision to release Mr Montana, did it happen after Mr Montana had made his presentation or before? The discussion about the rational or the board's decision to release Mr Montana. Did it happen after Mr Montana had addressed the meeting or before? If you are able to recall.

MS PETERS: After Montana addressed the meeting I spoke and Mr Molefe spoke. So I do not recall if the President – because the President was visibly
10 ...(indistinct). And truly speaking at the end even Mr Molefe was saying this is fruitless. (Indistinct).

CHAIRPERSON: (Laughing).

MS PETERS: Yes you will laugh because ...(intervenes).

CHAIRPERSON: Without saying goodbye to the President.

MS PETERS: Without saying goodbye to the President. I did not know ...(indistinct) in terms of being in the organisation, they are my seniors. They should have woken him up so and they did not do that. So when they
20 said the President he did not – we just quietly ...(indistinct).

CHAIRPERSON: Okay alright but just to make sure that you are able to say what you might wish to say. I am making this proposition to you. That on the face of it, it seems to me and it is a pity because President Zuma might

never respond to this in – before the commission. On the face of it, it seems to me that there might be credibility in Mr Molefe's version with that the meeting did discuss Mr Montana's possible return to PRASA. And that President Zuma – Mr Zuma spoke in favour of the board, allowing Mr Montana coming back.

I am saying on the face of it. I have not made a decision. I have not made a finding. I am saying on the face of it because you have a situation where somebody
10 who no longer has anything to do with PRASA – who has left ...(indistinct). Comes back and is allowed a lot of time to address the President two minutes ...(indistinct) and the chairperson of PRASA board.

But he has nothing to do with PRASA anymore. And as you say in his long address he in fact as I understand – both what Mr Molefe said and what you are saying, he seems to have been saying look how well I have done as a PRASA group CEO in the past. You have certain problems at PRASA.

20 I can – this is what I can do about those problems and it seems he implies if he did not say so expressly, if I can be allowed to go back. That seems to be the crux of – the purpose of his address. And Mr Molefe says the President said at the meeting something to the affect that this is talent that should not be lost to the country.

And then there is – and he says the President wanted the board to revisit or rescind its decision to release Mr Montana. And then both – and then you say the yes the domestic did discuss what the rational was for the board's decision to release him.

So if you look at all of that, it seems probable that somebody must have said you people – the board must revisit your decision to release this man. It should not be lost ...(indistinct). And then when you link that with Mr
10 Molefe's evidence that I invited mister – President Zuma to come and address the board on the rational – on his rational or releasing Mr Montana.

It seems quite probable that the position must have been that President Zuma wanted Mr Montana to be taken back on these facts. Are you able to comment on that?

MS PETERS: If you allow me Chairperson I could probably belt onto what you are saying.

CHAIRPERSON: Yes.

MS PETERS: Chairperson when the board of PRASA -
20 through the chairperson - Mr Molefe in informed me in early 2015 about the eminent departure – that time they had not even discussed the dates of Lucky Montana. They were couple of months as the board in office and he told me that he had a discussion with Lucky and Lucky indicated to him that he has been with PRASA with a very

long time and he thinks it is about time that he goes.

I then discussed with the political stakeholders because at that particular time chairperson they were four CEOs who were in the same position that Lucky and the PRASA institution or PRASA company was in. Whose contracts were about to end and I then in my discussion with the political structures – I indicated to them that we are now at this point in the country where we have got – and I am happy to indicate to you Chairperson - the
10 national transport master plan.

We have got the rail policy. We are working on the ...(indistinct) transport economic regulator which was going to consolidate regulation of the entire transport factor. And now we have got people with institutional memory, experience and expertise in this particular field. It is important that as the African National Congress that has invested in these individuals, we should not lose them to the private sector.

Where they would come back and be consultant at
20 exorbitant amounts to Government. I even said in my history of deployment – in my experience of deployment I have realised that if you deploy people – like for example we have just concluded on the rail policy. We concluded on the master plan.

If we take new people who are clean slates, the

implementation will take very long. And Chairperson you would have realised and transport – national transport master plan was under consideration for 2015. And after 10 years it was adopted by cabinet ...(intervenes).

CHAIRPERSON: From 2005?

MS PETERS: 2005.

CHAIRPERSON: Ja.

MS PETERS: And now it was 2015. And now we had it in place. The ...(indistinct) transport economic regulator
10 equally so. We were busy with different instruments to make it possible that we can reform and transform the transport sector. If Chairperson you would allow me I can submit some of those documents as supplementary evidence.

I discussed with them. I had discussed equally with the President of the Republic to say to him, Mr President you have got this expertise in the transport sector. And you would not want to lose it. In fact I even advised the President that in your advisory team some of these people
20 can be considered for that. And I still maintain Chairperson that the challenge we have with service delivery in the country is primarily because we chop and change.

Today you do this. Tomorrow it is Dipuo doing this and Dipuo does not know where you ended because

sometimes our handover is not even amicable. So it was for that reason that I spoke to the President. I even advised him that as the Chair of the north south corridor, some of these people would be able to help you.

One of them was the former CEO of the Cross-Border Road Traffic Agency. And incidentally my last in office I signed off some of the ...(indistinct) or RPMP as part of the ...(indistinct). So that they can then concentrate on dealing with the challenges of bad breaks.

10 We even signed an agreement with the Minister of Zimbabwe on the 16th June. Very important date because we believed that we talking about the future of the continent and the future of our region started.

The country ...(indistinct), we complaining about the long of time – length of time that these countries that are landlocked struggle to get their goods to Durban because they have to pass through South Africa. And the challenges they have with the attacks and the hijacks of the trucks on the M3.

20 We are busy with part of that ...(indistinct). So I said and I can mention the agencies that we dealing with. It was Sanral. If you look at the infrastructure in roads in Sanral. We were communicating with provinces and municipalities that they give ...(indistinct) some of their roads to Sanral.

But the funding model we were working on
...(intervenes).

CHAIRPERSON: I am going to stop – just stop. I am going to stop you. But you might get a chance to deal with those issues. But I understand you to be saying – to making response to the proposition I put to you based on Mr Molefe's evidence. I understand you to be saying, you understand what Mr Molefe is saying and you can add by saying even the discussions that you have had with the
10 ANC – I think that is what you mean – and the President about the need to retain some of the expertise.

You would not be surprised if indeed the President wanted Mr Montana to be – wanted the board to consider reviewing its decision or revisiting its decision. It is my understanding of what you are saying correct?

MS PETERS: It could be correct Chairperson but it could also be speculation. Because Chairperson I had gave an indication, if there is anybody who at fault it is then me who went to the President to say we cannot lose these
20 people.

CHAIRPERSON: Yes.

MS PETERS: And in my saying we cannot lose – in fact there was no mention to the President about Lucky going back to – even that time he had not even left. We were looking at him for other areas based on his experience and

how do we utilise this experience, this capacity, this knowledge. Some of them have even gone internationally to do benchmarking studies. To do understudies on how we address some of these challenges in the country.

And I believed that now we have rail policy. You need this person called Lucky Montana with his knowledge and expertise in rail. Even if it would ended – have ended up him being my advisor. Incidentally Chairperson in conclusion, I once even joked with him – Mr Montana – and
10 I said if you look at the country futuristically, one day you will be the Minister of Transport.

Does it mean that I was lobbying for him to be Minister of Transport? I was saying it because I know that he knows the sector.

CHAIRPERSON: Okay alright I – can I – would it be fair to say you do not take issue with what Mr Molefe says in his evidence in this regard or can I say you do take issue?

MS PETERS: I do not take issue because it is him – his impression.

20 **CHAIRPERSON:** Yes but he goes more than the impression. But also the – what I put to you. You know the rational or the board's decision being discussed. Being ...(indistinct) that the President should address ...(indistinct). You understand the logic around that.

MS PETERS: I understand Chair.

CHAIRPERSON: Yes okay. Mr Soni?

ADV VAS SONI SC: It is matters concerned I want to raise with you. I understand ...(indistinct). While the Chairperson is asking you questions you were going through books you said constituted your notes you have made. Now is your answer yes?

MS PETERS: Yes Chairperson.

ADV VAS SONI SC: Now you knew that you have those notes at the time you made this affidavit of yours in
10 response to what ...(indistinct).

MS PETERS: Chairperson in my affidavit I did say that there are documents that are all over that I am trying to locate. And I even stand indicate here that I am prepared to give documentary – documents to the other information that has since come to the fore.

The secretariat of the commission would remember that there are certain documents of cabinet that we even had to request cabinet to declassify before we could present them. And I think Chairperson – you know
20 Chairperson just to clarify this. I left the office on the 30th July – not July, March 2017.

And now I have got to read through these as I pick them up and some of them then informs this particular ...(indistinct). So the recollection of the ...(indistinct), I even indicate that it would be from memory. And now that

even some of these notes, they are not official notes. They are just my notes as I scribble when the discussion is unfolding.

So if the evidence leader believes that I should have attached those notes I would request the Chair - but I do not know whether they will make sense because ...(intervenes).

CHAIRPERSON: Yes, no, no that is fine. Any material that was not available to you when you prepared your
10 affidavit which you believe is relevant or important for either your version or somebody else's version, feel free to – your counsel will talk to you ...(indistinct). Affidavits can be made or supplementary affidavits where you can attach them.

That will be the question of how important they are to be looked that. Thank you.

ADV VAS SONI SC: Ms Peters I am afraid I am making a different point ...(indistinct).

CHAIRPERSON: Bring the mic closer. No it is on but you
20 – your voice ...(intervenes).

ADV VAS SONI SC: I am sorry Chairperson. I will just repeat the proposition. I am making a different point that I must make. You see when I asked you about your response to Mr Molefe's affidavit as it appears in your affidavit, the one we dealing with today. I said to you that

it is not in much detail and it does not contain a response to everything he said.

Now the reason I am putting this proposition to you is, before you made your affidavit those notes were available to you and I only making the proposition, I am not going to ask you why. You obviously did not consult those notes when you made your affidavit. Is that correct?

MS PETERS: Chairperson like I have indicated, some of these books they are in boxes and whatever. I managed to
10 get records that were relevant to the sections, the commission ...(indistinct). And at that time Chairperson I had not got an opportunity – in fact Chairperson I must give you an indication. I had to put aside which – to just page through everything that is a paper.

When I see a word PRASA and put it aside so that I can sift through it to be able to get to some of this information that I have. And that is why earlier Chairperson I said to you, I am prepared to file supplementary affidavit based on the information and
20 incidentally some of the information I even got last night from the Department of Transport.

So it – in essence it shows that we get information as and when it is possible. And also I want to give thanks to Honourable Minister Mbalula and his team for this helpfulness for them. We even sitting on weekends to be

able to sift through this information, who helped me to get some of the information.

That is why my plea Chairperson is that I be allowed to give supplementary affidavit so that the information that is sought by the evidence leader can then be brought to your attention. But I just want to upfront indicate, some of the notes like I indicated, if you do not sit with me it will not make sense to you.

But they will make sense to me because I am make
10 those notes.

ADV VAS SONI SC: There is no request for the notes. You are more than welcome to file a supplementary affidavit based on notes. We will accept the correctness of what you file. It is just that I did not realise that there were those notes that might have been ...(indistinct). But you have explained why you did not ...(indistinct). Now I ask you, this meeting took place ...(intervenes).

CHAIRPERSON: I am sorry I think Mr Madlovo wants to say something. But if your mic – the ones attached to the
20 desk does not work – that one. Just press it on.

MR MADLOVO: I am told this one works.

CHAIRPERSON: Okay, alright you can use that one ja.

MR MADLOVO: Chair I think maybe we should not step off this point. Because an aspersion intentional or otherwise seems to be cast and I feel quite strongly about

it. Chair would remember that the only time during which Ms Peters reached ...(indistinct) for her notes was when Chair ...(indistinct) and said, firstly would you quibble with Mr Molefe's estimation of how long it took. Six hours seems to be a lot of time.

And then she explained that he gave us a full lecture about PRASA and, and, and. And she reached to try and see to what extent was the issue of the rational discussed. It is an issue that arose here. And it was in
10 that context that she was paging through. I do not know Chair if you observed.

There was a time at which she asked you to repeat the proposition.

CHAIRPERSON: Ja.

MR MADLOVO: Because you may have thought that she is not listening but she was paging through her notes to be able to say to Chair, on my notes this particular aspect enjoyed some measure of attention or not. I can state that the books that she is – she was referring to were not
20 available at the time that the affidavit was compiled. And I just needed to make that point.

CHAIRPERSON: No, no, no that is fine. I certainly will not have any difficulty with the fact that she made reference to her notes which she says she did not – was not available at the time. I do not have a ...(indistinct).

MR MADLOVO: I am happy then.

CHAIRPERSON: So I did not understand Mr Soni to be casting any aspersions on her. Maybe I did not understand but on the face of it I have no issues with what ...(intervenes).

MR MADLOVO: I am happy ...(intervenes).

CHAIRPERSON: And the explanation she has given.

MR MADLOVO: Yes. I think Chair it was only insofar as Mr Soni said, I am asking a different question and I repeat
10 it, and then he said my concern is this. So I was simply trying to clarify that concern to the extent that it is a concern. If we left it unattended it might have given a different impression. I did not want to make assumptions Chair.

CHAIRPERSON: Ja okay.

MR MADLOVO: But I am happy that we can accept it on that basis.

CHAIRPERSON: Ja ...(intervenes).

MR MADLOVO: Thanks Chair.

20 **CHAIRPERSON:** Okay thank you.

ADV VAS SONI SC: Chairperson with respect you are absolutely right no aspersions. I am entitled to ...(indistinct) that you may have had the ...(indistinct). She has explained since, I acquired them recently.

CHAIRPERSON: Yes.

ADV VAS SONI SC: But we can leave that.

CHAIRPERSON: Ja.

ADV VAS SONI SC: May I Ms Peters go to the date of the meeting. Now this meeting was on the 20th of August 2015, am I right?

MS PETERS: Correct Chairperson.

ADV VAS SONI SC: I want to ask you to please and this is evidence that chain before the commission in the last two to three weeks because it was given by witnesses who
10 dealt with what had been happening around that period in Parliament. I would like you to – Mr Chairperson I am going to refer the witness to certain statements made by Mr De Freitas when he gave evidence.

Not many of them –they provide a context which in my submission is an important context that what happened at the meeting should be considered against.

CHAIRPERSON: Yes, no, no that is fine. Before you do that, there is just one, two more questions I want to raise with Ms Peters. I am sorry Ms Peters I am taking you back
20 to the meeting. Do you recall whether at the time of that meeting of the 20th August 2015 there were already allegations that were being made at against Mr Montana for - relating to the time when he was group CEO of PRASA, relating to allegations of corruption and so on and whatever other allegations of wrongdoing. Do you know

whether at – those allegations were there.

MS PETERS: Yes Chairperson they were there. There were media reports. At that particular time there was a call from myself to the Auditor General to do an investigation based on his audit outcome. And the issues that he flagged as findings, even those that he saw as repeated findings in the audit outcome.

CHAIRPERSON: Now President Zuma at the time, I am sure would have been aware of those allegations as well,
10 wouldn't you say? They were in the public domain and maybe they were in reports, maybe in your report back to him, you ...[indistinct] you would have raised them. Are you able to say or you are not able to say whether he was aware of those allegations or would have been aware?

MS PETERS: I think he was aware because they were in the public space.

CHAIRPERSON: Yes, yes.

MS PETERS: Yes. And there, there was a meeting before then where I had taken the President through some of the
20 litigation and other so-called corruption cases in the, in the department plus also in the entity. So I gave, I gave him a report. I did give him a report to that nature.

CHAIRPERSON: Yes.

MS PETERS: In fact to his defence, he actually gave us a proclamation for the SIU on matters, some of the matters

that were addressed.

CHAIRPERSON: Yes. I know that you have given your evidence about where you stood on the issue of Mr Montana or on the issue of Mr Montana's possible return to PRASA. You have said that you made it clear at the meeting that you supported the decision of the board to release him. Now to the extent that according to Mr Molefe, President Zuma wished or pushed for or argued in favour of the board revisiting its decision to release him.

10 Or sought that the board should rescind that decision to release him which obviously would have meant that he would come back as Minister of Transport. I would have thought that you would have considered that not appropriate to return somebody to PRASA who had left and in against whom there were various allegations of corruption, or wrongdoing that had not been resolved as yet. Would it be fair to say as Minister, that would be your attitude?

MS PETERS: Yes Chair.

20 **CHAIRPERSON:** That would be your attitude. Yes, okay. Alright. Mr Soni.

ADV VAS SONI SC: Yes. I was getting to that point and I will, I will raise that question again.

CHAIRPERSON: Okay, alright.

ADV VAS SONI SC: But Ms Peters you have said to the

Chairperson yes these matters where in the public space and so on. I just want to go raise with you what had been raised in parliament, and that is the evidence that was given in this Commission in the last two or three weeks ago. None of us was present except the Chairperson, so he will remember the evidence. And I just want to place it on record so when the Chairperson is looking at the different strands he is able to pull them together to the extent that they are connected. May I ask you to look at

10 Parliamentary Bundle 3 please?

MS PETERS: Yes.

ADV VAS SONI SC: Have you got it?

MS PETERS: Yes Chairperson.

ADV VAS SONI SC: Will you look at page 368?

CHAIRPERSON: Did you say Bundle G or 3.

ADV VAS SONI SC: Bundle 3 Chairperson.

CHAIRPERSON: Okay.

MS PETERS: 368.

ADV VAS SONI SC: Have you got page 368?

20 **MS PETERS:** Yes Chairperson.

ADV VAS SONI SC: The one on the left-hand side.

CHAIRPERSON: What is the page?

ADV VAS SONI SC: Page 368 Chairperson.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Chairperson what I intend doing and I

don't intend being long, but it is important that one knows that it was not only happening in the newspapers, it was happening at one of the arms of Government. So if you look right on top, the, there is a date which is the 4th of March 2015. Do you see that Ms Peters?

MS PETERS: Yes Chairperson.

ADV VAS SONI SC: Okay. I'll just read this to you and ask you if you aware of it. Is in the National Assembly Plenary of the 12th of March, I am and this is Mr De
10 Freitas:

“Called on the House to debate how PRASA did not comply with the processes, processes and procedures in the ordering of the new locomotives, rolling stock and how this took place and the impact it had on the project and budget in this regard.”

Now that was a matter that was raised in the assembly. Were you aware of that?

MS PETERS: Yes I am aware of this Chairperson.

ADV VAS SONI SC: Alright. Then I am just placed that,
20 that parliament, that Mr De Freitas had raised that in the assembly.

MS PETERS: Yes Chairperson.

ADV VAS SONI SC: Okay. Then would you go to the next one which is the 7th of July 2015. He says, this is Mr De Freitas says, that:

“On the 7th of July I wrote to Minister Peters about replies to my question submitted under the name of my colleague Mr Imbubu about the dimension of the new locomotives. Said I had received the replies from Minister Peters on the 6th of May and he then at the end of that paragraph says, Minister Peters’ in her reply stated the new locomotives are not different in any form. The new locomotives are within the required scale.”

10 Is, was that your response to Mr De Freitas?

MS PETERS: Chairperson I will have to go back to the record, because this has now been sprung on me. And I don’t remember. There were a lot of questions that were raised in parliament. And one needs to take this, because usually there is a response and then there is an explanation to the response.

ADV VAS SONI SC: No I understand. Okay, so you ...

MS PETERS: So I’ll go and check on this.

ADV VAS SONI SC: Let’s, let’s leave that now because
20 this, his complaint relating to your response is based on a newspaper report which appears on the next page. If you page over to page 369, and I don’t want to read everything. I just want to read two sentences from there. Right at the top it is said:

“The Class Afro 4000 was the first new locomotive

type to be acquired by PRASA. It was officially unveiled in Cape Town on the 1st of December 2018.”

That is what the report said. Then if you go to the last paragraph it says:

“The Euro 4000 locomotive was designed to operate throughout Europe and is 4,264 millimetres high above the railhead.”

Can I ask you, were you aware of this?

10 **MS PETERS:** Of this?

ADV VAS SONI SC: Of this allegation?

MS PETERS: Of this allegation.

ADV VAS SONI SC: Yes.

MS PETERS: Yes Chairperson. I was aware of this allegation.

ADV VAS SONI SC: Alright.

MS PETERS: And there was a process that they embarked upon with RSR which is the Rail Safety Regulator to find out how we arrived at this particular point. And

20 Chairperson incidentally I do even have a report, because it was in the public space, that is what we usually do as a courtesy and as part of protocol of cabinet, to alert the President to this particular issue.

ADV VAS SONI SC: Okay.

MS PETERS: And if allowed, I can submit that

documentation as documentary.

ADV VAS SONI SC: No, you are more than welcome.

CHAIRPERSON: Please face this side as you give those answers.

MS PETERS: [Indistinct].

CHAIRPERSON: Ja, okay.

ADV VAS SONI SC: Alright. On the following page at page 370, you will see that right at the bottom it says, on the 7th of July under the heading Montana denies claims
10 and aid in report story:

“On the 7th of July 2015 with 13 locomotives already delivered and following the huge press report about the excessive height of the Afro 4000 locomotive, PRASA’s CEO Lucky Montana denied that the locomotives height was too tall and insisted that PRASA had followed a strict design review process.”

Now that was in the public space and it was what you knew about that as well.

20 **MS PETERS:** I knew about this. That is part of the investigation that RSR was dealing with.

ADV VAS SONI SC: Okay.

MS PETERS: But also equally Chairperson, this matter formed the basis of some of the issues that were put in the terms of reference for the forensic investigation by the AG.

And I can make that also available if allowed.

ADV VAS SONI SC: Yes. Then on the 8th of July, right at the bottom it says:

“Mthimkulu qualifications found to be fake.”

And he says on the 8th of July, now this is Mr De Freitas reporting. Sorry giving his evidence or his affidavit, he says:

10 “The media story broke that the head of PRASA Engineering Services, Daniel Mthimkulu had lied about his qualification.”

And he then alleges that the response from PRASA was to defend Mthimkulu without proving that he indeed had the prerequisite qualifications. Now that is not a matter that concerns you. I am just saying that in the public space, this contract now perhaps it is a good time to place on record, that this was a contract for 3,5 billion rand. Is that correct?

MS PETERS: Yes. Yes Chair.

20 **ADV VAS SONI SC:** It is what then became known as the Swifambo contract.

MS PETERS: Yes Chair.

ADV VAS SONI SC: And just again to put it in context. That contract was set aside by the High Court, set aside, which was confirmed by the Supreme Court of Appeal which found there was corruption in the, in the award of

the tender. And that Swifambo was a fronting company for Vossloh of Spain. Is, is that correct?

MS PETERS: Part of that document that I was saying are available for the Commission.

ADV VAS SONI SC: Then ...

MS PETERS: What we did as a department with regard to this matter.

ADV VAS SONI SC: Then on the 14th of July 2015, that the note in respect of that says, that:

10 “Mr De Freitas on the 14th wrote a letter to the chairperson of the Portfolio Committee. The first was to request to summon Minister Peters before the Portfolio Committee. And the second to request that Mtimkulu be summoned to appear before the Portfolio Committee.”

I have raised all of this because these are not matters that were happening in our of the public glare, and they were not happening in unofficial circles. They were happening in the house in which are laws are known.

20 **MS PETERS:** Chairperson, just a correction. These matters were deliberated on, between the chairperson and Mr De Freitas, as well as in the Portfolio Committee. And Chairperson I would not want to respond for the Portfolio Committee, because as, as members of the executive we get invited to the Portfolio Committee. So if the Portfolio

Committee did not invite us to come and address this particular matters, I cannot address it yet Mr Chair. And, oh let me leave it there.

ADV VAS SONI SC: Well then can I ask you in response to that, did the Portfolio Committee not invite you to address this issue as requested by Mr De Freitas?

MS PETERS: I don't remember ever being invited by the Portfolio Committee. Chairperson, the parliamentary systems also operate on the basis that many stars have got
10 what is called parliamentary license officers, who sit in, in this committee meetings and would bring reports of what trans – what the decisions of the committee is. So and at times they would have access to the minutes. So if the decision is not made at the committee level, that the Minister must be invited, then it would then mean that the Minister would not be invited. But at any given stage Ministers get invited to present the quarterly reports to support or sit and listen in on entities when they present their reports. If the Minister is not there then the DG or
20 the Deputy Minister or any other official from the department who has got relevance in whatever is being discussed, he or she would then go and represent the department.

ADV VAS SONI SC: Then on the 30th if you look at page 372, on the 30th of July, Mr De Freitas tabled a motion in

the house of assembly, requiring, raising, raising questions about the answer you had given. [Indistinct] and he then says, you, he alleges that you supplied incorrect information, which you did not correct. And he asked that you be called before the Powers and Privileges Committee, or that they investigate you and he says the Powers and Privileges committee blocked that motion. Are you aware of that?

MS PETERS: I am totally not aware of that Mr Chair.

10 **ADV VAS SONI SC:** And Ms Peters, can I just and I want to give you this assurance, none of this is intended as a criticism of you. It is merely saying that around the time of this meeting, these were the facts or these were the matters that were going on in the public space. This is to give context to what happened prior to the meeting of the 20th of August. Then on the 12th of August, then on page 372 Mr De Freitas says that:

20 “Replies from Minister Peters who my questions are relating to Mr Mtimkulu, he may have given his peers the impression that he had the necessary qualifications.”

Can you remember giving that reply?

MS PETERS: Yes Chairperson.

ADV VAS SONI SC: Ms Peters, now I am obliged to ask, we had a 3,5 billion rand contract, this - the version

everywhere is that the person who developed the scope for this locomotive was Mr Mtimkulu. Is it now said that he had a fair qualification. And you are asked or your department is asked to look into this. What steps were taken as soon as the department and PRASA became aware that these were the allegations relating to Mr Mtimkulu?

MS PETERS: In fact Chairperson at the time when this issues of Mr Mtimkulu were picked up, I had instructed all
 10 entities of the department to do as skills and qualifications and competencies audit, based on that SOE reform process that was unfolding so that we can match and place people according to their qualifications and their competency. Unfortunately at that particular time we had not received the responses from PRASA. But I want to indicate if I have to go back to this question which I see for the first time here today that it has, it is a matter for, for the Commission. Chairperson if, if you read the question, I indicated in that, that Mtimkulu may have given his peers
 20 the impression that he had the necessary qualification, and thus without being detected slipped through the verification, verification process. Secondly, we go ahead and I quote, PRASA Rail indicated to me at that time because Mtimkulu submitted his resignation. That they will not accept his resignation, because they wanted to pursue criminal and

fraud charges against him. And that is how I left it Chairperson.

ADV VAS SONI SC: Now this is the 12th of August, the, the – your response. Eight days later is the meeting at the Presidential guesthouse relating to a possible re-employment of Mr Montana. Were these issues raised at that meeting? By anybody?

MS PETERS: They were not raised Chairperson.

ADV VAS SONI SC: Now you were aware of them.

10 **MS PETERS:** Yes I was aware of them Chair.

ADV VAS SONI SC: And, and Ms Peters I am sorry I must ask you this and I know you will say it is unfair, but I just ask you this because did you not think that until these clouds had been cleared regarding a 3,5 billion rand contract, the question of Mr Montana's going back to PRASA should not even be on the radar screen?

MS PETERS: I will not say it was on the radar screen of the, the, of me or the ministry, or even the board. And that is why Chairperson, I impressed at the meeting of the 20th
20 that the board acted – Mr Montana resigned. The board accepted his resignation. And in the process of the time that the board had requested him to stay on, there were issues that cropped up. This was some of those issues. And the media reports, the auditor general report and that lead to the decision of the board, which I accept. And, and

Chairperson the issue of Mtimkulu like I have indicate, the company did indicate to me that they are pursuing criminal and fraud charges against this particular individual, at that particular time.

ADV VAS SONI SC: So the question I am going to now, my next question in that regard is, forgetting what you said at the meeting, in your own mind when the question, when Mr Montana said at the meeting, but I can do so much for PRASA, PRASA will benefit from me. Forget what you
 10 said. Does it not occur to you that this might not be the right thing to do in respect of two things, one is PRASA. But in respect of having regard to proper governance, that until this cloud is, is removed, we should not be seemed to be putting people like this in power?

MS PETERS: Chairperson, at that particular time and it was even in the media space, I had asked the auditor general to do a forensic audit and lined out some of these issues related to mal ...[indistinct], corruption that was happening and not following due process in dealing with
 20 supply chain issues at PRASA. And at the same time there was this audit, the skills and competency audit. And at the same time the company had given me, the company at that time was under Mr Molefe, had given me an indication that PRASA is busy with criminal and fraud charges against Mr Mtimkulu. And I left it at that Chairperson.

ADV VAS SONI SC: Now I am asking you ...[indistinct]. I am saying at the meeting of the 20th of August, Mr Mtimkulu did not ...

CHAIRPERSON: Your voices.

ADV VAS SONI SC: Sorry, sorry Chair.

CHAIRPERSON: Is down Mr Soni.

ADV VAS SONI SC: Sorry.

CHAIRPERSON: Yes.

ADV VAS SONI SC: At the meeting of the 20th of August,
10 Mr Mtimkulu did not feature. It was Mr Montana and you've already said that Mr Montana was saying it may be that he can contribute to PRASA. I am not asking for what you said, but I am asking and I am testing your state of mind, did you not think that it would not be appropriate to take him back until this cloud had been lifted?

MS PETERS: Chairperson, already at that time we had accepted the board's decision to release Mr Montana. In my mind the issue of him returning to PRASA did not arise. Especially in view of the fact that I said there were four
20 other CEOs that were engaging on with regards to the transport sector as a whole. So at no given stage did I create the impression that I am pliable to consider, even when Mr Montana was, was lobbying aggressively for him to return to PRASA. But there was no entertainment of all those lobbies that were happening. So I think a person is

free to lobby whoever he wishes to lobby. The reality is, PRASA is an entity of the State. It is not the private property of Mr Montana where he can go and, and come back as he wish. And there was no way in which I was going to say to the board, bring back Mr Montana. It, it never, and Mr Molefe can tell that I never went to them to say bring back Montana. Because there was all these investigations that was happening and in any case at that particular time. There was a lot of investigation. In fact
 10 the late AG once even said to me, that the officials at PRASA, the functionaries that have got to provide information for all these investigations, will suffer investigation fatigue.

ADV VAS SONI SC: That is on account of the number of investigations ...

MS PETERS: Investigations.

ADV VAS SONI SC: Which is because the amount of fraud.

MS PETERS: Yes.

20 **ADV VAS SONI SC:** Now we can take it that this, the question of the propriety of Mr Montana coming back to PRASA was not discussed. Is that correct?

MS PETERS: Maybe in, in ...

ADV VAS SONI SC: No, no, no. I am not saying that the – sorry I am not cutting you. I just want you to answer the

wrong question. I am saying the propriety, not whether he should come back, we know that was discussed. But where the propriety of that was not discussed. I am going – we are going to break for lunch. I just want to leave you with this proposition. Isn't that one of the problems that we as a country find ourselves that that at those meetings, private meetings, we don't articulate these concerns about proper governing. I, I leave, I am not criticising you, I am asking because the Chairperson will want to look at what
 10 recommendations he should make in regard to this and it would help.

MS PETERS: I would say Chairperson, the fact – I am trying to process the evidence leader's question properly so that I respond well Chairperson. The issues of governance were raised and that is why Chairperson you would remember I gave an indication that the board, what the board process was. The other thing Chairperson was that in that particular meeting, like I indicated there was no specific agenda. And after the long list of issues that Mr
 20 Montana raised, there was no opportunity to almost like go through each one. Because in my view Mr Montana was building a case for himself. In fact when I left that meeting, I said, for the information that Mr Montana has I think he has got a good framework for writing a book about his time and what he has done at PRASA. If, if he believes

that it is PRASA, because I was looking at him in relation to the transport factor, because he did not start with PRASA. So and, and I still believe that as individuals we don't when we are deployed in a position, it is no – it does not become our feetstom(?). It becomes a responsibility that you need to carry out up to where it is possible based on the laws of this country, the policies and the programs that are in place. And that is why for me it is, it is, it is interesting that the President has got a performance
 10 agreement and we follow that. The board had a performance agreement with Mr Montana. And they needed to follow that. And they, these would be issues that also come the supplementary affidavit that I am speaking about Chairperson.

CHAIRPERSON: Well Mr Soni was saying that he is not criticising you about not raising the question of whether it would be appropriate to return, to allow Mr Montana to return. But I do want to say this. That one of the things that I'm keen to establish is whether to the extent that I
 20 might find at the end of the work of the Commission ...

MS PETERS: Pardon.

CHAIRPERSON: That Mr Zuma as President of the country may have done or engaged in certain wrongdoing which may have been, may have assisted or enable State capture or that may have enabled acts of corruption to happen and

to flourish. I want, I will want to know if I come to that finding, but we need to talk about it before the Commission's work is finalised, because when I make that finding I won't have a chance to call you back or any of the witnesses back. So we have got to say, I have got to say, what will I say in my recommendations if I make this kind of finding? So I will, one of the questions that would arise is, was there anything that prevented Ministers to say, no but this is not right Mr President. In this context of what
10 you are talking about, if as Mr Molefe says in his evidence, Mr Zuma as President in that meeting of the 20th August 2015, did push or urge the board to revisit its decision to release Mr Montana, or to take him back, despite the fact that on your evidence he was aware that there were all kinds of allegations of corruption and wrongdoing involving Mr Montana. The question arises whether you should not have said, apart from saying you support the decision of the board which you have made it clear, you said. But President how could you ask the board to change its
20 decision when there all these kinds of allegation of corruption that have not been resolved against Mr Montana? You, you understand the context. So, so one wants to find out those who were within the cabinet, what did they do if they did see certain wrong things happening where they expected the President to do something, or did

they just keep quiet? And if so, was there an environment that made it difficult to say something as to try and understand that the position was. But we will take the lunch break. Maybe when we come back, you might wish to say something.

ADV VAS SONI SC: Chairperson, may I before we break

...

CHAIRPERSON: Yes.

ADV VAS SONI SC: Just ask one question. It is and if you
10 just look at lunch time.

CHAIRPERSON: Yes.

ADV VAS SONI SC: And that is, there is a distinction because I know looking at what happened recently the question is, innocent until proven guilty. The problem here is, Mr Montana was not in PRASA anymore. He was out. So it is, it is a different situation where you are taking action against somebody you say, well we did not know whether he was guilty. The question is questions have been raised and now the question is, should you take him
20 back? It is a very different question. And if, Chairperson, it fits in with ...

CHAIRPERSON: Ja.

ADV VAS SONI SC: It reinforces the point of ...[indistinct].

CHAIRPERSON: And you will remember Ms Peters that part of what you said about State Capture is that in certain

instances those who pursued State agenda of State Capture sought to remove certain people or officials or Ministers from their positions who were not prepared to be party to any wrongdoing. And sought to have certain people appointed to those positions that they believed would work with them in advancing the agenda of State Capture. So, so when you have a situation such as the one that you have testified to, where Mr Montana had been a Group CEO of PRASA for quite some time, he left. The
10 board released him. And there were certain allegations, serious allegations against him of wrongdoing, of corruption. And here now you at a meeting which is obviously approved by the President, who comes and sits in this meeting and allows this person, against whom there are all these kinds of allegations of wrongdoing at PRASA, taking the stand at the meeting, according to Mr Molefe, that the board must rescind its decision and take this person back, while all these allegations are hanging over the head. It makes you ask the question, why would a
20 President want to do this? Why? So those are the kinds of questions that the Commission has to look at and ask. And of course it would have been better if everyone who could assist us, who would be able to come and assist us. So there, there are those questions and they might not be limited to PRASA. They might be limited; they might

extend to other SOEs and maybe other departments. So, so that just to give you the full context. Okay, we will take the lunch adjournment. It is 13:14. We will resume at 14:15.

ADV VAS SONI SC: As it pleases.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us proceed Mr Soni.

10 **ADV VAS SONI SC:** As you please Chairperson. Chairperson, may I just enquire? You will appreciate that when the last questions were asked ...[intervenes]

CHAIRPERSON: Just one second. The aircon, if you can lower it down. It is too noisy. Yes, Mr Soni?

ADV VAS SONI SC: I was saying Chairperson that the last few questions before lunch.

CHAIRPERSON: Ja.

ADV VAS SONI SC: I do not know if I should pursue them now or wait until the end?

20 **CHAIRPERSON:** That is fine. As long Ms Peters gets a chance to comment or say something.

ADV VAS SONI SC: Yes, yes.

CHAIRPERSON: Ja. So it is fine if you deal with them later if that is convenient. Ja.

ADV VAS SONI SC: That may be because there may be

other things.

CHAIRPERSON: Okay. That is important.

ADV VAS SONI SC: Ms Peters, we were looking at Mr Molefe's affidavit. And then the next issue that he deals with from paragraph - or the next issues that he deals with from paragraphs 93 to 97 are three issues. And he deals with these issues in ...[intervenes]

CHAIRPERSON: Are you back in the bundle that has got Mr Molefe's affidavit?

10 **ADV VAS SONI SC:** Oh, sorry. Yes Chairperson.

CHAIRPERSON: Okay.

ADV VAS SONI SC: It is Bundle D-SS-6. And page 24.

CHAIRPERSON: Okay. Thank you.

ADV VAS SONI SC: 24, I will assume. That is on the right hand side in red.

MS PETERS: [No audible reply]

ADV VAS SONI SC: But he deals with three issues which you then respond to in paragraphs 9, 10 and 11 of your affidavit. Sorry, 9 and 10 of your affidavit.

20 Now the first issues I want to deal with is. There is an allegation at paragraph 93 that after Mr Montana left, the board embarked on a rigorous recruitment and interviewing process but he alleges that you frustrated the attempts to appoint the CEO.

Now just again in terms of time context. The

impression may be created because he then says that instead, in July 2016, Mr Letsoalo was appointed the acting CEO. You see that at paragraph 93?

MS PETERS: [No audible reply]

ADV VAS SONI SC: I am just trying to put context to this.

MS PETERS: [No audible reply]

ADV VAS SONI SC: Okay. The only thing is that between the time Mr Letsoalo was appointed and Mr Montana's leaving almost a year had passed. Is that not so?

10 **MS PETERS:** Yes, Chairperson.

ADV VAS SONI SC: So there was a period when mister – the – before Mr Letsoalo took over as acting CEO when somebody else acted. That was Mr Khena. Is that right?

MS PETERS: Yes, Chairperson.

ADV VAS SONI SC: So the position then is. From the 15th of July 2015 to July 2016, PRASA had an acting CEO.

MS PETERS: Yes, Chairperson.

ADV VAS SONI SC: And then in July, Mr Letsoalo was seconded from your department to act as the CEO. Is that
20 correct?

MS PETERS: In consultation and in agreement with Mr Molefe.

ADV VAS SONI SC: Yes. I did not mean it in that sense. I am just looking at the...

MS PETERS: Yes, Chairperson.

ADV VAS SONI SC: But I know that there is a dispute as to he says that Mr Letsoalo was imposed on the board, as it were. You say it was done in consultation. We will come to that in a minute but I am just trying to get a timeframe.

MS PETERS: Yes, Chairperson.

ADV VAS SONI SC: Then after it was Mr Zide who acted as the CEO. Is that correct?

MS PETERS: [No audible reply]

ADV VAS SONI SC: From February 2017.

10 **MS PETERS:** I do not have a recollection Chairperson because at that time I was in hospital.

ADV VAS SONI SC: Okay.

CHAIRPERSON: By that time you were...?

MS PETERS: At the time when – after Letsoalo left, I do not recall what happened at that particular time because I was in and out of hospital for some period during that period.

CHAIRPERSON: H'm.

MS PETERS: But I do remember the names Zide.

20 **CHAIRPERSON:** H'm.

ADV VAS SONI SC: Yes. I am going to take you to documents appeared by the late Mr Kimi Makwetu where he records all of this.

MS PETERS: Yes.

ADV VAS SONI SC: But the point I want to make

Ms Peters is, that from the 15th of July 2015 until the end of March 2017 when you were relieved from the ministership there was no full CEO. It was always an acting CEO. Is that correct?

MS PETERS: Yes, Chairperson.

ADV VAS SONI SC: Alright. Now I just want to ask you. If I can ask you to look please at Parliamentary Bundle 4? I think you have been told what the page is.

MS PETERS: [No audible reply]

10 **ADV VAS SONI SC:** Can I just ask you to deal with – oh, to go to page 35. Sorry, page 871 of that bundle. This is – remember we are talking about the left-hand side, the black numbers.

MS PETERS: Yes, Chairperson.

ADV VAS SONI SC: Alright. Now Mr Makwetu deals with in paragraph 61 and he puts in the table, Table 2, which shows the increased ...[intervenes]

CHAIRPERSON: Sorry, just ...[intervenes]

ADV VAS SONI SC: OH, sorry Mr Chair.

20 **CHAIRPERSON:** ...for the record Mr Soni.

ADV VAS SONI SC: Yes, Chairperson.

CHAIRPERSON: You want to confirm that the document we are asking her to look at ...[intervenes]

ADV VAS SONI SC: Alright, correct.

CHAIRPERSON: ...is an unsigned affidavit of the late

Mr Makwetu.

ADV VAS SONI SC: Yes. Sorry, Chair.

CHAIRPERSON: Yes. So that whoever reads the transcript can understand...[intervenes]

ADV VAS SONI SC: Yes, I understand.

CHAIRPERSON: Ja.

ADV VAS SONI SC: Yes.

CHAIRPERSON: And we are at page 871.

ADV VAS SONI SC: Yes. And just for your reassurance
10 Ms Peters. The contents of this affidavit although not signed by Mr Makwetu were confirmed, with the correctness of the contents, were confirmed by officers from his department or from his office.

MS PETERS: Noted Chair.

ADV VAS SONI SC: Alright. So in Table 2, he deals with the exponential increase, as he calls it, from 2013 to 2018 in the irregular expenditure incurred by PRASA. I just want to read that for the record. Are you with me Ms Peters?

MS PETERS: Come again Chairperson.

20 **ADV VAS SONI SC:** If you look at Table 2 ...[intervenes]

CHAIRPERSON: It falls under ...[intervenes]

MS PETERS: Chair, my apology. I am struggling to reflect back here because of the lights.

CHAIRPERSON: Oh, is it affecting you?

MS PETERS: Yes, Chairperson. I just ...[intervenes]

CHAIRPERSON: Too bright?

MS PETERS: I just had a procedure in my eyes. So.

ADV VAS SONI SC: Oh.

MS PETERS: They are very bright. So when I look up, then I first have to close my eyes to adjust.

CHAIRPERSON: If they tilt them to face in a different direction, that should make a difference to you?

MS PETERS: Yes, Chairperson.

CHAIRPERSON: Which particular one or both of them?

10 **MS PETERS:** This one in particular, yes.

CHAIRPERSON: This one in particular. Okay alright. You must just – they will tilt it and you must tell us if that is fine for you.

MS PETERS: It is not. It is actually level with me now.

ADV VAS SONI SC: Is that any better miss?

CHAIRPERSON: I think that is too bright. That is too bright. Will it be fine if you tilt it towards the left?

MS PETERS: [No audible reply]

CHAIRPERSON: How is that?

20 **MS PETERS:** [No audible reply]

ADV VAS SONI SC: Ms Peters, how is that?

MS PETERS: [No audible reply]

CHAIRPERSON: It is still problematic?

MS PETERS: It is still problematic Chair but if anything, I need time to adjust.

CHAIRPERSON: They can tilt it downwards?

MS PETERS: Probably.

CHAIRPERSON: Okay. Can you do that, tilt it downwards?

TECHNICIANS: [No audible reply]

CHAIRPERSON: How is that?

MS PETERS: [No audible reply]

CHAIRPERSON: Still is a problem?

MS PETERS: [No audible reply]

10 **CHAIRPERSON:** If you tilt it towards the left, does it affect anything if you tilt it substantially towards the left or the right? Does it affect it anything in terms of the TV?

MS PETERS: Oh, okay.

CHAIRPERSON: It does?

MS PETERS: Maybe I should leave it Chair.

CHAIRPERSON: How far can you tilt it to the left without it affecting the television?

TECHNICIANS: [No audible reply]

CHAIRPERSON: Reverend Stimela, can you tell me
20 because I cannot hear.

REV STIMELA: [No audible reply]

CHAIRPERSON: That is the furthest you can move?

REV STIMELA: [No audible reply]

CHAIRPERSON: Oh. How – that has not helped, hey?

MS PETERS: It has not helped but for progress Chair, I

would just beg for indulgence for the length of time I would take to adjust first before I see the letters.

CHAIRPERSON: Yes.

MS PETERS: But I will be fine. I will stop looking at the evidence leader.

CHAIRPERSON: Yes.

MS PETERS: H'm.

CHAIRPERSON: I am sorry about that. Okay alright.

MS PETERS: Yes.

10 **CHAIRPERSON:** H'm.

ADV VAS SONI SC: So in Table 2 Ms Peters the Auditor-General says or his office says that in the financial year 2013/2014 the irregular expenditure was not R 0,1 billion. That I understand is about R 100 million. Is that correct?

MS PETERS: Correct Chair.

ADV VAS SONI SC: Then in 2014/2015, it increased to R 5.5 billion.

MS PETERS: That is correct.

CHAIRPERSON: Sorry, in which year is that now?

20 **ADV VAS SONI SC:** In 2014/2015 Chairperson. The second one from the right ...[intervenes]

CHAIRPERSON: No, the R 5 billion – zero comma five?

ADV VAS SONI SC: Five.

CHAIRPERSON: Ja. Zero comma... So that must be about R 550 million.

ADV VAS SONI SC: R 550 million

CHAIRPERSON: Yes.

ADV VAS SONI SC: Perhaps I should use those figures, yes.

CHAIRPERSON: Ja.

ADV VAS SONI SC: Yes. And then in 2015/2016, it increased to fifteen billion, three hundred million.

MS PETERS: Yes, Chairperson.

ADV VAS SONI SC: And in 2016/2017 it increased
10 20 billion, three hundred million.

MS PETERS: Yes, Chairperson.

ADV VAS SONI SC: And in 2017/2018 to 24 billion, two hundred million.

MS PETERS: Yes, Chairperson.

ADV VAS SONI SC: Okay. Now what is then said at paragraph 62 is:

“The instability in the board and at PRASA’s
key management level, negatively impacted
the operations of the entity and contributed to
20 the collapse of the controlled environment.”

That is his comment.

MS PETERS: Yes, Chairperson.

ADV VAS SONI SC: And then he makes a second comment that:

“Although the auditors continuously reported

ineffective compliance monitoring processes to senior management, these deficiencies were not addressed and resulted in repeat non-compliant findings.

This included ineffective steps taken to prevent irregular, fruitless and wasteful expenditure.”

That is what is recorded there. I am just raising that.

10 **MS PETERS:** Yes, Chairperson.

ADV VAS SONI SC: Now as I understand it Ms Peters and we can go to it if you want. There were several meetings between you as Minister and the office of the Auditor-General.

MS PETERS: Yes.

ADV VAS SONI SC: During the period of your ministership.

MS PETERS: Yes, Chairperson.

ADV VAS SONI SC: These matters would have been
20 raised with you.

MS PETERS: Yes, Chairperson.

ADV VAS SONI SC: Alright. Now ...[intervenes]

CHAIRPERSON: So... I am sorry.

ADV VAS SONI SC: Yes, Chairperson.

CHAIRPERSON: So just to make sure. You accept that

these were the figures in terms of irregular expenditure as set out by the Auditor-General's office?

MS PETERS: They are the figures as indicated and as reflected in the meetings we had with the Auditor-General which – in which he raised concerns about the issues related to record keeping and challenges of – that most appropriate officials to account nothing available.

CHAIRPERSON: Yes.

MS PETERS: Chair, again related to this. I would request
10 - because of the fact that after all these meetings there was correspondence and communication with the board. I would request that I supplement that information.

CHAIRPERSON: Yes.

MS PETERS: With the records that – I am grateful that yesterday the office of the Minister managed to sent to my ...[intervenes]

CHAIRPERSON: Yes, okay. No, that is...

ADV VAS SONI SC: Yes.

CHAIRPERSON: No, that will be important.

20 **ADV VAS SONI SC:** You can turn to the next page Ms Peters. This is page 872. He then table – at Table 3, he deals with the instability of the PRASA Board. Now just highlight two things because – oh, see. In fact, only the three top ones affect you. You were not longer Minister from the end of March 2017.

So the first matter he reflects on is that on the 1st of August 2014, the new board under the chairpersonship of Mr Popo Molefe was appointed but that is common cause. Is that right?

MS PETERS: Yes, Chairperson.

ADV VAS SONI SC: And then he says on the 1st of November 2016, the National Treasury representative and resigned.

CHAIRPERSON: Where are you reading from now
10 Mr Soni?

ADV VAS SONI SC: Oh, sorry. Table 3 Chairperson on page 872.

CHAIRPERSON: Oh, okay alright. Continue.

ADV VAS SONI SC: Yes. And then he says on the 8th of March, the board under the chairpersonship of Mr Molefe was dismissed. And we are going to get to that in a moment.

And then an interim board was appointed. What happened on the 10th of April, obviously, is something that
20 you must know about but namely the court made a decision of Mr Molefe's application.

And the rest of the things we need not worry about because they do not concern you and obviously the next Minister will deal with that. If I can then ask you to look at page 873 at para...[intervenes]

MS PETERS: So sorry?

ADV VAS SONI SC: Sorry.

MS PETERS: Am I allowed to comment?

CHAIRPERSON: Ja. He can give you an opportunity to comment.

ADV VAS SONI SC: Yes.

MS PETERS: Thank you Chairperson. I would confirm that on the 1st of August 2014, the board appointed another chairpersonship of Popo Molefe. I confirm the resignation
10 of the Treasury representative.

When the board informed me. I wrote to the Minister of Finance to appoint their representative and it was upon them to submit which was later done.

And I confirm that under – on the 8th of March, under the chairpersonship of Tata Molefe, the board was dismissed. Yes, I agree. And the board were place – put in place an interim board that was chaired by Mr Allie, as indicated. I confirm that.

And despite the fact that I was not there, I do
20 note that on the 10th of April the board under chairpersonship of Tata Molefe was reinstated.

And I just want to indicate Chairperson that I still believe that in acting against the board of Tata Molefe on the 8th of March, I was correct.

And I was correct based on the fact that in the

supplementary affidavit, you will note the length of time I took to engage the board under Tata Molefe with regard to these issues that are being raised by the Auditor-General.

As every quarter, ministers get reports on the performance of the entities. And all perusal and engagement would find the issues that might be found to be issues that need attention.

I wrote to the board. And in most instances, the board would not even respond. And Chairperson, quite a
10 number of times, throughout the period of 2016...

I will make an example. The first quarter of 2016, the board – the company performed at around 60%. The second quarter they performed at around 40%. The third quarter they performed at around 20% or 21%.

And those matters were of concern to the Portfolio Committee and to myself as the Minister and it was at that time Chairperson that the other matter that the evidence leader would raise would come to the fore.

The focus of the board, not on the core
20 responsibility of the company was of a concern to me and I raised it. Even in the meetings I had with them, there are – what we call notes or speeches - that I delivered in those meetings for the record.

And I want to indicate that ordinarily sitting back... There is a saying in life, generally, that says you

regret more the things you did not do than the things you did.

I believe my patience with the board of Tata Molefe was over-stretched. And the other thing that was of worry to me as the Minister was the fact that the correspondence related performance issues, to matters from the Auditor-General were not getting the attention the board is supposed to get.

And at times, because it was difficult to meet the
10 full board, we would meet every time with Mr Molefe himself and he would say we will respond or complain that the administration on management is not given back the information and yet it is him who was the board based on the fact that they would have concurred.

Because when the management writes the report, they present it to the board, the board must concur with that report and then send it to the Minister so that they can then say: Yes, this is a true reflection of what transpired. And that was not happening.

20 There is correspondence that I sent to Mr Molefe that indicated even the fact that I wrote to you on this particular issue. You did not respond. I wrote to you on this particular issue. You did not respond. I wrote to you on this particular issue. You did not respond.

And I want to say to you Chairperson, if you give

me a chance, given an opportunity I would have challenged this court's outcome because in my view it was on a procedural technicality based on the fact that probably I did not give them ample notice and all that but I still believe that my decision to remove that board at that particular time was long overdue.

CHAIRPERSON: Yes, Mr Soni.

ADV VAS SONI SC: Did you ...[intervenes]

CHAIRPERSON: Well, I – maybe I can just say and you
10 may have heard me say this and when other witnesses were given evidence about this Table 2 on page 871 that for me it is really shocking to find that for 1, 2, 3, 4, 5 – five financial years an entity's irregular expenditure year in year out was going out up astronomically.

As if somebody at PRASA had taken the decision that I am going to show them, whoever they are, that they cannot do anything. We will increase this irregular expenditure every year, every year.

I mean, you look at the financial year 2013/2014.
20 It was about R 100 million. But it then goes up in the following financial year, 2014/2015, to R 550 million.

As if that increase was not bad enough, then from R 550 million it does not go to one billion. It does not go to two billion. It does not go to three billion. It does not go to ten billion. It goes to 15-billion.

This should have shocked everybody concerned and said this must stop! How then the following two financial years it continued to go up. It is just difficult to understand for me.

And I ask the question: Where were all of those people who were supposed to make sure that this did not happen? What were they doing?

Now obviously one must look at the management, one must look at the board, one must look at
10 the minister and I think one must look at the Cabinet, the President in the Cabinet because these things should have been brought to the attention, certainly the President's, I would imagine, to say there is a serious problem at PRASA.

But it is like nothing was being done and all concerned must have seen this astronomical increase year in year out. I mean, it is supposed to go down not up. It is like somebody knew that nobody would do anything about it or simply said they cannot touch me. I am going to just
20 continue making – increasing this irregular expenditure.

It is difficult to understand that people were aware of this and just allowed it to continue like that. Of course, you have said that you will deposed to a supplementary affidavit and that is most welcome because you have got info – correspondence that shows what you

did on your part because that is quite important to say as Minister you became aware of this, every quarter of how the entity was performing and therefore every year. And what did you do about it?

So it is very important and I want to know also what the board of Mr Molefe did about it but I will also want to know – well, I was going to want to know what President Zuma did about it but he might not be here.

But I would like to know what the Cabinet did
10 about it. How could a state entity have these kinds of reports and the irregular expenditure just increases like this and what did everybody do about it?

So for your part it is important that during your term, because I think that this was mostly during your terms, it is important that you place before the Commission all the evidence you might have that shows what you did.

So that when judgment has to be made as to who did their job and who did not do their job about this, at least you have put your side of the story properly before
20 the Commission.

MS PETERS: Thank you Chairperson.

CHAIRPERSON: Ja, okay.

MS PETERS: Chairperson.

CHAIRPERSON: H'm?

MS PETERS: With regards to – if you look at the

2015/2016, that was the time when we received the Auditor-General's audit. We got to start the process of the investigation, that the forensic investigation that I spoke to.

Unfortunately, the forensic investigation - I had requested from the Auditor-General coincided with the release of the Derailed Report from the Public Protector which was dealing with matters of between 2010 and 2012.

And there was a decision between myself, the
10 Auditor-General and the board chairperson as well as the office of the Chief Procurement Officer to reconcile the investigations.

But also Chairperson, in this report of 2015, to the credit of the board, they had requested the Auditor-General to reveal everything because in the previous report there would be indications that they still work on regard to this matter, with regard to this particular matter.

These were some of those contracts that were entered without proper procurement processes, those that
20 SCM procedures were either flouted or they were found to have not been regularly entered to and these were matters that were taken to the SCOPA at parliament.

You would remember, Chairperson, that at SCOPA some of these amounts would either be treated as extension of contracts, deviations and modifications and all

those and others would be rejected and others would be either condoned and this would be the process that is not necessarily in the hands of the minister of the relevant department because the report is now released, we are engaging with the board with regard to what are you doing to make sure this matter does not recur. Thank you, Chairperson.

CHAIRPERSON: Mr Soni?

ADV VAS SONI SC: As you please, Chairperson. Now as
10 paragraph 65 on page 873 it is recorded that:

“The instability in the Group CEO position was equally troublesome with the new appointment every year and on occasion more than one per year. Further, these appointments were made in an acting capacity and only in 2018 an interim Group CEO was appointed.”

They before demonstrate the movements in appointment and I will just read it for the record, it says that:

“Mr Montana resigned in 2015 and in August 2015,
20 Mr Khena was appointed as Acting Group CEO. In July 2016 Mr Letsoalo was appointed as Acting Group CEO. February 2017 Mr Zide was appointed...”

And obviously you cannot answer for this:

“In December 2017 Mr Molepo was appointed, April

2018, that is on the next page 874, Mr Zide was again appointed as Acting CEO and in June 2018 Mr Sithole was appointed interim Group CEO.”

Two things, are you aware of these developments, the correctness of what is here?

MS PETERS: I remember up until July 2016 and like I have indicated, February 2017 I was in hospital at that particular time when this matter was decided on and thereafter, some things that I followed from the press.

10 **ADV VAS SONI SC:** Okay, but this is from the office of the auditor general. Are you prepared to accept its accuracy?

MS PETERS: That is why, Chairperson, I say up until July 2016.

ADV VAS SONI SC: But you noted the point I made – well, that was made at paragraph 65, that the instability in regard to the appointment of a permanent CEO was flagged by the auditor general. You accept that it was flagged?

MS PETERS: I accept that because it is at all times
20 reflected in the engagements with the executing authority, Chairperson.

ADV VAS SONI SC: Now there I want to come back to what Mr Molefe says at paragraph 93, he says:

“After Mr Montana’s departure from PRASA the board sought to appoint ...[intervenes]

CHAIRPERSON: Hang on, hang on, Mr Soni. We are changing bundles now, hey?

ADV VAS SONI SC: Yes, sorry, sorry.

CHAIRPERSON: You are going now to bundle that has got Mr Molefe's ...[intervenes]

ADV VAS SONI SC: Bundle D, SS6. Sorry, Chairperson.

CHAIRPERSON: Is it bundle D?

ADV VAS SONI SC: Bundle D, SS6, page 24, paragraph 93.

10 **CHAIRPERSON:** Okay.

ADV VAS SONI SC: Now Mr Montana says:

“They embarked on a rigorous recruitment and interviewing process. However, Minister Peters frustrated the board’s attempt to appoint a CEO.”

And then it is added immediately thereafter:

“Instead she insisted Mr Letsoalo be appointed.”

But that was of course in July 2016. I want to now go back to the time Mr Montana left in July 2015. What was your approach to what should happen to the position of the
20 CEO? Now we know the meeting of the 20 August took place. We know Mr Montana and you have said that nothing happened thereafter. Now clearly there was a need to appoint a CEO. Do you accept that?

MS PETERS: Yes.

ADV VAS SONI SC: Mr Molefe says that you frustrated

their attempts despite a rigorous recruitment and interviewing process. Are you aware of a recruitment and interviewing process?

MS PETERS: I am aware of it, Chairperson. I am aware of it, Chairperson.

ADV VAS SONI SC: Were you told that the board is embarking on that process?

MS PETERS: He informed me when they had concluded the process and I did know that there is a process that
10 unfolded, even the adverts were done and I knew that they are busy with that particular process.

ADV VAS SONI SC: Now I going to come to this but in parliament it was then reported that an amount of R1,7-odd million had been spent on that process. I am going to come to that but I am just recording that. Were you aware of that?

MS PETERS: I was aware of that but not the amount, Chairperson.

ADV VAS SONI SC: Now can I ask you before we go into
20 why nobody was appointed, what role does cabinet play in the appointment of CEOs of SOEs?

MS PETERS: There is a process where once a board has gone through the processed they would recommend – I do not know whether it is three names in their order and there would be a consultation process, Chairperson, and that

consultation process culminates in the minister presenting a memo to the cabinet requesting cabinet to concur with that particular decision.

ADV VAS SONI SC: Now ...[intervenes]

CHAIRPERSON: The consultation involves who and who?

MS PETERS: It involves quite an extensive number of role-players because you would be looking at an appointment that has a bearing on other colleagues in cabinet and you would want to make sure that those
10 colleagues can then be able to give you an indication of it they have got an issue with regard to that or, alternatively, to support your recommendation in cabinet.

CHAIRPERSON: But who gets consulted by whom? Is it cabinet ministers including the President, the Deputy President?

MS PETERS: Yes, Chairperson, it would ultimately include the President and in most instances it is courtesy to include the President. Chairperson, it is important to note that as a Minister when you go and meet the
20 President or make presentation everywhere else where you were supposed to, you are supported by a team of men and women who are necessarily from the establishment or from department and entities that you are working with. So it would be important and I always used to use even my own experience as a head of government in my previous

responsibility as Premier of the Northern Cape where you would as a Chairperson of a cabinet when a particular motivation is made. If that motivation you are fully versed with and informed about then it makes the taking of the decision or the taking of the – or the acceptance of it even easy. Even if there would have probably been others who would probably say no, but we would have preferred to get that particular individual or somebody else would then say in the cabinet that I have interviewed that person and in
10 the next interview – it is just to cross-reference and check.

CHAIRPERSON: Does that consultation involve people who are not in government?

MS PETERS: Sorry, Chairperson?

CHAIRPERSON: Does that consultation also involve people who are not in government?

MS PETERS: Not in government?

CHAIRPERSON: Ja but for example in the ruling party, the ANC?

MS PETERS: No, no, no, in the ANC the President and
20 the Deputy President would report on those particular processes, to consult.

CHAIRPERSON: Okay. So the people that consulted are basically your cabinet colleagues and the President and Deputy President?

MS PETERS: It would be the cabinet colleagues – yes,

Chairperson, it would be cabinet colleagues, it would be the President and the Deputy President and if so feel that you – based on the fact that you are appointing somebody who would be of assistance in the implementation of a particular policy you would also be free. That was not restricted, you would be free but it would be out of courtesy. You would be free to consult other colleagues who would not necessarily be in cabinet but through a structured process.

10 **CHAIRPERSON:** And would those be people within the ruling party?

MS PETERS: Pardon?

CHAIRPERSON: Would those people, who are not in government, be within the ruling party?

MS PETERS: Yes, Chairperson, it would be wrong for me to go and consult people who are not necessarily members of the ruling party on matters that has got a bearing on the mandate that I draw from the ruling party.

CHAIRPERSON: No, no, no ...[intervenes]

20 **MS PETERS:** But the agencies and the government implement the policies and programmes of the African National Congress, which is the ruling party.

CHAIRPERSON: No, no, no, I just wanted to have a picture of the groupings of people or categories of people that get consulted and I was not necessarily you were

consulting people who are neither in government or in the ruling party but I wanted to know whether people within the ruling party also get consulted. Okay, alright.

MS PETERS: Even with the appointment of boards.

CHAIRPERSON: Sorry?

MS PETERS: Even with appointment of boards.

CHAIRPERSON: Of the board, yes, okay. That is important. Mr Soni, do you want to – well, you can follow the line you were following.

10 **ADV VAS SONI SC:** Yes, yes.

CHAIRPERSON: But you might wish to come back to ...[intervenes]

ADV VAS SONI SC: I do want to pursue this, Chair.

CHAIRPERSON: Ja, ja.

ADV VAS SONI SC: Ms Peters, we are a country of laws, that is more or less first paragraph of a recent judgment of the Constitutional Court issued. Now in regard to the appointment of the CEO, this is what the PRASA Act says. It says that the CEO is appointed by the board in
20 consultation with the minister. It places no role on the cabinet, it gives no power to cabinet.

MS PETERS: Chairperson ...[intervenes]

CHAIRPERSON: He just wants you to comment on that. What do you have to say about that?

MS PETERS: Chairperson, I think maybe I have not followed that particular judgment [indistinct – dropping voice] but when I got into government from the stages that I got into government, we found ...[intervenes]

ADV VAS SONI SC: Sorry, Ms Peters, I do not want to be rude. I have been asked to ask you to adjust your mic because you are not being recorded properly. Sorry.

MS PETERS: Thank you, Chair. I was saying, Chairperson, that in the history of my deployment in
10 different responsibilities of government we have always as a protocol, which is a cabinet protocol, consulted with cabinet and there is no decision because when you appoint, you are not appointing for yourself, you are appointing for South Africa. So the cabinet of – or government is in the hands of the President and the cabinet. So the cabinet resolution gives you that authority. The pronouncement would be made by the board because the board would be informed on the decision of the cabinet and, Chairperson, if you go into the records of cabinet
20 statements after every cabinet there would be an indication on the appointment and under appointment it would then reflect all those people who have been appointed in different areas. If it was wrong then it would mean that we need cabinet to review that protocol.

ADV VAS SONI SC: So there are two issues. The

protocol is that the consultation and in a sense approval of the appointment of the CEO of an SOE must come from cabinet, forget what the minister thinks.

MS PETERS: I would not say, Chairperson, that is, is forget what the minister says and incidentally, there has not been a lot of instances where a submission of the minister was rejected and that is why I was saying the engagements with colleagues would be to just cross-check and cross-reference so that they then are able because
10 decisions would necessarily be taken on the majority decisions and if you have got a strong case you will not have anything having comebacks.

ADV VAS SONI SC: So when you say the majority of the decision are you talking about the majority of cabinet members?

MS PETERS: Ja because majority is taken in that way and the summary of the Chairperson of the meeting.

ADV VAS SONI SC: Now, Ms Peters, I am not challenging the process that is followed at this point, I am merely
20 saying that the process that seems to be followed does not reflect what the law says the powers of different institutions are.

MS PETERS: Noted, Chairperson.

ADV VAS SONI SC: And I am saying that, Ms Peters, again – and it is a submission I will make to the

Chairperson and I am going to ask you to comment on that. One of the things about good governance is you have an independent board which makes decisions and that board can be held accountable for the decisions it takes.

Now, as the Chairperson said, when irregular expenditure increases from less than a billion rand to R20 billion in five years the persons who should be held responsible are the members of the board and that is on the basis that they take the decision.

10 The problem with what is now being suggested is that you cannot hold anybody accountable because somebody else effectively took the decisions or somebody else influenced those decisions. That is my worry about the way these matters are being dealt with and it is the submission I am going to make to the Chairperson at some stage.

MS PETERS: Chairperson, once the CEO or the board has appointed the CEO and got the concurrence of cabinet the board through the Chairperson signs a performance
20 agreement with the CEO and takes responsibility for the evaluation of the performance of the CEO who then should take responsibility for the performance of his or her subordinate and the board must be held responsible for that because they then report after everything to the minister.

In the instance of the PRASA process the rationale was whilst we are dealing with the process of the appointment there should not be a vacuum and therefore there was this particular acting positions. Chairperson, if we have to go back to the report of the AG with regard to that spiralling irregular ...[intervenes]

CHAIRPERSON: Expenditure.

MS PETERS: Expenditure. I discussed with Mr Molefe, not Minister Molefe, Mr Molefe and we then had an
10 agreement on this particular secondment. In fact he was recommending somebody else who was in a subsidiary when in the [indistinct] 20.42 I had with him and then I said to him, your main problem here is SCM procurement issues and this irregular expenditure. You need somebody who understands finances who can help us to be able to get out of this quagmire that you find yourselves in and we discussed that.

He made the recommendation on wanting one of my advisers and I said to him no, I am directing you to the
20 point about the finances, now you want to cripple – I even jokingly said now you want to cripple my – the ministry, if you want to do that and in fact at that part ...[intervenes]

CHAIRPERSON: I am sorry, just repeat that, what did he suggest and what did you say?

MS PETERS: He was suggesting that I borrow him one of

the advisers in my office. Then I said to him but you are crippling my ministry if you do that.

CHAIRPERSON: Okay.

MS PETERS: And that is where – we left it at that, as such and we then had this discussion where the motivation for Letsoalo's acting, Letsoalo went to act there and everything – and I want to indicate, when Letsoalo got to PRASA everything was hunky dory, I am sorry for that word, Chairperson, but I do not know where the challenges
10 emerged from because for some reason – and I would want to say this seems to play itself back.

For some reason I do not know what happens with the Chairperson of the board when he goes to overseas trips with these CEOs and when they come back then all relationship issues becomes a big issue because that was the issue.

And then the certain issue that they seemed to have an issue with, we went to the portfolio committee, they had no problem with Letsoalo, Letsoalo was acting there. We
20 went to the portfolio committee, the portfolio committee raised a concern on something they had picked up that the board had overpaid themselves. There is a particular process also that is followed for board remunerations, that was not followed, there has not been even a request for the minister to engage with regularising that particular

illegal increase and it was flagged in the AG's report as an issue, that the committee wrote to me. I wrote to the board to request the board to repay the money, private to Mr Molefe. He repaid the money. The other board members refused to repay the money and later on I was informed that he went back to ask back for his money because he seemed to be the only one who has honoured that and repaid the money and I am raising this just to indicate that in the beginning there was – and the other issue that I
 10 believe was a problem between – emanated as a problem, there was this request for reports, there was this request for an audit of the – or the board evaluation because I was looking at the auditor general's report and I said we needed a board evaluation. All entities did that board evaluation, the board Chairpersons presented the board evaluation ...[intervenes]

CHAIRPERSON: Yes, yes, I am going to stop you there, Ms Peters. You might later on go back to whatever you wanted to say. I think the question was a very narrow
 20 question.

ADV VAS SONI SC: Indeed.

CHAIRPERSON: I do not know if you want to repeat it, Mr Soni?

ADV VAS SONI SC: Yes, yes, Chairperson. I was going to say, Ms Peters, that the dispute over Mr Letsoalo in the

bigger picture is a red herring and I am saying that to you in this context. Mr Montana leaves in 2015, July 2015, Mr Letsoalo is appointed in July 2016, a year passes. Now the question I asked you and have been asking is why was there no appointment of a board and you were telling me – you were telling the Chairperson that this is the process and one needs cabinet and so on. And then I asked you a further question that he says there was a recruitment drive and you said yes, you did not know what it had cost. But

10 the question really is, was it not of concern to you having regard to what the auditor general had said to you that a CEO needs to be appointed?

CHAIRPERSON: Well, let us break those questions up, I think there are three now, Mr Soni. The first question is why was a permanent Group CEO for PRASA not appointed for over a year or close to a year before Mr Letsoalo was appointed to act? But when I say close to a year, Mr Soni is kind to you by counting from 15 July when Mr Montana left, I want to suggest to you that both you and Mr Molefe

20 knew by end of 2014 the previous year that Mr Montana's contract was going to come to an end, so therefore, from that time, at the latest, you ought to have been occupying yourselves with preparations relating to the appointment, the finding of a new CEO. Now, of course, in terms of the separate roles, maybe it is the board that would need to do

that but you would need to oversee, I would imagine, that they were doing that because if they were not doing that you would need to decide what steps to take if they were not doing their job. So if you ask me, I do not start in mid-July when Mr Montana leaves, I say from 2014 towards the end you and the board knew that there would be a need to appoint a permanent CEO and yet by 2016, is it March for Mr Letsoalo?

ADV VAS SONI SC: 2016 – sorry, July.

10 **CHAIRPERSON:** July 2016. So it looks like certainly over a year and a half there is still no appointment of a permanent Group CEO. Why was that?

MS PETERS: Chairperson, it took the board some time and it was around I think – I am not sure of the exact date but necessarily in 2015 but early 2016 when I got the information on the end process that they had followed and then I started with the process of consultations. And I would want to say, Chairperson, that there were other activities related to the department and to the entities
20 which actually delayed the engagements that I was supposed to have with Mr Molefe with regards to this particular appointment and we later had it where thereafter I was supposed - I then start the consultations. I would say I concede and agree that it did take a bit too long.

CHAIRPERSON: And by the time you say you got

involved, around about when was that in relation to mid-year 2015 and July 2016 when Mr Letsoalo was brought in, around about when would it be that you became involved?

MS PETERS: I am not sure of the date, Chair.

CHAIRPERSON: Ja, no, just – towards the end of 2015 or early months of 2016?

MS PETERS: I think it was of 2016.

CHAIRPERSON: Yes, but I would have expected that part of what should have happened is that once you were aware
10 of the effect that Mr Montana was going to leave that the Board would place before you their plans to deal with the issue of the filling of the position of Mr Montana and that that should give you an idea to say look, we are planning to do A, B, C, D in terms of process but our target is by that month there should be a permanent CEO. Did they not give you anything like that at any stage, either early 2015 or mid 2015?

MS PETERS: There was indications towards after Montana left which was a later part of 2016 sir, I mean
20 2015 that they intend to start the process. It is just that the dates are throwing me out right now.

CHAIRPERSON: Well, maybe when they asked Mr Montana to stay for six months more if that was the period, I think that was the period. So the extension of his stay, maybe they had in mind that they would use the

opportunity to try and get a CEO appointed I would imagine, but do you know whether their process of recruitment happened during the second part of 2015 or is that something you do not remember or you do not know?

MS PETERS: The only thing that I remember Chairperson, was that Mr Molefe did indicate to me that in the engagements with Mr Montana when Mr Montana indicated to him that he is leaving, he said he requested him initially not to go. They were saying can you give us three years,
10 we just arrived, so that we can then work together, but when he submitted the written resignation, they do not request again to stay for an additional six months, which in the letter they actually indicated that they reserve the right to terminate at whatever time. Ja.

CHAIRPERSON: But you cannot remember whether their recruitment process that Mr Molefe talks about in his affidavit, whether it was in 2015 or later?

MS PETERS: It did not start at the time they were engaging with Montana. When Montana was still there it
20 had not started, but I am just not sure when it actually started Chairperson. I am trying to recollect and remember Chairperson, it is something that happened 2015 which is about six years ago. So my dates are throwing me out.

CHAIRPERSON: Yes. Well, maybe I might as well just ask this question. I think both Mr Soni and I would have

this question in mind, but then Mr Letswalo is brought in in July 2016 and by the time you leave in March 2017, still there has been no appointment of a Group CEO, not so?

MS PETERS: Yes Chairperson.

CHAIRPERSON: And as far as you know, was there a process to try and appoint a Group CEO that happened during Mr Letswalo's time, but before you left?

MS PETERS: Yes Chairperson, it was on.

CHAIRPERSON: Ja, and what happened to that process?

10 **MS PETERS:** I would not know, because at the end of March I was relieved of my responsibilities.

CHAIRPERSON: So when you left it had not been completed?

MS PETERS: It had not been completed yet.

CHAIRPERSON: Yes, but you can see already we are going to 2017 March, you knew and the Board knew in 2014, by the end of 2014 that Mr Montana would leave, so therefore there would be of course a need to appoint a Group CEO, but the whole of 2015 comes and goes, no
20 appointment has been made. I do not know whether upon Mr Molefe's version that there is a process that took place during that year to try and appoint or not, but then there is 2016. The whole year comes and goes. No Group CEO is appointed. I mean we, I think we know that 2017 came and went, there was no Group CEO appointed. What was going

on?

MS PETERS: Chairperson, I need to acknowledge that the delay in appointing the CEO, I can also take responsibility for that part. The short part of about six months that I was still there and that it did not happen and also Chairperson, taking the decision to in writing when the Board, Mr Molefe had said that they will get Mr Letswalo's secondment, I indicated that it is a temporary measure to look at especially the issues that were raised with regard to the financial situation of PRASA, including that column that the evidence leader made reference to, about the irregular expenditure and Letswalo's responsibility was to make sure that all those matters are addressed and they can then be able to present to the Minister and the Portfolio Committee the turnaround strategy that they were talking about, because the Board had been talking about a turnaround strategy since 2014, and if I was wrong Chairperson, I will accept that I believe it was to correct many wrongs that were happening at that particular time.

20 **CHAIRPERSON:** But of course it does, it does not look like when it comes to with regard to irregular expenditure, it was committed during the time of Mr Letswalo when one looks at that column from the Auditor General. The two financial years that he was, the irregular expenditure kept on going up.

MS PETERS: Just as a correction Chairperson, Mr Letswalo was not even there for a year.

CHAIRPERSON: Okay. No you, I may be wrong but I was under the impression that he came in 2016 July and left when, in 2018 somebody was appointed.

MS PETERS: 2017, February.

CHAIRPERSON: 2017, February. So he was there for less than 12 months. Okay, alright. Well, the irregular expenditure did not, there was no change in it. He had
10 about is it nine months or, he had less than a year to deal with it. One can accept that he did not have a full year, but never the less that part he might have performed well on other funds, but that part seems to have just continued as it has done before. Okay, Mr Soni.

ADV VAS SONI SC: As you please. Ms Peters, I have been asking, I have been waving the question of accountability so I am going to come back to an issue that you raised. So we know now that Mr Montana had left in July 2015. We know that cabinet is involved, rightly or
20 wrongly, but it is involved in the appointment of CEO's of SOE's. That is correct? I see you shaking your head. That is correct, is that not so?

MS PETERS: That is correct Chairperson, because the Minister submits the submission to cabinet for concurrence.

ADV VAS SONI SC: Now the question I want to ask you is when Mr Montana had resigned, the President had called a meeting late on a Thursday evening, or on a Thursday afternoon which finished early on Friday morning. Did nobody in cabinet from the time Mr Montana left, and he is leaving with a matter of great public debate and so on, did nobody ever raise that who is going to go, who is going to replace him at PRASA, at cabinet now?

MS PETERS: That matter was never discussed in cabinet
10 because it was not an agenda item on cabinet.

CHAIRPERSON: Sorry ... [intervenes]

MS PETERS: The one of Mr Montana's departure?

CHAIRPERSON: I may have missed something. What matter was that? I am sorry.

ADV VAS SONI SC: The fact that there is this continued vacancy ... [intervenes]

CHAIRPERSON: Yes.

ADV VAS SONI SC: In regard to ... [intervenes]

CHAIRPERSON: Yes.

20 **ADV VAS SONI SC:** The CEO of PRASA.

CHAIRPERSON: Ja.

ADV VAS SONI SC: Which on Ms Peters's version is a major SOE which performs an important public function.

CHAIRPERSON: So the question was whether that issue was placed before cabinet?

ADV VAS SONI SC: Did anybody in cabinet raise that?
That is the question I am asking.

MS PETERS: I do not understand the question
Chairperson.

CHAIRPERSON: Maybe let me ask, let me ask this.
Maybe it is going to be easier. Did the fact that the Group
Executive, Chief Executive of PRASA, Mr Montana had left
and that in the meantime no permanent CEO had been
appointed. Was the President Mr Zuma told about that?
10 Was the cabinet told about that whether it is irregular
towards that a Minister presents to cabinet or in regard to
his or her portfolio or in any other way? You, it just seems
very disturbing that you could have a situation where for so
many years the position of Group CEO of any entity is not
filled, let alone an entity as important as you told us
PRASA is. Was the President told about this? Was
cabinet told about this?

MS PETERS: Every year when the Auditor General before
he makes public his audit outcomes, he would make a
20 presentation to cabinet and one of the indicators that he
had given in one of the cabinets that I was present in
where he presented the audit outcomes, he did indicate
issue of stability at SOE levels and even in the
administration, and the President at that time impressed on
all of us to address the issue of the instability in the

institutions that reports to us or that are directly under us. It was a general, not PRASA vacancy. Just to say there is instability in the administration, be it of entities or of departments that was raised and flagged by the Auditor General, and in fact the Auditor General went further to indicate where these type of situations are recurring, and like I say the President impressed on us can we deal with this issue of instability in SOE's, because we were not only talking about PRASA. It was a general impression created
 10 or a general issue raised by the Auditor General with regard to issues of leadership in SOE's.

CHAIRPERSON: But let us leave out what the Auditor General may have, may or may not have told cabinet. Did you as Minister are responsible for PRASA, not report to the President about what was happening at PRASA and the fact that there was no Group CEO appointed for this number of years, and was this not something that you also shared with the rest of your cabinet colleagues in one or other meetings to discuss your portfolio?

20 **MS PETERS:** Chairperson, in the earlier questions that were raised with regard to the meetings, I did not give an indication on the way in which we as Ministers would used to be able to report to the President, and given an opportunity, I think in one of the documents that has already been submitted to the Commission, there would be

something that actually points to the fact that I did report to the President in writing about these matters and if given a chance, it could serve as part of the package that is added to that supplementary document.

CHAIRPERSON: Yes, no, no you, that would be most welcome. So you did report to the President?

MS PETERS: Yes Chairperson.

CHAIRPERSON: Yes, so he would have been aware of the problems at PRASA, generally speaking?

10 **MS PETERS:** Yes Chairperson.

CHAIRPERSON: Yes. Mr Soni?

ADV VAS SONI SC: As it pleases. Now what was your own adieu towards the appointment of the CEO and I am going to narrow the ambit of your answer by saying did you want a CEO to be appointed expeditiously or for you was the length of the process did not matter?

MS PETERS: Chairperson, if I have to respond I wanted it to be done expeditiously, but there are developments that happened, like for example the request of the Auditor
20 General on my part to say the Auditor General must do the forensic audit, as well as the issue that emanated from the derailed report of the, what is this? The public protector. So there were issues that in my engagements, and unfortunately so in most instances I had the engagements with Ntate Molefe alone, without necessarily with the whole

Board. The meeting I had with them on the 30th of June, that indicated ... [intervenes]

CHAIRPERSON: Which year is that?

MS PETERS: Pardon?

CHAIRPERSON: Which year?

MS PETERS: June 2016, which is also one of the meetings that we dealt with the issue of the need to second Letswalo to PRASA on, I think in that meeting there were a lot of issues that came to the fore, and in my
10 wisdom at the time, I thought that we needed time to deal with these particular issues, with the Board and the management that was there together with the acting CEO.

CHAIRPERSON: Are you saying you wanted the appointment of a permanent Group CEO to be made expeditiously but this did not happen because you took the view that certain issues, such as forensic investigations, needed to be done and completed first. Is that what you are saying?

MS PETERS: Not necessarily completed.

20 **CHAIRPERSON:** Yes.

MS PETERS: But I would, I want to say Chairperson at this particular moment, they were I actually used a word with Ntate Molefe at the time, that says I do not think that ... I even said to him I do not think that you and the company is ready for the new CEO. Let us deal with these

particular issues, and we agreed with him let us deal with these particular issues, that when you appoint a CEO then you will have an indication of this is what was a problem, this is how we dealt with them and this is exactly the areas that, because Chairperson, one of the officials in PRASA once said something very interesting, that said at the time that when they emerged from SACRCC which is the predecessor to PRASA, they did not sit and build an organisation, because there was this view that they were
10 chasing the big ticket high profile type of programs and projects, and that is why underneath in PRASA there was this turmoil and this particular challenge.

CHAIRPERSON: Well, I have difficulty with that logic of what, of the position that you say you adopted. You are in effect as I understand you, saying to me and you must tell me if I misunderstand you what you are saying. You are saying there were problems at PRASA. The fact that there was no Group CEO was not good for PRASA. There should be a Group CEO as soon as possible, but you were saying
20 to Mr Molefe you are not ready, you and management or PRASA is not ready for a new CEO which happens to be in line with Mr Molefe's evidence, because he did say you served there. You say you are not ready for the Group CEO, let us have these investigations, then you can bring in a CEO. I do not follow that logic. I would think that

when there are problems and you do not have a Group CEO, you need a Group CEO and you need a permanent Group CEO and because there are these problems, it is all the more reason why you should expedite the appointment of a Group CEO. When he or she comes, he will find PRASA in the condition in which he or she will find PRASA. He or she is the one who will prepare a report to say to the Board and to the Minister, I found PRASA in this condition. When I came on such and such a date I did investigations
 10 to find out what are the problems. What are the causes to the problems. What are the solutions that I am going to apply, and then say going forward, this is my vision to make sure that these problems do not happen again. So I do not understand the logic of saying yes there are problems, yes we know we need a Group CEO expeditiously, but let us wait. Can you help me understand that logic?

MS PETERS: Now that you say it Chairperson, and they usually say hindsight is the best signs, and I realise what
 20 you are saying.

CHAIRPERSON: Yes, Mr Soni?

ADV VAS SONI SC: As you please. Just on that score, so there is no debate about what your position was at that time. You have now conceded it was incorrect, but let us put that aside. I would like you to look at page 1, SH6

page 163, which is part of a ledger that Mr Molefe wrote to you on the 25th of August 2016, and you will find that that letter starts at page 157 and I want to read to you the last paragraph of page 163. Are we, this is SH163, page 163. That is Mr Molefe's affidavit, and it is Annexure PM8.

MS PETERS: 163?

ADV VAS SONI SC: 163 yes. If you look at page 157, so you orientate yourself. This is a letter that Mr Molefe sent to you on the 24th of August.

10 **MS PETERS:** I cannot find it Chairperson.

CHAIRPERSON: You might not be looking in the right bundle. It is the same bundle that has got Mr Molefe's affidavit.

ADV VAS SONI SC: Now Ms Peters, I am going to come back to this letter, but I just wanted to finish this issue first. This is part of a letter that Mr Molefe wrote to you on the 24th of August in response to a letter you had sent to him on the 12th of August, but just so that I understand precisely what your position is in regard to a permanent
20 CEO, I want to read something, read the last paragraph to you where it is said, this is what Mr Molefe says to you:

“The Minister indicated that ...”

This is yourself:

“Notwithstanding the completion of an independent robust process to recruit a

permanent Group CEO, the Minister's view was that PRASA was not ready for such an appointment. The reason we had consulted the Minister around our recommendation for the position of Group CEO of PRASA that was we felt the appointment of a permanent Group CEO will assist with stability. We however defer to the Minister's preference to second the acting Group CEO from the Department of Transport."

10 Now this is about the time that Mr Letswalo was appointed.
Is that correct?

MS PETERS: Yes Chairperson.

ADV VAS SONI SC: So does this, is what Mr Molefe says in this paragraph, certainly the first sentence, reflective of the views that you expressed to him?

MS PETERS: Come again Chairperson?

ADV VAS SONI SC: Okay. So the first paragraph where you say PRASA is not yet ready, that is what Mr Molefe has said in his letter. The question to you is did Mr Molefe
20 correctly reflect in this letter what you had said to him?

CHAIRPERSON: You are asking her to look at the particular paragraph?

ADV VAS SONI SC: That is right.

CHAIRPERSON: As opposed to the whole letter?

ADV VAS SONI SC: Whole letter, yes.

CHAIRPERSON: The particular paragraph, the last paragraph at page 163.

MS PETERS: That is a confirmation Chairperson of what I said earlier on.

CHAIRPERSON: Yes, yes.

ADV VAS SONI SC: Well ... [intervenes]

CHAIRPERSON: Yes, I am sorry Mr Soni.

ADV VAS SONI SC: No, no, no I ... [intervenes]

CHAIRPERSON: Yes, of course Ms Peters, you have
10 correctly conceded that it was not the correct position to
adopt, to say the Group CEO should not be appointed as
yet, because PRASA was not ready for a Group CEO, but
that view seems to me to be so extraordinary that one has
got to ask you but how could you have thought along those
lines as Minister responsible for PRASA, how is it possible
that as Minister it could, you could think that a year, a year
more than a year after the position of Group CEO had
become vacant and it had not been filled, because this
letter is written in August 2016. How could you have
20 thought that it was not the right thing to appoint a Group
CEO at that time? How is that possible?

MS PETERS: Chairperson, like I indicated there were
those processes that we were involved in, but there was
also the consultation process that I was busy with. That
was what I was saying to Mr Molefe, and I did say to Mr

Molefe that at that particular moment we are not ready to conclude on this process of appointing a Group CEO. In the same paragraph Chairperson, he gives an indication of the work that they are doing and also the workshops that they are convening, and like I said earlier on yes, with hindsight I could have been wrong at that particular time and I concede that.

CHAIRPERSON: I want to put to you that it just hits me as something that is just so obviously wrong that it is difficult
 10 to understand how you could have thought so, because one a year had passed and the position had not been filled. Two, you knew how critical the filling of the position of Group CEO would be for an entity such as PRASA. Three, obviously you knew the problems at PRASA and they were not small and more than a year after the permanent Group CEO had left, you were saying no, no, no, no you do not need to appoint a Group CEO at this stage. So that is, that is just a concern to me how it is possible that you could have brought along those lines, because I think in
 20 your position as Minister, you ought to have been saying why are you taking so long, you are the Board, you Mr Molefe, you are the one who told me in 2014 you knew that Mr Montana was going to be leaving, what is happening? You are the one who should have been saying to them what is going on. You understand?

MS PETERS: I understand Chairperson.

CHAIRPERSON: Yes, okay, alright. Mr Soni?

ADV VAS SONI SC: May I follow up, and Ms Peters you know Commissions of Inquiry are always awkward public debates, or spawn awkward public debates but this is a question I want to ask you; you have said to the Chairperson, and correctly so with respect, that 2020 is a perfect science, you look at it and you say you were wrong. What I want to ask you is, when did you realise you were
10 wrong, today or before?

MS PETERS: They say, in life you'll regret more the things you didn't do than those that you did and now that we bring it up now, by reminding me of something that happened at that particular time Chairperson and I want to say, yes, at that particular moment, despite the many things that we were dealing with, probably we should have allowed for this process but there was no way in which I was going to circumvent the consultation process that, ultimately would have resulted in Cabinet. Like I
20 considered earlier on that the Court judgement – the evidence leader made reference to, I was not even aware of it because it seems to be a recent...[1.50] whilst there is a protocol in Cabinet, with regards to the appointment of senior people in, is it the Board, is it the CEO, is it the DG's and DDG's they are appointed through the Cabinet

process.

CHAIRPERSON: Maybe just to finalise, I seem to remember that, in his oral evidence, Dr Molefe said, at a certain stage, and it may be that this is the stage that he's talking about, when you said PRASA is not ready for a new CEO, he says, as the Board that even identified a candidate that they had confidence in that they wanted to be appointed and I asked him about the credentials of that candidate and he told me the credentials of that candidate,

10 I think, he may have even mentioned the name.

ADV VAS SONI SC: He did, Chairperson.

CHAIRPERSON: Of the candidate and he said that it was somebody who would not be new in the rail industry it was somebody who had been involved in the rail industry and my impression was, that it was somebody who had been involved either within PRASA or with the predecessors of PRASA or some other subsidiaries and he said, this was a good candidate, we were ready, but the Minister said we were – PRASA was not ready for a new CEO. Do you
20 remember whether they mentioned to you that they had identified a candidate through their process?

MS PETERS: Chairperson, Mr Molefe brought volumes of files of this nature.

CHAIRPERSON: Yes.

MS PETERS: And I had not applied my mind to the

volumes of files.

CHAIRPERSON: Yes.

MS PETERS: That he had brought from the beginning so it would have meant that I processed those so that I then can prepare the submission of Cabinet and ultimately when we get to Cabinet, it's not a foregone conclusion that, you come with a file and say there's it and then it's a yay because Cabinet works in cycles of every two weeks and Chairperson, I don't just remember the time that he brought
10 the file to me.

CHAIRPERSON: Okay but my question was whether – and you can tell me if you don't remember, that's fine. Whether you remember that at a certain stage his Board had identified somebody that they were happy with, to be appointed.

MS PETERS: Earlier on in my input, Chairperson, I did give an indication that Mr Molefe had said that they've got a line-up because when we go to Cabinet we have to go with three names.

20 **CHAIRPERSON:** Yes.

MS PETERS: A line-up of three names and in their order of priority and that file I left at the Department.

CHAIRPERSON: Okay, but you'd remember that he said they had names?

MS PETERS: He said so.

CHAIRPERSON: Okay, alright, Mr Soni?

ADV VAS SONI SC: Did you take those names to Cabinet?

MS PETERS: No, I had not, by the time I left, I had not.

ADV VAS SONI SC: But this is in 2016 as I understand it, so another 9 months before you left office you hadn't taken it.

MS PETERS: I don't think it's another 9 months, Chairperson, I'm not so sure of the timeframe but I don't
10 think it's another 9 months but it's some few months.

ADV VAS SONI SC: Let me ask you a slightly different question now. You say that your view in August 2016 was that PRASA was not ready for the appointment of a permanent CEO, that was your view. When Mr Molefe gave you those names that remained your view, is that correct?

MS PETERS: Chairperson, I indicated that, he gave me a list with files and as a member of Cabinet if I have to go to Cabinet with those files, it would not have been fair. So, I needed, also to process those files and summarise them
20 for the benefit of Cabinet. So, that was the work that we were still going to be doing and then I would give an indication – at that same time I think it was around August I went to China for a State visit.

CHAIRPERSON: I'm not sure whether that answered the – your question, Mr Soni?

ADV VAS SONI SC: I'm going to pursue it at two levels. If this was your view and you say, it's only when the Chairperson raised the fact that, that view didn't appear to be cogent that you achieved 2020 vision on that issue but I'm going to suggest to you, and you can tell me if my suggestion is wrong, that if this was your view, that PRASA was not ready for a CEO you would not have taken that list to Cabinet.

MS PETERS: Pardon?

10 **ADV VAS SONI SC:** You would not have taken that list to Cabinet?

MS PETERS: I would have taken the list to Cabinet because, like I indicated my intention was, when I come back from the international trip we'll go through the submission and Chairperson, I had already, even started looking at the report that – because there was a report that Mr Molefe said comes from the company that they had used to do that.

ADV VAS SONI SC: To head hunt a CEO?

20 **CHAIRPERSON:** Well this file, I just want to get the timeframe right, this file that you say Mr Molefe gave you or sent to your Department for your attention with three names, as I understand the position, was that in 2015, was that given in 2015 was that given in 2016 to you?

MS PETERS: I think it was in 2016 Chair.

CHAIRPERSON: Sorry?

MS PETERS: I'm not sure but it was – I think it is around 2016.

CHAIRPERSON: Around 2016, okay, which might have been early in 2016 or mid 2016 because in the letter of August – early 2016 or mid 2016 it might have been there, because the letter of August 2016 that we were looking at a few minutes ago, when Mr Molefe said you said to him, PRASA was not ready for a new CEO, that letter was
10 written in August 2016. So, that may tie up with what - with your suggestion that it was in 2016 because there in that paragraph it does say, they had engaged in a vigorous recommend process. So, that was – so you say, yes you did not take that – those names to Cabinet?

MS PETERS: No.

CHAIRPERSON: By the time you left the portfolio you had not done so and that would mean – because you left in March 2017, that would mean if it was – if this file was given to you early in 2016 or during the first half of 2016
20 that would mean you stayed with it for maybe about a year without taking these names to Cabinet, you would agree?

MS PETERS: I'm not sure, Chairperson, about the actual timeframes but...[intervenes]

CHAIRPERSON: Yes, no, no I'm saying, if, for example, the file was given to you during the first half of 2016 it

looks like you would have stayed with it, without taking these names to Cabinet for about a year or just close to a year, you would agree with that?

MS PETERS: Yes, Chair.

CHAIRPERSON: Yes, now that's extraordinary because you are the Minister in charge of PRASA, you know the problems at PRASA, you have expressed the view that you thought that the appointment of the Group CEO should be done expeditiously, at least at a certain stage that's what
10 you thought, at another stage you thought, well, PRASA is not ready for a Group CEO at least August 2016. So, is it possible that by the time you left, that is March 2017, you had not changed your view that PRASA was not ready for a new Group CEO and that is why you did not take the names to Cabinet?

MS PETERS: At the time, when I was almost relieved, not almost, before I was relieved of my responsibilities I was trying to engage – and that is a period, Chairperson, that I say, I was in hospital, I was trying because we had, had a
20 meeting at PRASA House with the Board Chairperson, like I always met with the Board Chairperson. The Board members would not be there in most instances and I indicated to him that we are now busy looking at this matter and based on an engagement that I was still going to pursue with the President, because for that particular

item I wanted the President's support with regard to it because it was going to be easier, Chairperson, for the President to preside over a meeting where – and I've seen it work well. I was not the type of Minister who, when the President passes I would grab his ear and talk to him in that way I would want a formal meeting with the President where I would take him through all this particular issues but in this instance was that, we are preparing the submission from the Board of PRASA and as and when I
10 get the time from the President, I will then go to him to be able to present this proposal and I want to indicate Chairperson, it has never happened in the past where, if I go – I'm speaking about myself now, in the areas of deployment that I was given, that if I go to the President for courtesy to inform him about an eminent appointment, he would say yay or nay he had never said that - he actually acknowledged and even looked at indicating areas that I would probably have to go and strengthen and all those types of things. So, I was going to process this file
20 and based on the time that I would be given for the President to meet me, to hear me out on this particular matter and other matters that might be related to those others that I was referring to, I would then be able to get this relief to go there. In fact, for your information Chairperson, there was a similar case...[intervenes].

CHAIRPERSON: I'm going to stop you there, the question is simply whether, you had changed your mind about PRASA not being ready for a new CEO between August 2016 and the time that you left as Minister?

MS PETERS: No, Chairperson, I had not – I had changed my mind because I had started the process that's why I'm saying I had said that the officials in the Department must process the file that was now given and I had written and requested through the DG in the Presidency for an
10 opportunity to brief the President with regard to this matter and once it was concluded I was going to take that file directly to the Cabinet Secretariat who was the DG in the Presidency so that he process it for Cabinet meeting.

CHAIRPERSON: And when would you have changed your view on whether PRASA needed a new CEO, are you able to tell? We know in August 2016 it was still your view.

MS PETERS: It was around January 2017.

CHAIRPERSON: Yes, what made you change your view?

MS PETERS: At that particular time, remember Letsoalo
20 had been in the position for about six months and Mr Molefe had called me and indicated to me that, do I anticipate a situation where they should extend and I said, no it's the prerogative of the Board, the acting and I left it as such because I knew that particular time that I am busy now with this matter and I'm sure, Chairperson, given an

opportunity we would have concluded on that particular process.

CHAIRPERSON: Yes, but you did testify earlier on and said at a certain stage you were of the view that a Group CEO should be appointed expeditiously, you remember that, am I correct?

MS PETERS: You are correct, Chair.

CHAIRPERSON: Yes, when was that and when did you cease to be of that view and you started thinking, we
10 shouldn't appoint expeditiously because PRASA is not ready for a new CEO. When exactly did you have this view that a Group CEO must be appointed expeditiously, when did you change that view and thought, look, PRASA needs some time before they can have a new CEO?

MS PETERS: We had discussed the matter, I think it was early 2016 – no not 2016 it was late 2015, I'm just thrown out by the dates Chair.

CHAIRPERSON: Yes.

MS PETERS: With the Board, I will also refer to the notes
20 that I have with regard to the engagement that I had with PRASA at the AGM because there's always Annual General Meetings. At the AGM with the shareholder who is represented by the Minister, would address the Board and in that there were some issues that we also raised and Chairperson, it was at that particular time that I then said

to Mr Molefe – because we talked and I then said to him, I am going to ask the Department to process that file that they had given. So – and some of the details – because, Chairperson, sometimes it is difficult to follow the things that you discussed in a corridor as opposed to the things that you discuss in formal meeting.

CHAIRPERSON: But, are you saying that it was up to – it was the end of 2015 it was around the end of 2015 hat you changed the view that a Group CEO should be appointed
10 expeditiously, is that more or less around that time?

MS PETERS: Chairperson, I'm using memory here now and I'm struggling to put the years and months together.

CHAIRPERSON: Yes, I know, yes.

MS PETERS: But I do acknowledge that there was a time where we agreed with the Board and at that time the escalation of the problems – because the problems of PRASA escalated even beyond Montana's time, before that things went out and the other thing that I had – ja let me leave it for now, Chairperson, because I'm trying to recall
20 some of – and I'm getting a cross-pollination of those things that we discussed with Mr Molefe in the corridors and those that we've discussed officially and that's why I'm requesting for the official submission of the document.

CHAIRPERSON: No, but you seem to be saying you are struggling to remember when you may have changed your

view about the need for an expeditious appointment, is that right, okay ...[intervenes].

MS PETERS: It's not necessarily to say the changing of your view about the need for the expeditious appointment. Chairperson, I did indicate that there are matters that emerged in the process that made me arrive at this particular statement of saying, it doesn't look like we are ready.

CHAIRPERSON: Yes, but the two – the two are in conflict
10 with each other, the two views. The one is, we must have a Group CEO appointed expeditiously, you have that view initially then you come to a point when you have a view that says, PRASA is not ready which means, I'm not in favour of an expeditious appointment of a Group CEO because PRASA is not ready, I want to wait until PRASA is ready. That's what it means, isn't it or do you not see it that way?

MS PETERS: No, Chairperson, not to wait till PRASA is ready but to address – maybe for a lack of a better word, I
20 used the wrong word but for a time when we could have consolidated all these issues that we were dealing with at that particular time.

CHAIRPERSON: Mr Soni?

ADV VAS SONI SC: Yes, the robust process – the recruitment process had taken place before you changed

your mind. In other words, initially your view was, or at whatever stage but certainly during the robust process that PRASA should have a Group CEO expeditiously, that would be correct, wouldn't it but I just want a yes or no, if it's not, because otherwise Ms Peters we are going to debate matters. It's a question of your own state of mind, not what you discussed with Mr Molefe or the President or anybody it is, what was your thinking at that time, that's what we're looking at.

10 **MS PETERS:** Chairperson, in the beginning, I did give an indication that, immediately after Mr Montana left, we agreed that it is important that we recruit a CEO.

ADV VAS SONI SC: Expeditiously?

MS PETERS: Maybe the word expeditiously means...[intervenes].

ADV VAS SONI SC: See, there's a difference between doing something expeditiously and doing it urgently, that's why I didn't use the word, urgently, right from the outset when I posed my question to you I said, expeditiously. In
20 other words doing it correctly but in the shortest possible time.

MS PETERS: Agreed, Chairperson.

ADV VAS SONI SC: Now – then something happened which caused you to change your mind. I'm going to deal with that in a moment but I want to ask you a slightly

different question. By the time you had changed your mind, whatever caused you to change your mind, had the process, the recruitment process run its course?

MS PETERS: I'm not sure Chairperson.

ADV VAS SONI SC: I'll tell you why it is important, Ms Peters, you see if it hadn't run its course and I'm going to refer you to a figure you gave in Parliament and I'll just mention it now but I'll come back to it, where you had said that this process or the amount spent on this process was
10 R1 767 000.00. If this process – if you had changed your mind before this process had run its course then, effectively, that would be fruitless and wasteful expenditure, wouldn't it?

MS PETERS: Can I ask for the dates, Chairperson.

ADV VAS SONI SC: This is the reply you gave in Parliament and perhaps you should look at it, it's the Parliamentary file, Bundle 3 page 379.

CHAIRPERSON: Do you think I should bother to look at it Mr Soni?

20 **ADV VAS SONI SC:** No, I can read it out, you needn't look at it.

CHAIRPERSON: Alright.

MS PETERS: Going to Bundle?

ADV VAS SONI SC: Bundle 3 page 379, remember the one on the left-hand side.

MS PETERS: Page?

ADV VAS SONI SC: Page 379.

MS PETERS: 379?

ADV VAS SONI SC: 379, you will see towards the latter third of the page, it's the paragraph begins,

“Replies to follow-up question”,

And then your reply is indicated, I just want to read what your reply to a question from Mr de Freitas was,

10 “That the Minister, in consultation and by agreement with the Board of PRASA resolved at a meeting held on the 30th of June that the environment within PRASA was not conducive for the appointment of a GCEO. In this regard and following this agreement with the Board, the Minister seconded through the Board and appointed Mr Collins Letsoalo as Acting Group CEO effective the 1st of July”,

And right at the end in paragraph C it said,

“The amount spent on the process was R1 767 000.00”.

20 Do you see that that's what's recorded there, Ms Peters?

MS PETERS: This question, was it a question to me at the time I was...[intervenes].

ADV VAS SONI SC: Yes, it says,

“Replies to follow-up question received on the 8th of

June 2016”.

MS PETERS: Okay yes Chairperson?

ADV VAS SONI SC: Well the question I was asking is, if the recruitment process, by the time you’d changed your mind had not been finalised and you allowed the process to go on, then on the basis of the definition in the PFMA, that or part of that R1.76 million would be fruitless and wasteful expenditure, would you agree with me?

MS PETERS: I would agree with you but I just want to
10 indicate there that it is clearly an indication that we agreed with the Board Chairperson on this particular.

ADV VAS SONI SC: No, but I think you misunderstand my question. The question is, by that time you had come to the conclusion, contrary to what your view was earlier, that the Board was not ready for the appointment of a permanent CEO, and I’m going back to a question asked by the Chairperson, namely, when did you change your mind that the appointment need not be done expeditiously, was it before the recruitment process had passed?

20 **MS PETERS:** It was Chairperson I think during the process and probably at the time that I received the package.

CHAIRPERSON: I am sorry, during the process and at the time when?

MS PETERS: I received the package.

CHAIRPERSON: Oh the files?

MS PETERS: Yes Chairperson.

ADV VAS SONI SC: That's when you changed your mind?

MS PETERS: Yes Chairperson.

ADV VAS SONI SC: Can I ask you was your mind changed by the names that appeared on the list Mr Molefe gave you?

MS PETERS: I had nothing to do with the names Chairperson.

10 **ADV VAS SONI SC:** No, no, no, I didn't say that, I know that the Board had gone through this process, they had got somebody to headhunt people, they gave you a list based on that process, that was the Board's list. The question I am asking is was your change of mind due to the identity of the persons who appeared on the list the Board gave you?

MS PETERS: Not at all Chairperson.

CHAIRPERSON: Was it – was the change of your mind in any way based on the contents of the files that you have
20 been given?

MS PETERS: No Chairperson.

CHAIRPERSON: Was the change of your mind based in any way on the process that the board had followed in seeking to identify the right candidates?

MS PETERS: No Chairperson.

CHAIRPERSON: Okay, so what is it that made you change your mind?

MS PETERS: What changed my mind at that particular time Chairperson I did indicate that as a department we had not processed the submission and we had not gone to Parliament as yet and there was going to be still sometime before we go to Cabinet.

CHAIRPERSON: Okay no I just want to make sure we are on the same page. When you say you changed your mind
10 during the recruitment process by the Board and after you had been given the files by the Board or Chairperson of the Board as I understand it you are saying the change of mind was from the view that the appointment of the Group CEO for PRASA should be done expeditiously, changing that view to the view that PRASA was not ready for a new CEO, are we on the same page?

MS PETERS: Yes Chair.

CHAIRPERSON: Yes, so are you saying what made you change your mind was that there were some investigations
20 that were still to be undertaken or had been undertaken by PRASA?

MS PETERS: It was many factors Chairperson.

CHAIRPERSON: Sorry?

MS PETERS: It was many factors.

CHAIRPERSON: It was many factors, please tell me

those factors.

MS PETERS: One of the factors was the fact that I had not processed the submission yet.

CHAIRPERSON: The submissions from the Board.

MS PETERS: From the Board yes Chairperson.

CHAIRPERSON: Yes?

MS PETERS: And remember I indicated that it still had to go to cabinet.

CHAIRPERSON: Yes.

10 **MS PETERS:** And the agenda of cabinet is set by the Secretary of cabinet and if you make a submission to the Secretary of Cabinet there would be indications from the Secretary of Cabinet that in terms of these slots for this particular week, because Cabinet was sitting every second week, for this particular week we have this particular challenge, so you – part of the process that I had worked out was that once I had processed this submission I need to consult with my principal, my boss, which is the person, but just out of courtesy inform him about what this outcome
20 has produced, so that was a – where we were, and at that time Chairperson there's these investigations that are happening which is your forensic investigation which we ultimately agreed that it must reconciled with the one of the Public Protector and that it must be referred to National Treasury which then got to their office of their

Chief Procurement Officer.

CHAIRPERSON: Well you are going to have to forgive me Ms Peters but much of what you have told me does not make sense to me in terms of the question that I asked and in terms of the view that you said you changed. You are saying to me for quite some time prior to the recruitment process you were of the view that the appointment of the Group CEO for PRASA should be done expeditiously, but during that recruitment process and when the files were
10 brought you changed that view to the view that said PRASA was not ready for a new CEO and to explain why you changed that view you are saying that you needed to consult the President, you were going to need to follow certain processes before taking the names to the Cabinet, is that right.

MS PETERS: Yes.

CHAIRPERSON: That part of it does not make sense to me, how does that translate to saying PRASA is not ready for a Group CEO?

20 **MS PETERS:** That is why I said maybe it was the wording that one use at that particular time.

CHAIRPERSON: Please raise your voice.

MS PETERS: I was saying Chairperson that maybe it was the wording that we used at that particular time that probably sent a wrong picture.

CHAIRPERSON: The wording of saying PRASA is not ready?

MS PETERS: That we are not ready with the appointment of the Group CEO at PRASA.

CHAIRPERSON: Okay, you now say we are not ready, I understood Mr Molefe to have said what you said was that PRASA was not ready. When you say we are you referring to PRASA or are you referring to cabinet, are you referring to the Executive, who are you referring to?

10 **MS PETERS:** I was talking to Mr Molefe, so the both of us in that engagement, we engaged and we ultimately agreed with him and in fact he was the one who later said to me that this process is even getting contaminated and compromised, I don't know what it meant at that particular time.

CHAIRPERSON: Yes, but I just want to find out when you say we were not ready who you are talking about, is it you and Mr Molefe, is it PRASA and the Ministry, is it PRASA the Board, the Ministry and the Executive namely the
20 cabinet, who exactly ...[intervenes]

MS PETERS: PRASA and the Ministry which means the Board would have been involved in – I mean included in the decision.

CHAIRPERSON: Yes, yes, but you are not able to – or are you able to explain to me how the fact that you must

follow certain processes to take the names to the cabinet translates in to say PRASA is not ready?

MS PETERS: May I just have a moment?

CHAIRPERSON: Yes, and I know we have gone past two hours of a hearing, it may well be that there is time for a break. I think your counsel Ms Peters is agreeing, he is nodding about the break.

ADV VAS SONI SC: A request to that effect has been made.

10 **CHAIRPERSON:** [laughing]. Maybe just help me with an answer to that question then maybe we will take a break. I am saying it doesn't make sense to me because when you were of the view that the Group CEO should be appointed expeditiously you would still follow the same processes as far as Cabinet was concerned. When you change the view, your view and said well PRASA is not ready it's the same process you would follow, but quite apart from that I am saying there seems to be no connection for me between saying we must follow these processes if I want to take
20 these names to cabinet and saying PRASA is not ready, I would have thought that when you say PRASA is not ready you would talk about things at PRASA, you would say this is the position, these are the things at PRASA that make PRASA not be ready.

MS PETERS: Chairperson the stakeholders at PRASA

must be there, the Ministry as well as the Department, and PRASA itself. When I said PRASA is not ready I have already elaborated on the areas of the investigations and the decisions between me and the AG, and then there is this other process that involves the Department and myself as the then Minister in terms of processing the submission. So at that particular time Mr Molefe had taken a decision that he cannot work with the then CEO who was acting, so there needed to have been something in between and
10 maybe that is the element that I did not bring in earlier on to say in our discussion there was an indication that the relationship between Mr Molefe and the then acting CEO was not right, so at that particular moment we were not ready, they were not ready and the whole process was not concluded yet and I then said they conclude and deal with these financial challenges and we will get in fact even in the engagement with the – the day ...[indistinct] was seconded was the day in which we had a whole day engagement with PRASA Board and the Executive at that
20 particular time and there were serious issues that were coming from that, and you couldn't wait for the appointment of the CEO for those things to be addressed, so we needed somebody in between that, and that is why I had no issue when Mr Molefe said the policy of PRASA re-acting indicate that a person can act for about six months

and then they went ahead and – I don't know whether they extended or what they did there, and I just need to indicate that the process that they had worked on with regard to the recruitment had started around October, I am trying to get the picture of 2015, and we entered 2016 and at the time when they made the submission to meet, because I think there were two processes that were ran in PRASA, it is just that I don't recall well those processes, and then when he ultimately, Mr Molefe came with the final process that they
 10 had worked in, it was at a point that he indicated to me those, that particular submission that they had made, so Chairperson by the 10th of 2016 we had not as yet concluded on the process of appointing the CEO. There was an acting CEO in place ...[intervenes]

CHAIRPERSON: Ja, no, no that's fine.

MS PETERS: And I am saying to you Chairperson if there is anything wrong at that particular time I would take responsibility for my part in that particular delay in terms of ensuring that the processing that happens and the
 20 preparation to Cabinet then happened.

CHAIRPERSON: But why were you going to meet, consult with the President after the Board had given you these files and why was the issue of the processes that leaked to Cabinet why were they, why was that relevant because your position was PRASA is not ready for a new CEO? I

would have thought that if that was your position you would be saying there is no need to bother about processes that take us to Cabinet because PRASA is not ready?

MS PETERS: No Chairperson government did not operate that way.

CHAIRPERSON: So what were you going to talk to them about?

MS PETERS: In Cabinet there is a principle and a protocol that says we are individually and collectively
10 responsible, and the Minister is [speaking in vernacular] the responsibility of this effect and in my view as Dipoa Peters if ...[speaking in vernacular] Patisiwe you keep on going back to law [speaking in vernacular] are you.

CHAIRPERSON: [laughing] yes.

MS PETERS: So that you can then be able to inform him or her about what he has given you as a responsibility and be even able to indicate that I am then from this point taking this matter to Cabinet and I said it earlier on Chairperson that in my experience, in the area of
20 responsibilities that I carry I have never had a situation where when the Board, out of the Boards I worked with in my previous areas of deployment, even in the other Boards that we were working with in Transport in have never had a situation where when I went to the President with regards to a matter and a recommendation by a Board that he says

no.

The issue is he would want more information and Chairperson you would have observed that there would be times even in Parliament where the opposition would ask President issues which he or she is not processed well, would not be able to respond to it.

CHAIRPERSON: No that is fine.

MS PETERS: And that informed me Chairperson to say it is important that I ...[intervenes]

10 **CHAIRPERSON:** Ja, I think you have made your point and you must just confirm that when you talked about Patiswa what you meant was that – whether what you meant was that you were given a responsibility to carry out and you must report back to whoever gave you the responsibility.

MS PETERS: Yes Chairperson.

CHAIRPERSON: Okay, alright. Mr Soni maybe, I don't know maybe – you know at five o'clock we are supposed to start an evening session with Mr Freund, maybe let's talk about the way forward. I think there is still ...[intervenes]

20 **ADV VAS SONI SC:** There is – not as much as today but certainly some important issues that remain to be dealt with.

CHAIRPERSON: Yes, is there a possibility that we could continue with Ms Peters' evidence tomorrow morning before tomorrow's witness?

ADV VAS SONI SC: Yes, yes.

CHAIRPERSON: Ms Peters how is your situation about that, is that – would that be feasible with you and I will ask your counsel just now, just speaking for yourself, would it be possible to continue with your evidence tomorrow morning, before tomorrow's witness?

MS PETERS: Yes Chair I will send a notice to Parliament because there is a Parliament sitting tomorrow and I am sitting in a Committee, and Chair you would know that that
10 Committee that I am sitting on is called the Standing Committee on Appropriations and I am an alternate on the Standing Committee on Finance, and the next day the Minister will be presenting his budget so I am going to miss out on tomorrow's presentation by National Treasury, the Committee, but if the Chief Whip who is responsible for our participation in Parliament is informed then usually there won't be a problem.

CHAIRPERSON: Yes there won't be a problem.

MS PETERS: And also because of the importance that
20 they actually give to the Commission I don't think that there ...[intervenes]

CHAIRPERSON: That there should be a problem.

MS PETERS: But I will call them and inform them.

CHAIRPERSON: Yes okay. Mr Mijaba how is your situation?

ADV MIJABA: Chair I would request that we stand down so that I can make logistical arrangements, I am not averse to that, it is just that I have got ...[indistinct]

CHAIRPERSON: Okay let us take a ten minutes break and then when we come back then we can talk. Okay, we will adjourn for ten minutes.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

10 **CHAIRPERSON:** Yes, Mr Soni. I think Mr Majavu was needing to make some contact with whoever. I do not know you are going to give me the report back or whether he will.

ADV VAS SONI SC: I can tell you so that we then speed it up Chairperson. Mr Majavu said to me so long as he is able to leave ...[intervenes]

CHAIRPERSON: The aircon is up again. Yes, okay.

ADV VAS SONI SC: So long he is able to leave by quarter to twelve tomorrow, it should be okay.

20 **CHAIRPERSON:** Okay, okay. And what is your assessment that should be fine?

ADV VAS SONI SC: I think we should be finished around tea-time.

CHAIRPERSON: Yes, yes.

ADV VAS SONI SC: It may be that we should start at

09:30 just ...[intervenes]

CHAIRPERSON: Yes. Ja, we could start a little bit earlier.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Ja.

ADV VAS SONI SC: There is not much, much more. It is just that there are matters that one would like to...

CHAIRPERSON: Ja. Mr Majavu, if we start at half-past nine, will that be fine with you.

10 **ADV MAJAVU:** Chair, that will be in order.

CHAIRPERSON: Yes.

ADV MAJAVU: Because I would also need a few minutes to redirect.

CHAIRPERSON: Okay.

ADV MAJAVU: So if we start at 09:30, by quarter to twelve we should be done.

CHAIRPERSON: Yes.

ADV MAJAVU: So that is in order with me Chair.

20 **CHAIRPERSON:** Okay alright. Ms Peters, starting at half-past nine would be fine?

MS PETERS: Thank you Chairperson. I have consulted with the ??

CHAIRPERSON: Yes.

MS PETERS: And they do agree.

CHAIRPERSON: Yes.

MS PETERS: I am certain Chairperson will be aware that we have got something called lock-up before the budget. They said as long as I am there by the time we get locked up for the budget.

CHAIRPERSON: Oh. [laughs]

MS PETERS: When we perused the budget before ...[intervenes]

CHAIRPERSON: No, I did not know that. [laughs]

MS PETERS: Before the Minister allows us, we go
10 through it together.

CHAIRPERSON: Oh.

MS PETERS: Yes.

CHAIRPERSON: Okay. So. No, that is fine. So I think we should then adjourn for now because I am due to start the evening shift, evening session now at five. So we will adjourn. You are all free to go home except me and those who must remain to assist us and there will be another work stream. So I will adjourn and allow about ten minutes for the – five to ten minutes for Mr Freund to be ready
20 together with his witness. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Good afternoon Mr Freund. Good afternoon everybody who was not here in the morning.

ADV FREUND SC: Good afternoon Chair.

CHAIRPERSON: Yes. Are we ready?

ADV FREUND SC: We are indeed Chair.

CHAIRPERSON: Yes.

ADV FREUND SC: May I proceed?

CHAIRPERSON: Yes.

ADV FREUND SC: Chair, you will recall that Mr Frolick testified previously on the 5th of February but not completed his evidence in the time available. It was agreed he would come back.

10 He has come back and he is ready, willing and able to resume his testimony. He is connected to these proceedings right now. But before we proceed with his evidence, with your leave I would like to raise a different issue.

CHAIRPERSON: Yes.

ADV FREUND SC: I would with your leave produce into the record a set of correspondence between the Commission, in particular the then acting Secretary of this Commission and the Secretary Generals or equivalent
20 office holders of 12 political parties represented in Parliament.

 There is a bundle of such correspondence and in that correspondence; essentially, the Commission invited those parties to lead evidence or to make submissions to this Commission.

And with your leave I would like to refer to that, introduce that into the record and just draw attention to certain features of that correspondence.

CHAIRPERSON: Yes.

ADV FREUND SC: We suggest... Yes, that it forms part of Exhibit ZZ, which is the exhibit on Oversight by Parliament. And there is a bundle that has been prepared called Correspondence to Political Parties. It runs to some 63 pages and I trust that it to be in your files Chair
10 together with the legal material and the other exhibits.

CHAIRPERSON: Yes, I have been handed the file. Yes.

ADV FREUND SC: Now Chair there is a particular reason why I have thought it possible appropriate to draw attention to this particular correspondence.

It has been drawn to my attention that in social media there has been a suggestion that the Commission is selective in the political party represented in Parliament from whom evidence and submission has been sought.

Now so for example you will see at page 45 of
20 this bundle a certain Mr Floyd Shivambu making some comments on social media but - and the sting of it is this:

“The EFF fought for the Commission to be established and yet they will never speak to us because we are not factional puppets.”

The suggestion being that their evidence has not

been solicited. And the point that I wish to place on record, through you Chair if you think it so fit, is that identical letters were sent on the 27th of February 2020 to each of 12 political parties and you will see them all referred to in this bundle.

And so, for example, just to illustrate the point at page 41, you will see the letters sent to the Secretary General of the Economic Freedom Fighters. And Chair, I would suggest you might wish to turn to that page.

10 **CHAIRPERSON:** I am there.

ADV FREUND SC: And Chair, this is a letter addressed by the acting Secretary of this Commission but on your directions, as I understand it.

CHAIRPERSON: H'm.

ADV FREUND SC: And as I say, a similar letter sent to all the political parties.

CHAIRPERSON: H'm?

ADV FREUND SC: And in summary, I am just going to refer you part of the letter ...[intervenes]

20 **CHAIRPERSON:** I think the ones that might not have been sent might be those who only got to Parliament in 2019 after the General Election of 2019 but that is incorrectly ...[intervenes]

ADV FREUND SC: That is ...[intervenes]

CHAIRPERSON: All those which have been there prior to

the appointment of the Commission during the relevant years, I think all of them were sent these letters.

ADV FREUND SC: That is indeed correct Chair to the best of my knowledge. And you will see Chair at the cover page of the exhibit, the list of the parties to whom it has been sent, 12 political parties including the IFP, Cope, FF Plus, UDM, DA, AIC, EFF, ANC, PAC, ACDP, Agang SA and NFP.

And what I just wanted to draw to your attention
10 and perhaps to the public's attention, through you Chair, is that as long ago as February of 2020, you directed and the acting Secretary of the Commission corresponded with each of the political parties inviting them all to make – to furnish evidence or submissions before this Commission.

So for example Chair, you will see in paragraph 4 of the letter. The letter says:

“Your party may selected a few members,
maybe two, who can provide the Commission
with statements or affidavits or declarations
20 setting out your experiences and observations
over the years.

The statements and affidavits can be drawn up
by the Commission's lawyers or by your party's
lawyers in consultation with the Commission's
lawyer.

The Commission needs this evidence in order to see whether Parliament carried out its constitutional oversight obligations properly over the years...”

And so forth. And in considerable detail the parties are all invited to make representations and a certain time period which was stipulated within those invitations were submitted.

But Chair, for – from a number of the parties, in
10 this particular instance, it might be relevant to just draw your attention to page 46 of this bundle. And there, for example, we have a signature from a representative from the EFF acknowledging receipt of that letter.

And to the best of my knowledge, that party and a number of other parties have not made submissions to this Commission.

CHAIRPERSON: And that signature – the person who signed there indicated that she received the letter of invitation at – it looks like five minutes past four on the
20 3rd of March 2020.

ADV FREUND SC: Indeed.

CHAIRPERSON: Yes. She put in – he or she – I think it is a she, even put in her ID-number.

ADV FREUND SC: Indeed. Thank you Chair. Chair, there is no more I wish to say other than that I submit that this

should form part of the record.

CHAIRPERSON: Yes. No, thank you. That is fine.

ADV FREUND SC: Thank you Chair.

CHAIRPERSON: It will ...[intervenes]

ADV FREUND SC: We can ...[intervenes]

CHAIRPERSON: It will be part of the record, ja. Thank you.

ADV FREUND SC: Thank you Chair. Chair, as I have indicated. Mr Frolick started but has not completed his
10 evidence on this particular topic.

CHAIRPERSON: H'm.

ADV FREUND SC: I think he testified under affirmation if I recall. I am not sure if I am correct in that regard.

CHAIRPERSON: Yes.

ADV FREUND SC: He should – I have been directed to ...[intervenes]

CHAIRPERSON: Ja.

ADV FREUND SC: The affirmation - would that be ...[intervenes]

20 **CHAIRPERSON:** Administer the oath or affirmation again. Good afternoon Mr Frolick. Are you there?

MR FROLICK: Good afternoon Deputy Chief Justice. I am here.

CHAIRPERSON: Okay thank you. I cannot see you as yet. Now I can see you. Okay thank you very much.

Thank you for coming back to complete your evidence.

MR FROLICK: It is a pleasure sir.

CHAIRPERSON: The registrar will just administer the oath or affirmation afresh.

REGISTRAR: Please state your full names for the record?

WITNESS: Cedric Thomas Frolick.

REGISTRAR: Do you have any objection to make a prescribed affirmation?

WITNESS: No, I do not.

10 **REGISTRAR:** Do you affirm that the evidence you will give, will be the truth, the whole truth and nothing else but the truth? If so, please raise up your right hand and say, I truly affirm.

WITNESS: I truly affirm.

CEDRIC THOMAS FROLICK: (affirmed)

CHAIRPERSON: Thank you. You may proceed Mr Freund.

EXAMINATION BY ADV FREUND SC: Thank you Chair. Mr Frolick, you will recall that when you testified we
20 referred to the affidavit that you submitted as one of several representatives of the African National Congress in Bundle 1 from page 46 and following. You will recall this affidavit, I am sure.

MR FROLICK: That is correct.

ADV FREUND SC: And I want to start off today at page

53. That is the top right hand pagination. And there you deal with the topic of certain letters written to chairpersons of committees in June 2017 from paragraphs 23 and following. Do you have that?

MR FROLICK: That is correct.

ADV FREUND SC: And Chair may I ask if you also have that?

CHAIRPERSON: I have got that. Thank you.

ADV FREUND SC: Now... Thank you. Now Mr Frolick,
10 there you say that during May and June of 2017 a number of allegations pertaining to the capture of state-owned enterprises and the alleged involvement of the Gupta family matters of the state appears in the public domain.

These allegations are directed at certain government departments and/or members of the Executive. And after dealing with certain preliminary issues, you say:

“Upon my return to Parliament on the 15th of June 2017, I...”

Of course, you were the Chair of Chairs.

20 “...was called to a meeting of the Speaker and the Chief Whip of the ANC where we discussed the matter of the establishment of such an ad-hoc committee which had again been raised by opposition MP’s.”

And you say:

“We were mindful that the Commission on State capture was not operational yet and that Parliament has a responsibility to look into the matter and we agreed that the best approach to be for the relevant line function committees to look into the matter and to report to The House...”

And you then referred to certain letters that you wrote to the chairs of certain committees. I take it that
10 this is all factually correct?

MR FROLICK: That is correct.

ADV FREUND SC: Right. Well, what interests me is the principle. The principle, as I understand it, that you are expecting in your affidavit, is that because there were allegations in the public domain of the capture of state-owned enterprises and allegations pertaining to the involvement of the Gupta family matters of state.

And because those allegations were directed at certain government departments and/or members of the
20 Executive it was appropriate for Parliament to exercise its powers of oversight and to enquire and in trying to clear up the truth in relation to these allegations. You accept that?

MR FROLICK: That is correct.

ADV FREUND SC: And I have to say Mr Frolick, I have no difficulty with the view that you say you had formed, the

Speaker had formed and the Chief Whip had formed that this required investigation.

But what I want to put to you where I do have difficulty is the fact that you only thought that necessary at this late stage namely in the middle of 2017.

And I want to ask you firstly, generally, why it was that prior to that no similar steps were taken to the best of your knowledge?

MR FROLICK: Well, thank you for the question. I want to
10 take you a little bit back Chairperson and Advocate Freund to indicate that these emails that were being revealed and leaked in the public domain was on the back of the report of the Public Protector in 2016 that was published, I think it was in October 2016, where the Public Protector came to certain conclusions.

And out of the recommendations of that report, indicates that the – a commission similar to what we are having now which is State capture, must be sped-up.

A discussion then ensued as to what happened
20 since that report from the Public Protector was published. The expectation was that by 2017, early 2017, all the legalities would have been put in place for the commission to commence its work.

It would have, and it was considered during our discussion that we had, that if Parliament would have

interfered earlier or intervened earlier from the time that the complaint was lodged with the Public Protector by a certain Father, S Mayebe of the Dominican Group and former DA Leader, Mr Mmusi Maimane on the 18th of March 2016, as well as an unnamed member of the public on the 22nd of April 2016, then we would have basically interfered and run a parallel process, parallel to that that the Public Protector was undertaking.

Keeping in mind that the Public Protector
 10 submits reports to Parliament and those reports which was the subject of an investigation then, arrived in The House that we must deliberate on.

And the recommendation explicitly said that a commission or inquiry into allegations of State capture must be set up and at that stage that you are referring to, as it appears in my affidavit, no such commission was set up as yet.

ADV FREUND SC: Alright. Now are you suggesting Mr Frolick that if a member of the public lays a complaint
 20 with the Public Protector about a particular issues – and here I have in mind an issue of huge national significance, allegations of alleged State capture and corruption of the highest level – are you suggesting that once such a complaint has been laid with the Public Protector, it would be wrong for Parliament itself to investigate and to deal

with such allegations?

MR FROLICK: Chairperson, we were mindful of the constitution of court ruling and the Constitutional Court ruled that investigations undertaken by the Public Protector and recommendations are made can only be taken on review in a court of law.

And Parliament was chastised at the time for undertaking after the Public Protector delivered her report in Nkandla what was deemed to be a second guess of what
10 the Public Protector said.

So the dilemma that they were sitting with is that if you intervene in this process that was investigated by the Public Protector that you could arrive at the same conclusion, that Parliament open up parallel investigations and come to the same conclusions than the Public Protector and that for us would have meant second guessing the report.

ADV FREUND SC: So is the short answer to my question yes that you thought it would be improper to investigate
20 something once the complaint has been laid with the Public Protector?

MR FROLICK: The ultimate discussion that we had is yes it would have been improper to do so.

ADV FREUND SC: And who had that discussion and when?

MR FROLICK: The discussion took place between the Speaker, as I indicate Chairperson in my affidavit. It happened on the morning of the 15th of June 2017 when I was called to the office of the Speaker where I derived my directives from where the Chief Whip was also present.

And they were in discussion about a meeting that took place earlier that morning, The National Assembling Programming Committee which I did not attend, where this matter was raised again.

10 **ADV FREUND SC:** Now if I can just interrupt you there Mr Frolick because I think you have misunderstood my question. When I asked you who were at that discussion and when, I am not talking about the discussion of June 2017 to have these four committees make investigations.

I am talking about the discussion that I think you say happened that said because there is a complaint before the Public Protector about state capture, therefore it would be inappropriate for Parliament to even
20 investigate.

That would have been much later. That would have been more than a year earlier. Are you saying there was such a discussion or did I misunderstand you?

MR FROLICK: Well, I must also take you back Chairperson to 2016 just after there were allegations made

by a certain member of Parliament around allegations of the involvement of a certain family in state-owned enterprises.

It was referred to a committee and the committee, for one reason or another after deliberations, decided not to look into the matter.

A new Chief Whip was appointed on the 22nd of March 2016 and it was the firm view of the Chief Whip and it enrolled in several multi-party discussions as
10 well that if Parliament would conduct a parallel investigation it would be improper.

That view was also supported by the Speaker and also on advice from the legal services who said we must look at the ruling of the Constitutional Court when it comes to these types of investigations.

ADV FREUND SC: And were you ...[intervenes]

CHAIRPERSON: One second Mr Freund.

ADV FREUND SC: [No audible reply]

CHAIRPERSON: I am sorry. Yes, you may proceed
20 Mr Freund.

ADV FREUND SC: Thank you Chair. If I understand what you are telling us Mr Frolick that this line of reasoning arose out of the Constitutional Court's judgment in relation to the Nkandla saga and the decision by a parliamentary committee not give effect to what the Public Protector had

recommended and rather to decide that no measures whatsoever should be taken against the President? That is the origin of what you are telling us, is it?

MR FROLICK: Can you just repeat the question again? So in terms of the Parliamentary Committee that you are referring to?

ADV FREUND SC: No, I am trying to understand what you are telling us because I have never heard this before. What I hear you to be telling us is that the view was taken
10 by somebody - and we will come back to who took that view – the view was taken that the effect of the Constitutional Court’s judgment on the Nkandla matter is that it would be improper for Parliament to investigate the matter if somebody had made a complaint to the Public Protector about the same matter. Am I understanding you correctly?

MR FROLICK: What I am saying is Chairperson that it would be improper for Parliament to conduct a parallel investigation whilst the Public Protector, a Chapter 9 institution, is conducting exactly the same investigation.

20 **ADV FREUND SC:** So that could literally mean for however long it takes the Public Protector’s investigation, your – the view that you are explaining was that Parliament was hamstrung and could do nothing. Is that the argument?

MR FROLICK: Well, the argument was and this is where

the Chief Whip of the majority party, especially the Speaker was very clear, that they must give time for the Public Protector to produce her report and see what recommendations are in that report.

ADV FREUND SC: And the reason for that, as I understand your evidence, is because there was a complaint pending before the Public Protector which complaint had been lodged in March 2016. Is that correct?

MR FROLICK: That is correct.

10 **ADV FREUND SC:** Alright.

MR FROLICK: Actually three complaints.

ADV FREUND SC: Well, let us go back to where we were on the last occasion. On the last occasion I put to you and Chair you will find this in the transcript of Day 338 at page 198. I presume you may not have Mr Frolick.

But I put to you an extract from a newspaper report and you make a point: Yes, but I do not have that newspaper report in front of me. So ...[intervenes]

CHAIRPERSON: Mr Freund, can you just repeat in what
20 bundle will we find it? In what bundle will we find it?

ADV FREUND SC: Well, we will find the newspaper report in Bundle 2 at page 561.

CHAIRPERSON: 561?

ADV FREUND SC: [No audible reply]

CHAIRPERSON: Okay alright. Okay thank you.

ADV FREUND SC: And is it correct Mr Frolick that you have since been furnished with a copy of this particular report?

MR FROLICK: Yes, I have been furnished this afternoon with three reports. You must say which one you are referring to.

ADV FREUND SC: Yes, well, the one I am going to refer you to now is the one dated the 27th of February 2011. It is a report in the Sunday Times. It is labelled in the
10 Commission's documentations, Annexure ZR-1. Do you have that particular report?

MR FROLICK: Yes, I have the report in front of me.

ADV FREUND SC: And that is a report that alleges under the headline: "Ministers shiver when summonsed to family's home."

The following. It says:

20 "A revolt is brewing within the ANC and its alliance partners against the influence of the Gupta family over President Jacob Zuma and its government."

And then in the third paragraph it talks about members of top ANC leadership structures, the National Working Committee and the Top Six party officials having raised concerns about this.

It makes an allegation. The Sunday Times says:

“It understands that the Guptas’ role in influencing the appointment of CEO’s and chair-people in key state-owned enterprises were recently raised at an NWC meeting...”

And it goes on and makes a host of other specific allegations.

Now those are allegations of precisely the same character, are they not, as the allegations to which you refer in paragraph 23 of your affidavit, the allegations
10 which in May of 2017 prompted a decision to cause certain committees to carry out certain investigations. Do you agree?

MR FROLICK: I do not agree?

ADV FREUND SC: Why not?

MR FROLICK: I do not agree because the allegations that surfaced in 2017 was on the back and it was very specific allegations of leaked emails. It was on the back of a report of the Public Protector.

And there was certain things that appeared in
20 that report that I do not have in front of me now but those emails and things refer the details on.

With respect Chairperson, the article of 2011 that is being referred to is so vague. It does not mention any specific person or quote anyone in that article. Now what usually happens in committees if I may proceed?

CHAIRPERSON: Please.

MR FROLICK: That once issues are in the public domain it is the responsibility of members of Parliament who serve in these different committees to bring the information, highlight it to the attention of the chairperson and in terms of the parliamentary rules, they deliberate on the matter.

And whoever brings these or whatever complaint they have or information must then present their case and they must convince the rest of the committee that the
10 committee must either schedule a hearing on the matter, require further information and so forth.

So I would, with respect, differ from you that it is exactly the same.

ADV FREUND SC: But the nature of the allegations is exactly the same, is it not?

MR FROLICK: Well, the nature of the allegations in the article of 2011 is – deals with a certain family and what they had been up to but in 2017 the allegations that appear in the form of leaked emails was on the premise on the
20 report of the Public Protector. So very concrete, very clear information on what appeared in the media at the time and the allegations that were made.

ADV FREUND SC: But the Sunday Times article quote members of the National Working Committee of the African National Congress as making these allegations. So it

would not have been a matter of a great deal of difficulty, would it, for anybody in Parliament to ask the NWC members whether such allegations were made, who made them and why they were made. It would be perfectly simple, would it not?

MR FROLICK: Advocate Freund, when this type of allegation appear or appeared, then you would find that in Parliament there are members who may be members of the National Executive Committee or the National Working
10 Committee.

And what needs to happen in these type of ANC meetings is that they meet behind closed doors, they discuss a range of issues and then thereafter a press release or a statement is made as to how the ANC wants to approach the matter.

So even if you are somebody in Parliament who is a member of the NWC or the NEC, it can simply say this matter must still be discussed or we do not have further information yet.

20 **ADV FREUND SC:** But they would be lying if they said that, would they not? Because you have the power to compel to testify and to tell the truth and it is crime not to do so, is it not?

MR FROLICK: Advocate Freund, they are members and not all members of the ANC and NWC are members of

Parliament. Some are and some are not but the manner in which the ANC, NEC and NWC is that those discussions take place, a certain view or collective view is taken and a certain position is taken as to how to proceed with the matter.

They do not have to or they do not – even if you ask very specifically they will say we are bound by the decisions of the NEC and the NWC and the discussions that have taken place and we cannot go outside of the NEC
10 and NWC.

ADV FREUND SC: Ah, is that the point? Is your point that if a member of the NEC or if a member of the NWC is summonsed to a portfolio committee and asked about these matters, they are entitled to refuse to answer? Is that the point you are making?

MR FROLICK: That is not the point. That is not the point I am making. If any member of the NEC or NWC who is serve in a particular capacity in government is called to a meeting of the Portfolio Committee, then according to the
20 rules of the National Assembly that member must be able to deal with their portfolios that are there but at that time in 2011 this issue did not arise in the way that you are putting it.

ADV FREUND SC: Ja, but what I am trying to explore with you is why it did not arrive, because the principle that you

yourself have correctly asserted that allegations of this type warrant investigation by parliament were not made for the first time in the middle of 2017, they were made extensively in 2011 and in every year subsequent to that.

MR FROLICK: I have referred you to the manner in which the different parliamentary committees work, how they gather their information and how members bring issues to the different portfolio committees and that is a political process within the rules of parliament that are taking place
 10 and that is how the system and how particular and the politics in parliament work. There are political parties there and members who have very firm views on how certain matters must be raised and you must be able, even myself must be able to convince a particular point of view or even a letter that I wrote to ask for certain things to be done and to explain to them, that is how the terrain in parliament works, it is a very contested terrain.

ADV FREUND SC: Yes, it is a contested terrain and yes there are partisan positions adopted by different political
 20 parties, I accept that without reservation. The problem is this, do you accept that there are certain types of misconduct or alleged misconduct, allegations of misconduct which are of such seriousness that there is a duty of parliament to investigate them if there appears to be any possible plausibility to those allegations and that

would include, in particular, allegations of state capture?
There is a duty on parliament to investigate that and to get
to the bottom of that, is there not?

MR FROLICK: There is the duty of each member of
parliament to bring such information to the relevant
structure by following the rules and then what should
happen is, is to get them the buy-in of the different role-
players in parliament to do as you say. However, in this
instance, Chairperson, I cannot speculate on what the
10 reasons are or is for the members of the NEC in 2011, the
names that do not appear there to say what they have said.
I am not a member of those structures.

ADV FREUND SC: Ja, I just want for the record to check
that you were not then and you are not now either a
member of the NEC nor of the national working committee,
is that correct?

MR FROLICK: That is correct.

ADV FREUND SC: Right, so I have understood that and I
have understood that when I have been listening to your
20 evidence. Now you have become aware of the point of
view expressed by Ms Mazzone of the Democratic Alliance
in relation to the events in 2016 and I just want to check
with you whether you have or have not had an opportunity
to look at paragraph 13 of her affidavit. I think that you
might have received it, only seen it late in the afternoon

and I do not know if you have had a chance to read it.

MR FROLICK: Yes, Chairperson, I want to put it on record that last Thursday the lawyer acting on behalf of the ANC, Mr Krish Naidoo contacted the Commission and asked which documents will be dealt with this afternoon and we were referred to the same bundle that was used last time and then unfortunately, late this afternoon I received three – in fact five different documents that the advocate is now referring to and I will try to the best of my
10 ability, while doing some speed reading on some of these things, I have not read the Honourable Mazzone's affidavit in full suffice for the sections that were sent for consideration and discussion in the previous hearing that took place. So ...[intervenes]

ADV FREUND SC: [inaudible – speaking simultaneously] at then. Let me not put you on ...[intervenes]

CHAIRPERSON: Mr Freund and Mr Frolick, how much time do you think Mr Frolick you might need? Five minutes to read what you need to read?

20 **MR FROLICK:** Deputy Chief Justice, it is quite a long affidavit.

CHAIRPERSON: Yes.

MR FROLICK: So it may assist me if Advocate Freund could point specifically to which section or pages and then it could take a few minutes, five to ten minutes, to look at

exactly what is there. But unfortunately at this stage where I sit I have not read the affidavit.

CHAIRPERSON: Yes. No, no, that is fine. Mr Freund do you have a suggestion because maybe we take a short adjournment to make sure there is no unfairness to him.

ADV FREUND SC: I have no difficulty with that, Chair, but I thought perhaps I could address the problem in a shorter way.

CHAIRPERSON: Yes.

10 **ADV FREUND SC:** Which is simply take the witness to very specific paragraphs which I will read and my questions just on that.

CHAIRPERSON: Yes.

ADV FREUND SC: If I might endeavour to that.

CHAIRPERSON: Yes.

ADV FREUND SC: That might enable us to do it more quickly.

CHAIRPERSON: Yes, maybe let us try and do that Mr Frolick. You understand what Mr Freund proposes to do.

20 Maybe we could do that but if you feel that you might not – whatever he might put, might tell you about the relevant portions of the document, might not give you enough context, please feel free to indicate. Do you understand?

MR FROLICK: Yes, Deputy Chief Justice, I understand and I am amenable to that, I will try to assist as far as

possible.

CHAIRPERSON: Yes. No, that is fine.

ADV FREUND SC: Thank you.

CHAIRPERSON: But if you feel that maybe you did not get the full context let me know. Okay, alright, Mr Freund?

ADV FREUND SC: Thank you, Chair. Now, Mr Frolick, in paragraph 13.8 of Ms Mazzone's affidavit, that is at page 20 of bundle 2. Do you have that accessible to you?

MR FROLICK: Yes, I do have it.

10 **ADV FREUND SC:** So I am going to read it out so that everybody can understand what I am referring to. This is evidence that Ms Mazzone also gave orally to this Commission and she says:

20 "On the 18 March 2016 I issued a statement referring to growing evidence that a number of SOEs had been captured by the Guptas and said that I was requesting the portfolio committee on Public Enterprises conduct a full parliamentary inquiry into the capture of SOEs by the Guptas. In my statement I referred to allegations *inter alia* that..."

And there are then six subparagraphs.

1. The resignation of the former Chairperson of Eskom Zola Tsotsi had been orchestrated by the Guptas as a result of him not playing the game

after he had refused to grant them exclusivity over certain Eskom contracts.

2. Former Minister of Public Enterprises, Barbara Hogan, had been placed under pressure to meet with Gupta-linked Indian Airline Jet Airways.”

And her affidavit makes clear that this is a recently made allegation pertaining to much earlier, pertaining back to 2010 and 2011.

3. Hogan had been replaced by Malusi Gigaba and who was known to have attended the Gupta wedding in 2013.

4. Vytjie Mentor had been offered the position of Minister of Public Enterprises by the Guptas on the condition that she drop the SAA route to India and give it to Jet Airways instead.

5. Former SAA Chairperson Vuyisile Khona had been offer R500 000 by the Guptas in 2012 to secure his cooperation.

6. Eskom CEO Brian Molefe had admitted to visiting the Guptas at Saxonwold, Gupta-owned Tegeta Exploration had recently secured lucrative contracts to supply coal to the Eskom power stations.”

And those are, if I may say so, when one reads her affidavit, probably the major points but by no means the

only points that she made about the sorts of allegations that were being publicly made by that time and which underpinned a request that she made to the portfolio committee on Public Enterprises that that portfolio committee should investigate these issues.

Now I would interested in your views as to whether, when she makes allegations of that type and she refers to where they are based from and they come from press reports and the like, whether you think that is the sort of
10 thing that a portfolio committee responsible for Public Enterprises ought to have investigated.

MR FROLICK: Well, that is a matter, as I also indicated last time, that the portfolio committee Chairperson and members should have had an interest on and should have deliberated on to chart the way forward in terms of Rule 167.

ADV FREUND SC: And if understood your evidence last time, I think, but I do not want to put words in your mouth, I think you agree that that is something they should have
20 investigated, is that correct?

MR FROLICK: That is something that the portfolio committee should have had an interest in and should have charted a way of how to deal with it in terms of Rule 167, whether it is an investigation, a hearing or whatever it may have been.

ADV FREUND SC: Well, okay, the manner in which they investigate could take different forms, I think you are suggesting. You could, for example, invite people to come to an ordinary meeting, you could perhaps issue summonses, if necessary. The manner in which you deal with it you say is a matter for them to determine, am I understanding you correctly?

MR FROLICK: That is correct.

ADV FREUND SC: But am I also understanding you
10 correctly that although that is so, how they would do it was for them to decide but you agree in principle that they should have done it somehow or other.

MR FROLICK: That is a matter that the committee should have considered.

ADV FREUND SC: Well, does that mean they should have considered whether to investigate and you are not expressing an opinion or does it mean that you agree that that they should have dealt with the issue by inquiring into it?

20 **MR FROLICK:** Ultimately the decision that the committee decides on what to take and how we want to proceed to it is a committee matter but given the circumstances, as it appears in this affidavit that you have referred to, it is a matter that the committee should have considered and should have been seized with.

ADV FREUND SC: Right. And you have been furnished, have you not with the ...[intervenes]

CHAIRPERSON: I am sorry, Mr Freund. Mr Frolick, maybe your answer raises the question of when it is that in your view that committee should investigate allegations that come to our attention, allegations of a serious nature? When they should investigate them, when should they – when should they decide to investigate and when should they decide not to investigate?

10 **MR FROLICK:** Chairperson, it is within the powers of the committee to decide whatever course of action they may take but the committee should always consider the gravity of the issues that are brought in front of them. It may not be an investigation or inquiry but they should do the first step to consider the matter that is in front of them so that they have a factual ground on where to move but also very importantly when it comes to these type of decisions it is good for the committee as a whole to decide how they want to approach matters.

20 What happens in a lot of these instances is that the working arrangements amongst the different members of parliament in the committee is of such a nature that it is more conflictual more than anything else and very quickly parties take partisan positions around these issues without necessarily gone – deliberated and I feel that once the

committees have properly deliberated on a matter they are in a position to chart a way before. But very often in a lot of instances you find that different members of political parties raise issues and then it comes a partisan issue and that makes it very difficult for the committee, as a whole, to arrive at a common decision on how to take matters forward, as happened later on in parliament.

ADV FREUND SC: Now as you have just ...[intervenes]

CHAIRPERSON: I am sorry, Mr Freund. Mr Freund, I am
 10 sorry, would it be fair in your view to say a committee is expected to investigate serious allegations that have come before – come to their attention which relate to matters falling within the jurisdiction of their committee? If there are reasonable grounds to think that if the allegations are true then there is something quite serious that parliament or the committee should really look into. I am putting it very roughly. So would not go along with an idea that a committee when there appears to be reasonable grounds before it to investigate allegations, you would not go along
 20 with the view that well, if they feel that they should not investigate, that is fine, if they feel that they should investigate, that is fine.

MR FROLICK: No, Deputy Chief Justice, I would say – and I understand the way that you put it.

CHAIRPERSON: Yes.

MR FROLICK: My view is a matter is properly deliberated upon and there is sufficient grounds then the committee must be seized with the matter.

CHAIRPERSON: Yes.

MR FROLICK: Identify how to want to proceed with it.

CHAIRPERSON: Yes.

MR FROLICK: And it is at that critical point where you find a divergence of views from the different political parties.

10 **CHAIRPERSON:** Yes.

MR FROLICK: Either (a) on how to proceed or (b) they can simply say we do not have a mandate from our political party to deal with this matter, we must first go back and discuss with three or whoever and then come back with a mandate around it. At that time, Chairperson, you will find that the atmosphere and the heat in the committee has reached such proportions that it is difficult to find one another on how to proceed with the matter and then argue along partisan lines.

20 **CHAIRPERSON:** The committee cannot make the right decision. Would you say that because the parties which form part of the committee now argue along partisan lines?

MR FROLICK: They cannot make the right decision in certain respects, Chairperson, because they actually forget about the issue that is at hand and also what we find,

Deputy Chief Justice , Chairperson, is that when these type of issue arise, it happens in the context of a broader political atmosphere in the country that is unfolding and then you find that in particular when you move – and you can sense it already as you move towards, for instance, a local government election that is pending or a general election that is pending, you can find that members of parliament who are actively busy outside of parliament campaigning on behalf of their different political parties, 10 they dig in their heels for their political parties.

CHAIRPERSON: Yes, thank you. Mr Freund?

ADV FREUND SC: Thank you, Chair. Now, Mr Frolick, am I correct that you were furnished with a copy of the letter from Ms Mazzone to Ms Letsatsi-Dube of the 14 March 2016 in which she requested the Portfolio Committee on Public Enterprises to conduct a full parliamentary inquiry into the capture of SOEs by the Guptas. You have seen that letter, am I right?

MR FROLICK: Yes, I have seen the letter, I am just 20 getting it on my screen but you may proceed, Advocate, I know about the letter.

ADV FREUND SC: Take your time. And ...[intervenes]

CHAIRPERSON: I am sorry, I missed the page number of the letter.

ADV FREUND SC: Sorry, it is probably because I did not

give it, Chair, my apologies. It is bundle 2 page 192.

CHAIRPERSON: Page 892?

ADV FREUND SC: 192 of bundle 2.

CHAIRPERSON: 192, okay. I have got it.

ADV FREUND SC: Thank you, Chair.

CHAIRPERSON: I do not know if Mr Frolick has got it?

MR FROLICK: I have got it, thank you very much.

ADV FREUND SC: Now that letter requests the inquiry, as I have referred to, it talks about allegations, recent
10 allegations – well...

“...a number of allegations of undue influence have been raised regarding the Guptas’ involvement in a number of state owned enterprises and then it specifically requests that the committee should immediately summon the Guptas to appear before it to answer these allegations as per my previous letter, should call former Ministers of Public Enterprises Barbara Hogan and Malusi Gigaba to provide details, summon the CEOs and
20 Chairpersons of the largest SOEs.”

That is something that I think you accept the committee had the full power and right to do if it wished to do so, do you agree?

MR FROLICK: That is correct.

ADV FREUND SC: So when the Chair of that committee

Ms Letsatsi-Dube said we have no power to do this without the resolution from the National Assembly she was quite wrong, was she not?

MR FROLICK: It did not require a resolution from the National Assembly.

ADV FREUND SC: I agree with you. And that is something that should have been perfectly obvious to all members of that committee certainly once the point had been made to them by opposition members, would you
10 agree, that the excuse that we cannot do this without a resolution of the National Assembly was a pretence that did not withstand scrutiny.

MR FROLICK: Well, as I said, for these type of issues to be tabled by a member of the committee, Chairperson, what usually happens, Advocate, is that the letter is tabled in front of the committee and is deliberated upon, so I do not know how the Chairperson then arrived at the conclusion that it requires a resolution from the house.

ADV FREUND SC: Well, to be fair to her – and I do not
20 know that you have this, you may or may not have it – Chair, this is at bundle 2, page 219, it is a letter from Ms Letsatsi-Dube so Ms Mazzone of the 6 April 2016. I am not certain, Mr Frolick, whether that sent to you. I think it was but I am not sure.

MR FROLICK: No, I do not have that letter.

ADV FREUND SC: Alright, well let me read to you the letter, it is at page 2019, Chair, of bundle 2, it is about that request that I have just read to you. She acknowledges receipt and then Ms Letsatsi-Dube says this, she says:

“I have since requested a legal advice from the parliamentary legal services on how to process this request. In terms of the advice received kindly be informed that:

- 10 1. The National Assembly Rule 138 requires a house resolution to initiate an investigation.
2. The portfolio committee on Public Enterprises is not authorised by law to initiate such a parliamentary inquiry on its own, and
3. Any member of the assembly may move a motion to have a draft resolution pertaining to a parliamentary inquiry put before the assembly for approval as a resolution of the National Assembly Rule 94.”

20 Now I think you have already told me that you agree that this is legally wrong.

MR FROLICK: I have not seen that legal opinion but I would differ with it.

ADV FREUND SC: Yes.

MR FROLICK: Because this is a matter that first and foremost should have been discussed by the Portfolio

Committee.

ADV FREUND SC: Right. Now what Ms Mazzone then testifies is that having failed to persuade the portfolio committee to pursue this investigation, they tried to do what the legal adviser to Ms Letsatsi-Dube had suggested is the right way of proceeding, which is to go to the house and to move a resolution in the house and I believe that you have been furnished with an extract from Hansard.

It is annexure NM42 from page 326 and following in
10 bundle 2. It is a very selected extract from a long document but at page 357 one find the terms of the resolution moved by Mr Maynier of the Democratic Alliance and I just want to check with you, Mr Frolick, that you have this documentation, you are aware of what I am talking about.

MR FROLICK: It was part of the previous bundle.

ADV FREUND SC: Right, thank you. And you will recall that the motion was that the house should note the allegations of state capture by certain individuals and their
20 alleged undue influence over government, that the house should establish an *ad hoc* committee in terms of a certain rule and investigate these allegations in a certain way and there is a debate on it and you were present for that debate, as I understand it, is that correct?

MR FROLICK: That is right.

ADV FREUND SC: And if we turn to page 360, we find who voted in favour of this and who voted against and, in short, there were 103 in favour comprising representatives of all the major opposition parties but there are 169 votes against and one of those is your vote, am I right?

MR FROLICK: That is correct.

ADV FREUND SC: Just as a matter of interest, am I correct that when we look at the next page, in the middle of the next page, one of the others who voted against it, 10 referred to Mbete B, would that be the then Speaker?

MR FROLICK: That is the former Speaker.

ADV FREUND SC: The former Speaker and another person was Mr J Mthembu, the then Chief Whip.

MR FROLICK: That is correct.

ADV FREUND SC: And is it common practice, by the way, for the Speaker to vote along party lines on motions put before the house?

MR FROLICK: It is common practice for the Speaker to vote in the house unlike in the Westminster system, for 20 instance, where the Speaker is not actively part of a caucus or involved in caucus matters or in party matters. The South African setup allows the Speaker to participate in all proceedings.

ADV FREUND SC: And this particular Speaker was President at the time of the African National Congress, is

that right or have I got that wrong?

MR FROLICK: Just repeat that, sir, I did not hear you clearly.

ADV FREUND SC: She held senior office, I think she was the President – or the Chair, was she not of the party?

MR FROLICK: The National Chairperson.

ADV FREUND SC: The National Chairperson of the party. So far from being neutral, she did not even pretend to be neutral, she was an active leader of the governing party
10 and on your evidence, if I understand it correctly, she voted as a matter of course in line with the party whip, is that correct?

MR FROLICK: Well, I cannot say, I cannot decide on why the Speaker decided to vote in a particular manner but the Speaker, as it indicates there, voted against the motion.

ADV FREUND SC: Right. Now why did you vote against this motion?

MR FROLICK: Oh, the matter was raised in the Chief Whip's Forum and mindful of the fact that the first time that
20 this issue was raised and directed towards a committee chairperson was in March that same year. We are now in September 2016.

ADV FREUND SC: Ja.

MR FROLICK: And the then Chief Whip, the late Chief Whip Jackson Mthembu, he attempted to move an

amendment to that specific motion.

ADV FREUND SC: Yes.

MR FROLICK: And I want to give a context to that, Chairperson. The amendment simply said that anyone who have any credible evidence in terms of what was in the motion should hand it over to the law enforcement authorities or to any investigative arm of the state.

At that stage the Public Protector was busy concluding her report on exactly the same matter and the
10 rationale at the time was this is exactly what the Public Protector is currently doing, are we not going back to the same situation like they have stated earlier to say – like I have stated, my apologies, Chairperson, it is late in the day – are we not going back to the same situation that while this investigation from the Public Protector is taking place and the Chief Whip was very clear at the time to say that he is convinced that this report is due to be released soon, why should parliament run a parallel process and possibly come with different findings and recommendations
20 whilst the Public Protector will also release her report.

ADV FREUND SC: While it is not clear for me from reading Hansard what role you played in this particular meeting. I sometimes get the impression that you were chairing this meeting. Is that a misunderstanding on my part?

MR FROLICK: My apologies, which meeting are you referring to?

ADV FREUND SC: This was the meeting at which – the meeting in the National Assembly in which this motion was moved and then rejected.

MR FROLICK: Look, we have a roster for the presiding officers to preside and I cannot recall really.

ADV FREUND SC: You do sometimes chair debates in the house.

10 **MR FROLICK:** Yes, I regularly chair debates in the house.

ADV FREUND SC: Yes and it seems to me, if I can refer the Chair of this Commission to page 327, it seems pretty clear that you were chairing this particular debate as we go along. Now I have not put that before you but you have no reason to doubt that, do you?

MR FROLICK: That is quite possible, that is quite possible.

ADV FREUND SC: And what you are referring the Chair to is that an amendment was moved.

20 **MR FROLICK:** Advocate, if I can just come in there?

ADV FREUND SC: Yes.

MR FROLICK: The then Chief Whip of the majority party attempted to move an amended motion.

ADV FREUND SC: Yes, I agree.

MR FROLICK: Ja.

ADV FREUND SC: I am just trying to find where that is in Hansard, and ...[intervenes]

MR FROLICK: In the extract of Hansard you can go to page 131 of 187 and in your bundle of documents it will be probably on page 359 if I am not mistaken.

ADV FREUND SC: Yes thank you, thank you. So it seems to me it starts at that page 358. That is where the Chief Whip enters the debate. Are you with me, Mr Frolick, page 358 of bundle 2, Chief Whip of the opposition. I would like
10 to address you in terms of rule 121.1. It says very clearly:

“That it is possible to move an amendment to a draft resolution provided and this is the important part, the amendment does not extend the scope of the draft resolution.”

It is very clear that when the Honourable Chief Whip, oh so that is the Chief Whip of the opposition I am reading from.

MR FROLICK: That is correct.

ADV FREUND SC: Chief Whip for the majority party is that is at 358. I think it is at page 358 it starts on the left
20 hand part of the page and it carries on the right hand part of the page. That is what you are referring to, is it?

MR FROLICK: That is correct.

ADV FREUND SC: It starts Chief Whip as the majority party, the part that I was reading was from the Chief Whip of the opposition:

“The Chief Whip of the majority party moved or attempted to amend to move a motion, and the motion, the amendment, if adopted would not have empowered Parliament to appoint an *ad hoc* Committee to investigate what had been requested. But instead to require that all such allegations of State Capture be referred to the South African Police Service or Chapter Nine Institutions for investigation, including the Public Protector.”

10 That was the basis not that it was pending, but that anybody who makes allegations of this type should not expect them to be investigated by Parliament, they should take them to the South African Police Services or Chapter Nine Institutions, including the Public Protector, that was the position adopted by the Chief Whip, am I correct?

MR FROLICK: That is correct.

ADV FREUND SC: So really, if I read this, paragraph 2, 3 and 4 of the amendment of page 358, it seems to me with respect that what the Chief Whip of the African National
20 Congress was articulating was a view that allegations of this type, ought not to be aired and investigated, well we will leave out the aired, ought not to be investigated by Parliament. If there were allegations of that type, they should be referred to the Police or Chapter Nine Institutions, but not to Parliament. That was the stand, that

was the principle on which the Chief Whip with the support of his party membership took his stance, is that correct?

MR FROLICK: Chairperson, I cannot speak on behalf of the late Chief Whip of the majority party was then Honourable Jackson Mthembu. But at that time, when that matter was discussed and came up into the House, I had absolutely no doubt on the integrity of the Chief Whip of the majority party. I articulating what he articulated there, and being serious about it.

10 At the time, as I have also said that the Public Protector was six months into her investigation on exactly the same matter, and that is now the benefit of having the report being published about a month later and released by the Public Protector. So I have no doubt in the integrity of the Honourable Jackson Mthembu.

ADV FREUND SC: Well, I want to make clear that I am not attacking the integrity of the late, Chief Whip and Minister. This is not a question about integrity. It is a question about debating what are the correct principles
20 that govern a certain situation. And...[intervene]

MR FROLICK: Chairperson if I may?

ADV FREUND SC: Yes.

MR FROLICK: My apologies advocate, if I come across, as if I say you are questioning the integrity of the late Chief Whip and also the late Minister, I did not intend

bringing it across like that.

ADV FREUND SC: That is fine.

MR FROLICK: But of having worked with the man for a long time, I can attest to what he said there is exactly what he meant, and being mindful in personal discussions with him, and in other forums. We mentioned it even in multiparty forums, that report of the Public Protector, according to the information that he had at the time, will be released soon.

10 **ADV FREUND SC:** Well, the thing about this amendment that he moved is that it is not based on we have to wait for the Public Protector, it is based on a different principle. Let me read it into the record:

“And all the sub paragraphs that follow after the word to be replaced with the following.”

So this is the resolution as amended that he says should be adopted:

20 “Refers all such allegations of State Capture to the SA Police, or Chapter Nine Institutions for investigation, including the Public Protector. Three, notes that all parties and individual members of Parliament with evidence of such alleged State Capture should make available such evidence to the Police Service or a Chapter Nine Institution for further notes that such investigations by either the

Police Service or a Chapter Nine Institution should culminate in prosecution of all individuals or companies involved in such State Capture, if such is proved as a criminal activity.”

Now I am sure you do not disagree with me, that is the terms of the amendment that he moved and sought to have adopted by the House.

MR FROLICK: That is the amendment Chairperson.

ADV FREUND SC: What happened was that the Chair
10 ruled that that amendment, that proposed amendment is not a permissible amendment having regard to the rules of Parliament. So it was not adopted, and what that left for consideration by the House was the original motion proposed by a representative of the Democratic Alliance.

And that was the motion that said that Parliament should appoint an *ad hoc* Committee, and that was the motion that all African National Congress members acting in accordance with the Whip refuse to support, do you agree?

20 **MR FROLICK:** I agree that is the motion that all the members indicated there, I have not checked if all of them are ANC members or not voted against.

ADV FREUND SC: Now I would like to move back to where we started this afternoon. Which was in the portion of your own affidavit, in which you referred to the decision

on or about the 15th of June 2017. I am in bundle 1 at page 53 and following Chair.

CHAIRPERSON: Thank you.

ADV FREUND SC: Now Mr Frolick, the report of the Public Protector had been released in November of the preceding year, am I correct?

MR FROLICK: It was released on the 14th of October.

ADV FREUND SC: 14th of October, thank you it makes my point even stronger and notwithstanding the release of that
10 report, notwithstanding the principles that you say, underlay the ANC's stance namely we have to wait for the outcome of the Public Protectors report.

For a good six months, Parliament did nothing at all about pursuing and investigating and requiring remedial measures to be taken arising from what has been disclosed in the Public Protectors report, do you agree with that?

MR FROLICK: That is correct.

ADV FREUND SC: Well, now, if you are right, that the reason for the original failure to support an investigation at
20 the time that the motion was moved in September, was the need to await the Public Protectors report. That excuse no longer held that it no longer held on your own version from October of 2016, am I right?

MR FROLICK: Well you referred to Parliament that did absolutely nothing. If you look at the remedial action that

the Public Protector recommended was for The President to appoint a Commission of inquiry into State Capture, and that is the essence.

The matter was now with the executive and I know that having been in more than one discussion Chairperson, with the late Chief Whip of the ANC, and also the Speaker of the National Assembly, the political processes that was taking place from an ANC level, to get the President at the time to move with speed in the implementation of this
10 recommendation.

That is information, discussions that I was not part of, but that the Chief Whip as well as the Speaker shared with me when asked. How far are we, when are we going to get this thing going? Because it is time that has elapsed, and there is no effect that has been given to that specific recommendation that was there.

ADV FREUND SC: Now, of course, the Public Protectors report did not imply that unless and until a Judicial Commission of inquiry had been appointed and finished its
20 work, which as you know, is still ongoing as we speak to each other right now. The Public Protectors report did not imply that until it was complete, Parliament should do nothing and no remedial steps should be taken to address the underlying problems of State Capture, did it?

MR FROLICK: Chairperson, the position is that was taken

at the time is that there is a report now from the Public Protector for implementation, that the Head of State as the head of the executive can decide if the Head of State is not happy with it, they can take it on review, it can take it on review to a court of law.

But Parliament proceeded with its other oversight functions whilst not pre-empting the work of the Commission of inquiry at that specific stage. And when it got to a point that a substantial amount of time has
 10 elapsed, backed up by certain emails that appeared in the public domain, both the Speaker, as well as the Chief Whip of the majority party said this is taking too long, and Parliament should act and that is the point at which I entered the discussion on that Thursday morning, the 15th of June.

ADV FREUND SC: Now the emails to which you are referring are the emails that have come to be known colloquially as the Gupta Leaks, is that correct?

MR FROLICK: That is correct.

20 **ADV FREUND SC:** A voluminous set of alleged email correspondence, which if genuine, appears at face value to implicate a number of people. You agree?

MR FROLICK: Those are the emails I am referring to.

ADV FREUND SC: So you took the view, that there is information, which is now in the public domain, which really

needs to be investigated, and Parliament if it is going to fulfil its duties should pause this to be investigated. Am I right?

MR FROLICK: That is correct.

ADV FREUND SC: So if you could do it in June of 2017, you could have done it in October of 2016.

MR FROLICK: The situation is different, in that there was no motion that was in front of the House to consider the establishment of an *ad hoc* Committee and also the letter
10 from the Honourable Mazzone was personally directed to the Honourable Letsatsi-Duba.

ADV FREUND SC: So Mr Frolick why did you not put such a motion before the House?

MR FROLICK: No, Honourable Chairperson, Honourable Deputy Chief Justice, Parliament does not work that way. Parliament is composed of different Portfolio Committees, where matters are directed to and those Chairpersons according to the rules, and those Portfolio Committees have certain responsibilities instead of pre-empting what
20 they are doing.

And those matters, and that is part of the way that Parliament operates for a very long time since 1994, this democratic Parliament, that that is the process and procedure to follow. That is the way in which it was approached.

ADV FREUND SC: Now...[intervene]

MR FROLICK: May, I just have an opportunity to finish please. In terms of the position that I hold in Parliament, I derive my powers and responsibility from the Speaker, which is institutional in nature, and that is the way in which we manage the current committees.

We have never ever told any committee in Parliament, or any member of Parliament, you may not raise this issue, or you may not raise that issue. It is up to
10 members to participate in these Portfolio Committees, put their point, motivate it and try to convince the others in the Portfolio Committee with different political views to arrive at a common understanding and to take the process forward.

ADV FREUND SC: Well, let us just look at what you yourself say in your affidavit in paragraph 30, I am at page 53 in volume 1:

“I was requested by the Speaker, to write in my capacity as House Chairperson Committees
20 Oversight and ICT to the Chairpersons of four portfolio committees, namely Public Enterprises, Home Affairs, Transport and Minerals to inform them of the decision, and for them to execute their functions in terms of rule 2271, A, B, C, D, and E.”

Now, that looks to me, like the Speaker, and you and the

Chief Whip felt that the three of you had the authority to instruct or to require these Portfolio Committees to conduct this type of investigation as referred to in your letter, would that be correct?

MR FROLICK: The decision was taken ultimately by the Speaker and the Speaker - and we had the discussion over it, we called the Secretary to the National Assembly to check in terms of the rules as well then instructed me and said, as the House Chairperson responsible for
10 committees, you must write to these committees, and that is in line in terms of the powers that the Speaker have in engaging with House Chairpersons.

ADV FREUND SC: Alright, I understand that you play, you're a link in this chain and what you are saying is that the Speaker has the power. I must understand you correctly, that in your understanding, the Speaker has the power to require Portfolio Committees to cause investigations to take place in accordance with their rights under the rules.

20 **MR FROLICK:** The Speaker can refer any matter to a Portfolio Committee.

ADV FREUND SC: And that is why a Portfolio Committee can investigate that matter?

MR FROLICK: To do whatever in terms of the rules in amongst others investigate the matter, and that has been

the practice and convention since 1994.

ADV FREUND SC: Right, so that is as regards Portfolio Committees but we all know it is a matter of public record for example, what happened with the problems at the South African Broadcasting Corporation, and we all know that the National Assembly has powers under the rules to appoint an ad hoc Committee to deal with the matter comprehensively.

It does not have to go to the existing Portfolio
10 Committees, you can establish an ad hoc Committee for such purposes, am I correct?

MR FROLICK: That is correct, that is a decision the House can take.

ADV FREUND SC: And the House can take such a decision - in order for such a decision to be adopted by the House, somebody must put a motion before the House, and then the House must vote on whether it supports that motion, correct?

MR FROLICK: Correct.

20 **ADV FREUND SC:** And frankly, any member of the House can put such a motion but certainly any member of the majority party, who has the support of the majority party could put such a motion and would have good prospects of such a motion being supported if put, correct?

MR FROLICK: The practice in the African National

Congress is that such motions are put by the Chief Whip of the majority party.

ADV FREUND SC: So the Chief Whip of the majority party could have done that, am I correct?

MR FROLICK: That is correct.

ADV FREUND SC: And the Chief Whip of the majority party did not do that, am I correct?

MR FROLICK: That is correct.

ADV FREUND SC: Instead, what happened was that the
10 Gupta Leaks caused some discussions to take place that you were initially not party to, and I just want to pause and consider those Gupta Leaks.

Ms Mazzone has given evidence that she distributed - that her office had, as it were scrolled through the Gupta Leaks, extracted certain documents from them by as it were ministerial responsibility and distributed big piles of Gupta leaked material relevant to at least four different Ministers. Do you recall that?

MR FROLICK: I can recall that the Honourable Mazzone
20 at the time referred to such excerpts or whatever she distributed, but I cannot attest that it was distributed to all of them, but she did refer on more than one occasion to it.

ADV FREUND SC: Well, I am assuming that you must yourself have applied your mind to those very leaked emails, because they form the very basis of the letters you

sent, am I correct?

MR FROLICK: Well, Chairperson, if I may, I must indicate that the discussion that preceded those letters, happened in a forum of the National Assembly Programming Committee that I was not part of. However, in the Chief Whips forum meeting, the previous week, that is a closed meeting, the matter came up of the leaks, and then the Chief Whip of the majority party indicated in that meeting to Chief Whips that, let us see, by next week, what would
10 be the best way to approach this.

If they came to that National Assembly Programming Committee, and after which the Chief Whip, as well as the Speaker felt that a direction must be given on how to deal with this matter. And the decision that was arrived at, that the Speaker asked me to implement was to use the existing Portfolio Committees that are there to look into this matter, because those emails were very explicit, and it referred to specific Ministers who were holding office at the time.

20 The view then of the Chief Whip was, and the Chief Whip was very, very clear on it in the discussion, was that these Ministers must account to their Portfolio Committees, and that formed the basis of writing those letters to those different Chairpersons of committees.

ADV FREUND SC: If...[intervene]

MR FROLICK: My apologies, if I can just finish off advocate. It is not as if the issue of a possible *ad hoc* Committee was not discussed. But we were very, very much mindful, on previous experiences also that we had, that when these *ad hoc* Committees are put together, it comes from the existing members of the National Assembly, it is not new members that comes into Parliament. So members then leave their committees where they are appointed to, to attend to the work of the
10 Ad hoc Committee, and at times, it has happened on more than one occasion, where certain Portfolio Committees cannot correct to pass important decisions due to Ad hoc Committees that are there.

And the Chief Whip then said in this instance, he would support the work to be done by the existing Portfolio Committees that are there and that is ultimately the decision that the Speaker arrived at.

ADV FREUND SC: Now, I think I am quoting your words, when I say that you said a moment ago:

20 “That those two Gupta Leaks emails, were very explicit. They made very explicit allegations and they referred to a number of Ministers.”

Did I hear that correctly?

MR FROLICK: That is correct.

ADV FREUND SC: And that is what I was referring to a

moment ago, when I was asking you a question about your own letters that were sent. Now your own letters, we see an example of it on page 488 in bundle 2, 488, 489, 490.

MR FROLICK: I am with you.

ADV FREUND SC: Aright, let us take 488 as an example:

“Dear Ms Magadzi,

Allegations of State Capture in organs of State.”

CHAIRPERSON: I am sorry, Mr Freund. I thought it was the same bundle we were using at the time; I have got the
10 right one.

ADV FREUND SC: I am sorry, Chair, Chair it is 488, bundle 2, may I proceed?

CHAIRPERSON: Yes, you may proceed I have got it now.

ADV FREUND SC: Thank you, Chair I apologise. Sometimes I just move backwards and forwards, I have even taken them out of there bundles.

CHAIRPERSON: Ja, okay.

ADV FREUND SC: The letters addressed to Ms Magadzi it is headed:

20 “Allegations of State Capture in Organs of State.”

It is a very short letter:

“I am sure that you are aware of numerous allegations of State Capture, that have appeared in the media in recent weeks. Some of these allegations involve members of the Board of the

passenger rail agency of South Africa, PRASA. I would like to request that your committee investigate the allegations within the parameters of the rules and report any findings were applicable to the National Assembly as a matter of urgency.”

Now, I presume you meant exactly what you said.

MR FROLICK: That is correct.

ADV FREUND SC: What were the allegations that involved the members of the Board of PRASA that appeared in the in the Gupta Leaks, which in your opinion, required this committee to investigate them? If not all of them, can you give us a few examples.

MR FROLICK: I do not have the specific issue, but the one it centred around how the Board was functioning, and it got into issues of locomotives, that was acquired, the relationship between the CEO and the Board at the time, as well as some of the statements that could have been attributed or could be attributed to some of the members of the Board.

20 **ADV FREUND SC:** And if we look at the at the next page at page 489, there is an almost identical letter to the Chairperson of the Portfolio committee of Home Affairs. The real difference is just the second sentence of the first paragraph where you say:

“Some of these allegations involve the former

Minister of Home Affairs and the granting of citizenship to non-South Africans.”

Would it be fair to guess that the non-South Africans to whom you were referring to were members of the Gupta family?

MR FROLICK: That is correct.

ADV FREUND SC: And the former Minister of Home Affairs, to whom you were referring was?

MR FROLICK: Former Minister of Home Affairs at the
10 time was Minister Gigaba.

ADV FREUND SC: Thank you, and then at page 490, an almost identical letter to Ms Rantho, the acting Chairperson of the Portfolio Committee on Public Enterprises. Now I just want to pause before we go further here because we have left out a very important fact, have we not?

You already knew by this time that the Portfolio Committee on Public Enterprises had itself already resolved to commence its own investigation in relation to
20 allegations pertaining to Mr Molefe and Eskom, am I right?

MR FROLICK: Yes, they were looking at certain specific aspects of certain departments or entities resorting under the Department of Public Enterprises.

ADV FREUND SC: Yes, and it was a landmark moment, was it not, because until then every committee dominated

by the African National Congress, which is to say every committee had starkly declined to investigate allegations of State Capture, but Ms Rantho and her committee which then involved, amongst others, a recently, as it were removed, Minister of Finance.

They took the view that they should be exercising their powers and that must have been, it must have been like an electric charge going around Parliament. Things are changing here, am I right?

10 **MR FROLICK:** That is correct. I think at one stage if I am not mistaken Advocate Freund, you were also part of those proceedings.

ADV FREUND SC: I beg your pardon?

MR FROLICK: I said, if I am not mistaken, you were also at one stage part of those proceedings of that committee.

ADV FREUND SC: I think you are mistaken.

MR FROLICK: Or you supported them.

ADV FREUND SC: Ja, in these proceedings before this Commission, I have spoken in support of them but I
20 certainly was not part personally of them at the time.

MR FROLICK: My apologies then.

ADV FREUND SC: Not at all, no problem. Now, some witnesses have suggested that the true explanation for the change of stance between starkly resisting suggestions that Parliament and its structures should investigate, and

now in the PCPE and as a result of your four letters, we have looked at some of them well one, not all of them, that really there are factional considerations of relevance, in fact it has been suggested that even you personally were motivated by such considerations. What's your comment on that?

MR FROLICK: Just repeat the question in terms of personal factional motivations.

ADV FREUND SC: Well what is – let's leave you aside for
10 the moment, we can back to your position in a moment, what is being alleged by some witnesses generally is that the true explanation for the change of heart and the decision contrary to the practice of the last five years or more of not pursuing investigations in Parliament is explained by the different factions that were emerging within the African National Congress, and that as it were one such faction now had sufficient influence to finally cause Parliament to do what it should have been doing all along, which was to investigate these allegations.

20 Now what is your comment on that in general terms?

MR FROLICK: Well those are allegations of factions and I did not personally hear the context in which those allegations have been made, but let me – Chairperson if I may – just digress, just for a short moment, it won't be

long, to say that in terms of the African National Congress in Parliament, the African National Congress is a very big church and in there you find members with different views, different political philosophy around certain specific issues, and those play out regularly in terms of whatever matter is in front of the ANC, so to just describe it to a certain factional thing or whatever is happening but one thing that I can say is that the leadership given by the former Chief Whip of the ANC certainly assisted the
 10 process for these different forums to be established and to deal with these matters.

He mentioned in one of the budget vote debates that he participated in, one of his first budget vote debates that he participated in as the Chief Whip of the majority party, he said that given the scathing judgment that was given on Parliament by the Constitutional Court it cannot be that the ANC stand back and not deal with some of these issues. It must be dealt with speedily, it must be dealt with as the issues arise, and the different structures
 20 must be given the necessary support to do their work to the best of their ability, so at any given time, around any issue this thing that people think that everybody in the ANC and Parliament is just following a party line or just doing it that way is absolutely incorrect.

There are different, different views about the

smallest of issues that arise that come to the fore, so the perception of the allegations of different factions it could be that it is mentioned in that way but certainly I can say that there was from the leadership portrayed by the Chief of the majority party a clear direction that was given, given the judgment that was given on Parliament on how to deal with these matters.

CHAIRPERSON: I thought ...[intervenes]

ADV FREUND SC: No, I am ...[intervenes]

10 **CHAIRPERSON:** I am sorry Mr Freund, I thought Mr Frolick I heard evidence whether it was last or the week, or last week I am not sure, I thought I heard evidence to the effect that one Portfolio Committees other than that or that the majority party, members of the majority party in a particular Portfolio Committee they will meet alone prior to the meeting of the Portfolio Committee in order to decide how they would approach issues that would arise at a particular meeting, or if that is not what I was told then I was told that there is a study group where issues are discussed,

20 that is within the majority party, with a view to ensuring that members of the majority party who serve in a particular committee, or in different committees, know what stance to take on certain issues. Is that not so?

MR FROLICK: Chairperson if I can respond to the first part. I am aware and when I was a member of Parliament,

not in designated as one of the office bearers in Parliament now I am aware that since 1994 there is a system that is called study groups within the African National Congress in Parliament, and members of the committees, the Chairpersons and so forth, they all form part of the study group of the African National Congress and that is where the deliberate on matters that will appear on the agenda, or they decide on a certain political approach in dealing with those type of matters.

10 I am not aware that – and I know at one stage there was an attempt to say that the skills should match the deployment to a specific Portfolio Committee, but that – after each election it is very, very difficult because you sit with new members all the time, and while an attempt was made by the different Chief Whips at the time to deploy members who have certain skills to these different Portfolio Committees it is really a mixed result that has been achieved Deputy Chief Justice, and may I add with the high poll over rate of members of Parliament generally from all
20 political parties it is sometimes as if after every general election we start afresh and new members must be trained, and it is on the job training that takes place because the institution and the lawmaking process does not stop and cease their activities, and those are generally the conditions under which members of Parliament work, but

there was definitely an attempt to deploy the correct skills, but it had a mixed result.

CHAIRPERSON: Well I was raising this issue because I understood you to be saying, and you must tell me if I misunderstood you, to be saying that members of the majority party, but maybe you meant members of all parties in a committee, members of the majority party would come and express different views as individuals, that was my understanding of what you are saying, and that seemed to
10 be inconsistent with this evidence that I am saying I heard, because that evidence suggested members of the majority party by the time they come to a meeting of the particular Portfolio Committee they have had a discussion, maybe in a meeting of the study group where there has been consensus to say this is the approach we will take, or this is the view that we would take, so that is why I was raising it. What do you have to say about that?

MR FROLICK: No, no the latter part of your intervention now Chief Whip, Chief, Deputy Chief Justice, Chairperson,
20 is correct, that there are study groups where members will sit and they will deliberate and they agree on a common approach that will be adopted when they go to the different parliamentary forums.

CHAIRPERSON: Thank you. Mr Freund?

ADV FREUND SC: Thank you Chair, now ...[intervenes]

CHAIRPERSON: Mr Freund we are about two or three minutes to seven o'clock and I am quite happy to continue but if we are going to be still sometime maybe we should take an adjournment at seven o'clock or ...

MR FROLICK: It would certainly be ...[intervenes]

CHAIRPERSON: ...for ten minutes or so.

ADV FREUND SC: Chair it would suit me personally if we could take a short break now and then resume whatever time you deem fit.

10 **CHAIRPERSON:** Yes, okay, alright, let us take a short adjournment then. Shall we say we resume at ten past seven?

ADV FREUND SC: Fine, thank you very much.

CHAIRPERSON: Ja, okay, we adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us proceed. Mr Freund.

20 **MR FREUND SC:** Thank you Chair. Mr Frolick, we were talking about portfolio committees and you accepted that the study group system is a form of caucusing in which decisions are made before a portfolio committee meeting commences and then the members of the committee in the study group act in accordance with that decision when they fulfil their roles in the portfolio committee. Did I

understand that correctly?

MR FROLICK: Well, it is a discussion forum that is a feature of the parliamentary process of as far as the ANC is concerned, I know other political parties do it as well. The members serving on a committee, they get together and they decide these are the parameters or this is the approach that will be used there, but in no way does it restrict a member of the political party, in this instance the ANC to ask questions. Questions that arise out of the
10 briefings that are there, that was not properly discussed and that is the nature of it. It differs from study group to study group of course, depending on the issues that are there.

MR FREUND SC: This Commission has heard evidence to the effect that study groups exercise real discipline on members and predetermine what approach is to be adopted in portfolio committee meetings. Now it is not clear to me whether you are disputing that or accepting that.

MR FROLICK: Well, my experience from having served on
20 the study groups is that we set the broad approach that will be set there and if there are any issues that may arise that was not discussed in the study group, there are members who are deemed, either the whip of the committee, the wings to give direction or senior members of the committee to give direction, but yes. Study groups do exercise some

form of discipline in terms of what is happening in the different portfolio committees. Whether it is attendance, whether it is preparations by the members and so forth.

MR FREUND SC: And what stance should be adopted on particular motions, for example a request that the portfolio committee should support a particular inquiry?

MR FROLICK: That will be part of the discussions of the study group, yes.

MR FREUND SC: Yes, and what is true for the study group
10 and the portfolio committee at what I might call the mini level is also true at the maxi level, at the level of the parliamentary caucus and the decisions taken on the floor of the national assembly. The caucus exercises a similar type of function. Am I right?

MR FROLICK: That is correct.

MR FREUND SC: Now is it correct that, well let me read to you some evidence that has been placed before this Commission. This is in the affidavit of Ms Khoza, Dr Khoza. It is at page, Bundle 1 page 773. You will not have
20 this. I just want to read it to you and then I am going to give you an opportunity to comment on it. She says in paragraph 13.8:

“In our case the ANC as governing party requires its members of parliament both to vote in the national assembly and to exercise their portfolio

committee oversight duties in accordance with instructions received from it.”

I think so far you would agree with that?

MR FROLICK: Well, I do not, I have ... I do not agree with the wording that is used by the person that you are quoting. I have not seen the context also in which she is raising that, but what would generally happen is, is that the ANC whether it is in a portfolio committee or in the house will have an approach on how to deal with these matters.

10 **MR FREUND SC**: Alright, and then she continues. This is Dr Makhosi Khoza, you remember a figure of some prominence in controversy. She says this ...[intervenes]

MR FROLICK: Those are your words, not mine.

MR FREUND SC: Those are my words. She continues as follows:

20 “No decision of any significance is permitted by the ANC to be taken by its members of parliament without prior instructions from the party itself. These instructions frequently emanate from office bearers who have not been elected as members of parliament. Depending on the importance of the issue to the ANC, such decisions may be made by the so called top six most senior office bearers of the party, or lower down e.g. at ANC strategy committee meetings.”

Now do you dispute that factually?

MR FROLICK: Well, I have a view that I will not bring across or put across the same way as a former member Makhosi Khoza. I also had a very good working relationship with her, I must add. No Chairperson, the ANC always stresses the importance of what is called the deployees in parliament. The deployees in parliament to process matters and out of any given topic or situation, most of the times you will have different divergent views
10 exterminating from it. Now our constitutional design is of such a nature that political parties and the leadership have a lot of power and influence in terms of what is happening to their elected representatives in the different legislatures, whether it is local, provincial or national government. Whatever they are doing, and that is also the feature of what will happen in parliament, but usually there are very, very long protracted discussions and I have experience of this in the ANC on what needs to be done, but at a certain point the leadership of the party must give
20 direction if there is not a common ground that have been reached or if positions that are taken, that are contrary to the manifesting of the African National Congress that was put in front of the electorate or of policy positions that are there and for those type of matters, yes. There will be direction that will be given by the top leadership.

MR FREUND SC: And let's be clear what we're talking about here. As a matter of routine, the Secretary General of the party and or the Deputy Secretary General of the party, attend meetings of caucus at which they convey instructions to members of parliament as to what stances they should adopt. Is that correct?

MR FROLICK: Well, there is not a regular routine as far as that is concerned. The chief work of the majority party, is the leader of the ANC in parliament and serves as the
10 contact point between the members of the ANC in parliament and the officials of the African National Congress that are commonly referred to as the top six or Lethuli House. What you do find is, is that on certain occasions and for the past 20 years that I have been in the caucus of the ANC, you will find that once or maybe twice a year the officials of the ANC will attend the caucus. Sometimes it is once a year, and sometimes when there are certain messages that must be brought across in terms of outcomes of MEC discussions, in terms of preparation
20 for election and so forth. So it is not a routine that they do attend caucus. Most of the time they are not there.

MR FREUND SC: And I think it is a matter, I do not think there is any factual controversy about this. When it came to the series of votes of no confidence in former President Zuma, would that have, would there have been a series of

occasions in which either the Secretary General, the then Secretary General or the then Deputy Secretary General or both would have come and conveyed instructions from the party as to how members should vote in relation to votes of no confidence?

MR FROLICK: They will convey a position taken by the officials of the ANC.

MR FREUND SC: And the position was not to support such motions?

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

MR FREUND SC: And the position was if you support such notions, you are acting in breach of your obligations to the ANC and you expose yourself to discipline.

MR FROLICK: Now I just want to pause there Chairperson, because my experience have also shown that at times there has been different Secretary Generals of the ANC and Deputy Secretary Generals of the ANC, but it is not as if they arrive in a caucus of the ANC and start lecturing the members and say this is what you will do and
20 that is what you will do. There is usually a lot of other interactions that take place at different levels of the movement and then when it comes to that particular issue, they will convey what is basically the position that has been agreed upon, and even at that point they allow for descent. They allow for members and I know in one or two

occasions it has happened that members will approach from caucus, afterwards the Chief of the ANC and say we do not agree with this or I do not agree with this and I am going to vote against it, or I am going to abstain myself from the voting process, but yes the constitutional design is there that the members of the ANC and all political parties who are in parliament are there on a party political ticket and the constitutional design indicates that it is political parties that are represented there. However, how

10 you exercise as a member of parliament, your constitutional obligation is a matter of your own personal conscience.

CHAIRPERSON: Okay, I am sorry Mr Frolick. I am going to ask you to repeat your answer because I think it is quite, it may be quite important, but towards the end I was not sure what you were saying in terms of are there circumstances where a party would be, a member of the party would be allowed to vote on the base of his or her own conscience and if so, under what circumstances? Are

20 there a party, are there circumstances where a voting according to one's conscience would not be allowed, and if so, what are those circumstances, or whether the position is that as long as the party has issued its position, you say we expect our members to vote along these lines, everybody is bound to follow. So I just want you to give

your answer again because I want to have clarity on that.

MR FROLICK: Well, thank you Chairperson to provide me with clarity again. I say the constitutional design is of such a nature that political parties are represented in parliament and there is members from those parties who are there. So when it comes to certain issues you do find that the leadership of the party will convey a certain position to these members of parliament and in this case to that of the ANC, but there is usually a vigorous debate and
 10 discussion, not necessarily confined to that caucus meeting only, but it can also happen in other forums. However, I am aware that in certain instances and that is when it comes to certain religious views or certain other positions that members may have, and if I may sight the just coming to my mind now, was in terms of the termination of pregnancy, a bill that was processed in the late 90's and also in terms of the civil union bill that was processed by parliament. I am aware that there is members who went to the Chief and said they cannot
 20 support this, and ultimately when it comes to the different votes and things that are taking place there, it is the members arrive at their decision based of course of the partly political positions that they hold but also in terms of their constitutional responsibilities that they must exercise.

CHAIRPERSON: So the position, would it be fair to say

your experience, you are saying your experience is that except in very limited cases over the past 20 or whatever years since you have been in parliament, except in very limited cases, once the party has taken a position on an issue, members are required to vote and speak in accordance with that position?

MR FROLICK: That is correct, Deputy Chief Justice.

CHAIRPERSON: Yes, and you say the only or the onetime which you remember is where some members sought to be
10 allowed to vote according to their conscience or because the issues that they were to vote on affected their religious beliefs.

MR FROLICK: Those are two, and then I also now recall Chairperson, while you were mentioning this, I also recall that there was also an instance and I remember the Honourable Ben Turock felt very, very strongly about a certain situation and he decided not to, he abstained from voting. He absented himself from the national assembly, so of course when that happens there will be a discussion
20 yes, but which members did not vote for the party. The opposition also does it. If you vote with the ruling party, then you have sold out on your principles. So that is part and parcel of this political climate and atmosphere of proportional representation that we live in and yes, the constitutional design of proportional representation gives

power, a lot of power to the parties and the party bosses to determine. Ultimately, especially when it comes to a motion of no confidence in the leader or the head of state to come to caucus and to give those type of directives.

CHAIRPERSON: Maybe when one takes into account a situation where the issue that is going to arise in parliament on which members would be required to vote, relate to the policy issue. An issue on which the majority party has a particular policy. Maybe it is understanding for
10 the party to insist that its members should vote in order to defend or promote the policy, and maybe members cannot complain about that, because when they came to parliament, they came to parliament knowing what the policy of the party is on those issues. But where it is not really a matter of policy, maybe it is a matter of saying there are too many allegations of corruption directed at the President who happens to be the President of the party. There is just too much that we hear that appears to me not to involve policy of the party and then there is a vote of, a
20 motion of no confidence in the President. It seems to me and you must just give me your perspective. It seems to me that one, the case for the party to instruct its members to vote one way or another, might be less convincing as compared to one where it is a question of policy, because I guess no party would have gone to the voters and say vote

for us, we will suppress exposure of corruption and we will defend our members if there are allegations of corruption. One kind of expects that in that kind of situation, members should be allowed to vote as they see the matter and obviously the party would have may have had some discussion and see what they do, but of course maybe I am just showing that I was never a politician, I am expecting something that maybe you know, is unrealistic. But there would be concern among you know, a substantial I would
10 imagine portion of the population if they thought rightly or wrongly that the President is in controversy of corruption for a long time and the party that the electorate voted for does not allow their members to vote as they see the situation should this President continue to be President despite all of these controversies relating to corruption or should he be retained. What do you have to say? Again, maybe I am it just shows I am not a politician and I am being unrealistic, but one would like a situation where if there are such allegations, members could vote as they
20 see the situation. If they do not see a problem, they do not see a problem. If they see it, they see it.

MR. FROLICK: Chairperson, you can now you have an idea of the complexities that is brought about in terms of representative democracy involving the proportional representation, appealed proportional representation

system, but I must hasten to say and policy issues as you are correct is quite, you can say it is this way or that way. You support black economic empowerment or you do not support it and if your member supports it in the house, then you still fire them. You get rid of them. You move them sideways, but when it comes to motions of no confidence in terms of the head of state it is a political, it is a political matter. A heavy political matter is processed and I can say that there are a range of different views
10 when it comes to that point. Some agree that they will agree with this motion and others will say no, we are not ready in terms of effecting a change in the head of state at this stage. We are not prepared. Do you understand? The former chief also said it in a certain motion that came at a certain time. I think I articulated it if I am not mistaken, to say that it will send shock waves through the electorate because simply the country is not ready for it, so whichever motion of no confidence there is, it is a political notion and in that notion of no confidence there is
20 instances yes that are mentioned this, that and the other, and being politicians that politicians are they argue each and every point either in favour or against or you will find inside the political party they have a range of different views that are there, but ultimately the constitutional design is of such a nature that the power resorts in the

party and that has a major influence on how politicians generally behave at any tier of government. I recently had experience of where, at another tier of government where there was a change in the Executive Mayor that all these, it is even worse at that level that is happening. So we must look at our electoral design. It will be an opportune moment to re-assess and to see but also something that becomes very important is the power that is exercised by the Presiding Officer. The speaker in this instance or in
 10 the absence of the speaker, the deputy speaker when these type of motions are dealt with, because I can recall that there was such a notion of no confidence. It was a secret baled that was conducted to give that type of, for the lack of a better word Chairperson, protection to members of parliament to decide how they want to vote, but still afterwards based on various reasons people found out one way or another, rightfully or wrongfully who voted in a particular way. So it is unless we look at the design of our representative politics at national and provincial level,
 20 we will sit with this challenge and dilemma that we have as to members of these legislatures of parliament to exercise their free vote as they wish.

CHAIRPERSON: It may well be that no majority party would like its leader who happens to be the President of the country, to be removed by way of a vote of no

confidence unless or except in certain really exceptional circumstances, but then one would hope that if a party adopts that stance in terms of saying we do not want our leader to be removed like that in parliament or maybe to be removed by the opposition with the assistance of some from among ourselves, because of allegations of wrongdoing and what corruption or whatever, but then would it not be better that in such a case then at least a party can say these are serious allegations against our
10 own leader. Therefore we as a party must investigate that, so that if we establish that it is really something serious, then we can ask him to resign or recall him or her or whatever, but it might be unacceptable to, for a party or the majority party to say on the one hand to its members in parliament do not vote in support of this motion of no confidence, even though there are very serious allegations against the President, but then it does not do anything about them. It does not investigate them itself, in order to see whether as a party it can arrive at a point where it
20 says is this person still deserving of being in that position representing our party. Do you have a comment on that? in other words one scenario is where the majority party does not, or want all its members to resist the motion of no confidence in the President who is their leader, who has lots of allegations of corruption against him, but it does

nothing itself, whereas in another scenario it might say do not vote with your position, but we as a party will conduct an internal investigation and see whether it is still fit to continue in that position and we will take whatever action.

MR FROLICK: Yes. Chairperson, my response will be very brief. There is something that is called intra party dynamics, and the ANC is no different than any other political party when it comes to intra, the dynamics inside the political party, to arrive at that specific position and
10 from where I sit, that I could see that that is a debate that started quite seriously at that stage amongst members of parliament of the African National Congress, and into 2017 but there is another dynamic Chairperson that I just want to briefly refer to, and that is your intra party dynamics goes with conferences of the different political parties and in that whole political climate, you have those who feel firmly that you must go this way and then there is others who feel no, no, no wait, wait, wait. You want to abuse the situation now to deal with either he is the head of state or
20 with a certain member of the executive because that alliance usually gets drawn as you go towards the intra party platforms and conferences that are taking place and that has an influence, but I do agree it is better for the political parties self to, and in this instance the African National Congress, to have that mechanism in place so

who the individual is who is occupying the office that at the intra party level we do have the necessary mechanisms in place instead of waiting for the opposition to do so.

CHAIRPERSON: And of course I guess that in such a situation where, in such a situation it would be important that maybe you have disciplinary structures and processes, which are beyond approach and the people who make decisions of a disciplinary nature, should be people who cannot gratibly be accused of advancing the interest of any
10 faction. Maybe it would be people who no longer want any positions in government or in the party. Maybe very senior people and people with credibility so that you might have a situation where most reasonable people would say if those people have made a decision that so and so must be subjected to a disciplinary hearing, we will not question it because we know how, we know their level of integrity and we know that they are not going to be manipulated by anybody. Even if some people can make some accusations because there will always be people who make
20 accusations, but the majority of people will say if those decisions are taken by those people, everybody must you know accept that there is no factionalism involved, there is no political agenda involved. All that they are looking at is the discipline of the party and its members. That is what may well work.

MR FROLICK: That is the idle situation as you have articulated it Honourable Chairperson, but in this terrain of politics I can tell you that unless political parties in the current system, constitutional design that we have, continuously evaluate and re-evaluate the internal disciplinary procedures and move towards that point, then we will move in the correct direction. Moving in the right direction, but not only putting such structures in place. Making it part of the constitution of the political party to
10 say this is it, you have joined. This is the constitution that you said that you accept and that you will support and that you will implement and if there is a sound of that, then those type of questions should not arise, but we must strengthen that to avoid the situations where interpretations can be made or may be made to say it is factional and remind the Chairperson and I know we cannot compare the two situations with each other when it comes to this thing of the free vote, everyone voting as they can. Now in the United States, in the congress and in the
20 senate we could see what happened, where a situation plays out where seven republican senators decided that the President should be impeached and they are being held by the political party, but in private some of them are supported and then even beyond we find that the constituency, the people who voted for them say to them

we are not going to re-elect you because you went against the party. So the party system in terms of [indistinct 00:03:48] internationally is so deeply entrenched that it allows for this type of situation to play itself out in the open.

CHAIRPERSON: I guess that as the Commission looks at what went wrong for certain things to happen over you know a certain number of years and what should, what measures should be put in place to minimise the prospects
 10 that there could be a repeat, as the Commission looks at that, it needs to accept that there are certain realities that are there, whether one likes them or not and that includes the role of parties in the parliamentary system or in our democracy. They play very important role and there are certain things that might be difficult to change, unless the change comes within the parties themselves.

MR FROLICK: No Chairperson, I am with you on that point. I want to say that there is an opportunity that is currently presenting itself to all the political parties
 20 represented in parliament and also stakeholders in the society and outside. The Constitutional Court made a ruling to say that independent candidates may be elected and stand as candidates to be elected to the national assembly and the provincial legislatures. That is opening up a platform for debate, where amongst others these

types of matters can also be exhausted so that we get more input. We get input from all the different political parties, from the largest to the smallest to see in terms of implementing this decision and ruling of the Constitutional Court, the impact that it will have on our arrangements, democratic arrangements in the different legislatures, how is it going to be done. is it not also an opportunity to re-look the entire electoral system and to arrive at something else, so that we can start dealing, I am not saying it is

10 going to solve all the problems, but dealing with some of the problems that and challenges that have manifested itself due to this constitutional design of representative democracy.

CHAIRPERSON: No, thank you. Mr Freund.

MR FREUND SC: Yes, thank you Chair. I will try not to be too long, but there were some issues that we digressed from.

CHAIRPERSON: Yes.

MR FREUND SC: When we got onto the macro level, and

20 they are much the same issues but looked at at a slightly lower level. Now I want to put to you Mr Frolick, what Ms Rhonto said. You will recall Ms Rhonto was the Acting Chair of the portfolio committee on public enterprises and she spoke about the divisions within the caucus in relation to this very issue of investigating allegations of the type

we are currently concerned with and she says whilst members of the ANC's PCPE study group, that is that particular study group, supported the idea of instituting an inquiry. There was a quest to start with the inquiry from a substantial number of members in the ANC parliamentary caucus, who argued that the inquiry would cause divisions of the taint integrity of the ANC. Of particular concern to some members of the caucus, was the risk to the reputation of the party. These views were openly
10 communicated to me in clear and emphatic terms. Now can you confirm that you also observed such pressures?

MR FROLICK: Well, firstly Chairperson I can confirm that the Honourable Rhonto at times would come to me or to the Chief to give a report back on what transpired at certain meetings. I can also indicate that she shared some of these concerns with me. At one stage I had to inform the Secretary because she was giving an explanation of an incident where she thinks she is being intimidated outside of parliament, or the place in the parliamentary village
20 where she was staying. I brought it to the attention of the speaker and the parliamentary protection services, the acting head of those services were asked to look into the matter with the relevant law enforcement authorities so that it can be established whether it is real or not, if there is any physical threat to her, but ...[intervenes]

MR FREUND SC: I think you are missing the point of the question. The point of the question is whether there was political resistance expressed by MP's we should not be doing this because it is embarrassing to the party.

MR FROLICK: There were different political views around that and that is one of the views that was there Chairperson, and those views some of the members felt very strong that it should not happen in this way. Some of the members queried where was this decision taken, where
10 did it come from and also who gave the final authority for this to be done. Whether it was now as you have stated earlier advocate, the public enterprises committee that started with some of the work around the allegations that was made, or the other committees that was there. It surely came across as something that was not supported by all ANC members, but as I said earlier ANC members have different views around these issues and personally I can attest that there were serious questions that were asked as to why this is done, who is being targeted and
20 why are we doing it in this particular way as it was never, ever done before.

MR FREUND SC: Yes, now Ms Rhonto does go on to say that although she experienced that kind of pressure from a number, from a substantial body of numbers of the ANC caucus, she says on the other hand that amongst others Mr

Ntembu supported her, encouraged her to proceed and if I hear you correctly, you would consider yourself one of those persons who was encouraging her to proceed. Would that be correct?

MR FROLICK: That is correct.

MR FREUND SC: But she also says this, and this is in paragraph 11.5 at page 553 of Volume 2. She says:

10 “I should note at this point that some ANC caucus members made attempts to stop the inquiry.”

That is the inquiry of portfolio committee on public enterprises, call it the Eskom inquiry.

“Some of them approached the public protector to try and get her assistance to stop the inquiry, arguing that it would duplicate the work by the Commission yet to be appointed by the President. I am not aware of any response by her to this.

That is the public protector:

20 “When the issue was raised in caucus, the Chief reprimanded those members that they have not been authorised to do this by the ANC.”

Do you have any knowledge of this incident?

MR FROLICK: I cannot recall a specific request being made to the public protector to get involved into that type

of situation. What I can recall is that the Chief would at more than one occasion, and then later in 2017 I think it was October or November, the then Deputy President who is now President of the country, came to caucus to re-enforce the importance of parliamentary committees to conduct these type of be it inquiry or investigation or whatever, because committees decide whichever way they want to go and the Deputy President was very supportive, but the chief was always very, very clear and on occasions
10 when you find that the Chairperson of this committee or other Chairpersons that letters were written to, will come and they are uncertain as to what is going to happen next, because they experienced this type of other views around these inquiries and they felt that they needed further direction. There was always very clear direction from the Chief and also then later from the then Deputy President for committees to do this work.

MR FREUND SC: Well, I have no reason to doubt your evidence when you say that Mr Ntembu from a certain
20 moment that you have described, were supportive of the portfolio committee's investigation in public enterprise. I have no reason to doubt your evidence when you say that he was party to the discussion which led to your June 2017 letters, but by the same token I want to put to you for your comment, that this was not a new problem in June of 2017

and that one of the features that best explains the failure of parliament to have acted sooner in a proper and appropriate manner in the exercise of its oversight and duties, is what is described by Makhosi Khoza in paragraph 13.6 of her affidavit. This is Bundle 1, page 773. She says this:

10 “I am convinced that the State Capture and corruption events of the recent past could have been far better addressed and perhaps resolved had it not been for the political culture of trying to please the leadership, but this requires brave employees working with skill and determination in the fairways of submittable obstacles.”

20 So she is really identifying firstly the power relations between senior and junior, and secondly the political culture and she is saying those two factors together actually go a long way to explaining what she regards as a favour by parliament to have properly exercised its oversight duties in respect of the issues we are presently talking about. What is your view on that?

MR FROLICK: Well, my view firstly is on the previous occasion Chairperson, I mentioned the issue of power relations between not all, but I have experienced and seen over the years between study groups, committees and members of the executive, and so forth but in terms of the

culture, the culture or political culture of the ANC is the political culture of the ANC in terms of how things are done and how things are being processed. So my view is that there was especially after the Constitutional Court ruling in 2015, there was and with the arrival of the new Chief whip, there was a new dimension in terms of how does parliament and in effect the ANC in parliament do their oversight work to effect and ensure accountability by members of the executive.

10 **MR FREUND SC:** And when you refer to a Constitutional Court judgment in 2015, I am assuming you must be referring to the Nkandla judgment, would that be correct?

MR FROLICK: That is correct.

MR FREUND SC: And what you say, I understand this point of view. You say that that judgment emphasised from the perspective of the Constitutional Court, parliament's not only rights, but duties to hold the executive to account and made it clear that parliament actually in that instance had failed to do what was required of parliament by the
20 constitution. That is what you had in mind when you say that that had an influence on the developing or emerging, we might call it better culture of oversight. Am I understanding correctly?

MR FROLICK: Yes, the Constitutional Court judgment was an important judgment and we respect that judgment and it

is because of that reason that we started taking a very deep and do some introspection as to how some of these matters must be raised, that it is not necessarily a situation where you can say that you know what, we are doing the oversight, but it requires more work and clearer political leadership when it comes to this type of work. You must remember Advocate Freund, through the Chairperson, the Chief whip of the majority party in any legislature, carries enormous political clout, and from that
10 perspective and on the back of the Constitutional Court judgment, you started seeing things unfolding in the way that it did and the speaker was supportive of this.

MR FREUND SC: Now you said that it needs more work and I cannot remember your word, I think you said decisive political leadership or better political leadership, and that leadership obviously would include the Chief whip, but it would in the context of me talking about, I am putting it to you for comment. It would also include the President of the nation who was then the President of the African
20 National Congress and the top six of the ANC. They were key elements of the leadership whose altered state of mind was required if parliament was going effectively to exercise its oversight responsibilities. Do you agree or disagree with that?

MR FROLICK: Well, I will say that the Chief whip as far as

I know and in discussions that we have had on numerous occasions, this was a matter that he, he was not afraid to take it up with anyone. He took it up with the officials. He took it up directly the link between the Chief whip's office to the headquarters of the AND Lethuli House through the Secretary General and he would come and say but you know, during discussions that we had as colleagues and comrades, that this is not moving fast enough. This is not happening in the right way, but we must always remember
 10 that this happens in the context of a bigger political environment in the African National Congress.

MR FREUND SC: That I understand, but what I want to put to you for a very specific comment is whether you agree or disagree that if this project is to be successful, this project or proper oversight over the executive when there are allegations, serious allegations made against very senior members of the executive, it is essential that the top leadership of the party, the President, the top six, the NWC, the NEC all had to commit to this, absent that this is
 20 not going to work.

MR FROLICK: That is correct.

MR FREUND SC: Well, now ...[intervenes]

CHAIRPERSON: I am sorry Mr Freund.

MR FREUND SC: Not at all.

CHAIRPERSON: Mr Frolic, is it expecting too much of the

majority party in parliament, well for the majority party to take the position that says any member of our party who gets himself or herself involved in corruption is acting contrary to the values that this party stands for, such a member is betraying the values that this party stands for and it does not matter what his or her position is in the party, whether he or she is the President or just an ordinary member, and members of our party who are in parliament are not expected to protect any Minister, Deputy

10 President or President of the party against whom there are allegations of corruption because corruption is something that is totally at odds with this party's values, and actually any party, member of the party in parliament who is found to protect from scrutiny any Minister, any DG from scrutiny in regard to allegations of corruption, would be himself or herself acting contrary to the values of this party. Therefore we say from now on Ministers who come from this party, a Deputy President or President who comes from this party, they must expect no protection from any of our

20 members of parliament when there are allegations of corruption and therefore they must know that they will be on their own, because when it comes to corruption we expect our members in parliament to really do their job. It does not matter what the Minister's position in the party or what anybody's position is in the party. That is something

that we will not tolerate. Is it expecting too much of the governing or the ruling party to take that position?

MR FROLICK: Honourable Chairperson, no it is not expecting too much.

CHAIRPERSON: But it does not look like it has happened. At least indeed, I may be in terms of words speaking maybe somebody has said that, but in terms of actions and in terms of the message to members of parliament, the kind of evidence I have heard has not told me that that is the
10 message that has been put through and if it has not been put through, the question would arise what would the party lose by taking that position. Not just in terms of speeches, in terms of statements, of course the statements might be important, but actually making sure that the lift expedience of parliament is that members of the ruling party in parliament, when it comes to corruption, allegations of corruption by Ministers, DG's or officials within government departments and SOE's who may be members of the party, that will simply not be tolerated and no member of the
20 ruling party will feel that there will be adverse consequences if they really take a strong stand in public, in a committee meeting or in the national assembly against their own comrade against whom there are allegations of corruption. Is it too much for South Africans to expect that that is the stance that can be taken by the ruling party and

that is the stance that they can make sure it is the lift experience of parliament?

MR FROLICK: Honourable Chairperson, I agree with your sentiment and I can say that and that the, there is a lot of work that must still be done but there is a commitment and we have seen it from the time and from the pronouncement in parliament that was made by the late Chief whip of the ANC under very difficult conditions I might also say, at great personal political risk as well. Some had to take that
10 type of decision in order to move towards the next level, but what is important is as you said we must take the people along so that everyone is committed towards that same outcome and that is work in progress and that is where we need to improve. There is no excuse that I can put forward to say that this is the reason why it has happened, it has evolved, there has been lapses yes and we must learn from those so that it does not re-occur and as part of that we must strengthen our institutional designs to give effect to that aspiration that you have articulated
20 and I fully agree with.

CHAIRPERSON: Thank you. Mr Freund?

MR FREUND SC: Thank you Chair. Mr Frolick, can we please try and spell out the obvious? When you just said that Mr Ntembu, then Chief whip acted at great political, at great personal and political risk, why did you say that?

What was the great political and personal risk he was running?

MR FROLICK: Well, in discussions that I had with the late Honourable Ntembu, it became apparent that the unhappiness and dissatisfaction that was there was due to his approach in term of parliamentary processes and parliamentary oversight and at times he would joke to say that he does not know if he can, if he is sure that he will continue as the Chief whip of the majority party that
10 express confidence that he has sufficient support from the African National Congress at national level to continue in that role.

MR FREUND SC: But risk from whom?

MR FROLICK: Can you just repeat?

MR FREUND SC: But risk from whom? I am not disputing this, I just want you to spell it out.

MR FROLICK: Well, it is I have just said from inside the African National Congress representatives in parliament there was dissatisfaction. Dissatisfaction to the extent
20 that some of our colleagues and comrades openly said that they do not agree with this and it is the wrong thing to do, and this is not an instruction that was given to the Chief whip or to the speaker for that matter or to myself to deal with this matter in this particular way. It was not processed properly and so the, when I talk about the inter

party dynamics, it is from inside. Inside where certain members felt that the Chief whip is not executing his mandate correctly.

MR FREUND SC: But would it not be correct, whilst I do not disagree with you, that the Chief whip faced resistance from a substantial body of his own MP's. He was also facing resistance from Lethuli House. He was also facing resistance from the President. He was also facing resistance from the most powerful people in the country.

10 **MR FROLICK:** Well, I cannot attest to who he was exactly receiving resistance from, but I know he received support from and at the level where I operate, I am not part of discussions of the National Executive Committee or the National Working Committee, but I know from where I operate, he received full support in terms of his direct line of reporting of parliamentary activities from the Secretary General of the ANC.

MR FREUND SC: So why did, because these are not my words. These are your words. He acted with great
20 personal political risk. Why great personal risk? What are you suggesting?

MR FROLICK: He could have lost his position as Chief whip of the ANC. That is what I am referring to.

CHAIRPERSON: The stance that he was advancing to which he was receiving resistance whilst a stance or a

position or approach that sought to ensure that there was proper oversight and members of Parliament perform their oversight functions properly. As far as you are concerned from the discussions you had with him, is that the position?

MR FROLICK: That is correct Chairperson. He said that this is a matter that and he kept on referring to say that we are not going to commit the same mistake,

CHAIRPERSON: H'm.

MR FROLICK: At least not under – under the caucus of
10 the African National Congress that was committed previously. It was matters that arise. It must be dealt with. It must be engaged with. And committees must play a role as far as this is concerned.

And that is also what informed his believe in the discussion that we had on the 15th of June 2017 with the Speaker on the direction that must be taken as far as those allegations were concerned.

ADV FREUND SC: And if his stance was that we are not going to commit the same mistake, I take it his stance was
20 that such a mistake had been made in the past but the past practise had been mistaken in the manner in which it had failed the Executive to account in relation to allegations of corruption in state capture. Am I understanding you correctly?

MR FROLICK: The stance directly related to the

Constitutional Court judgment of 2015. That is there. It is very specific in terms of that Parliament failed in its obligation to hold the Executive accountable.

ADV FREUND SC: Alright. Now I just have on further line of questioning before we can wrap up. I know it has been a long and hard day especially for the Deputy Chief Justice. But you will recall that we were dealing with your letters of the 15th of June 2017 and I took you to a couple of them. And there were in fact four of them as I
10 understand. Is that correct?

MR FROLICK: That is correct.

ADV FREUND SC: Home Affairs, Public Enterprises. It would have been Transport and it would have been from the letter to the Committee of Transport, has already into record. And I think it should Mineral and Energy Affairs. Is that correct?

MR FROLICK: The answer is yes.

ADV FREUND SC: And in relation to that four letter. We do not have in the record – I have never been able to track
20 down and find a copy of it but it must exist or must have existed a letter of the 15th of June to the Mineral and Energy Affairs Portfolio Committee along the same lines as the other three that we have read. Am I correct in that?

MR FROLICK: That is correct.

ADV FREUND SC: And in relation to that committee as

you told the Chair a little earlier. There would have been reference to the fact that the recently published material in the media had some bearing on that committee. So what was it, as far as you were concerned, that that committee ought to have been investigating or concerned about?

MR FROLICK: There were certain allegations made around certain contracts. It was in the or directly linked to the provisioning of coal and that is a matter that resorts under Mineral Resources. And that was the matter that the
10 Speaker felt that the committee should look into and to report back to her.

ADV FREUND SC: And were those the contracts, the Eskom contracts involving for example Tegeta and where allegations were made involving amongst others the Gupta family members?

MR FROLICK: That is correct.

ADV FREUND SC: Alright. Now we all know what happened with the Public Portfolio Committee on Public Enterprises. It conducted a very public process which
20 resulted ultimately in a report which had been placed before this Commission. I do not need say anything more about that.

As with regards to Home Affairs and bear in mind that your letter says this needs urgent attention and urgent report back. Am I correct that for a long time the Portfolio

Committee on Home Affairs took no effective steps to get to the bottom of the allegations that you had thought that they should investigate?

MR FROLICK: That is correct.

ADV FREUND SC: And am I correct that the Portfolio Committee on Transport took no steps to implement the directive that you had given that they should pursue allegations pertaining to PRASA? When I say they took no steps, to the best of your knowledge they took no steps.

10 **MR FROLICK:** Well, I get several interactions with the chairpersons of both of those committees at various stages. Some of them are in writing and different reasons were advanced as to why it is not happening.

In the case of Transport it was non-cooperation being receiving from PRASA and the chairman of the board and other political developments of the chairperson saying or report to the – that is according to the chairperson of that committee. She mentioned to me that they will report somewhere else and they busy with legislation.

20 Home Affairs eventually got going with some form of work that they were doing and that was also after some time that was happening but all of this was happening within this milieu and political environment where you had two members with different views. Why must we do this. Who tell us to do this?

We cannot really go into that area because as the chairperson of the Transport at the time mentioned to me, there are a number of issues in front of the courts or that is going to litigation that they cannot enter into.

So you did find that – and also with Mineral Resources. At one stage, I eventually had to write a letter and I kept the Chief Whip informed and I know from his side he tried his best to get to the chairpersons

Because I said: Ultimately, Chief Whip the
10 chairpersons of these committees are members of the ANC.
Can you not assist us to get going with this work that needs to be done?

I know at a certain occasion the Speaker also had a discussion with the chairperson of Transport around the matter. But it was extremely difficult to achieve the same type of outcome that was achieved by the Public Enterprises Committee that was there.

And that has a lot to do with the different positions that was taken inside the study groups of the
20 ANC or – I want to call it a – at one stage the chairperson of Mineral Resources told me they do not know how to get going. Where must they start?

And I referred him to the Chief Whip and the Chief Whip said they must start by calling the ministers to say that: Minister, you report to this committee. Have you

seen these things in the public domain that has been said about you? How do you respond to that?

And then once that is done the committee must decide what is the action that will be taken or what is the direction that will be taken.

ADV FREUND SC: Now you have referred to a number of reasons that were given by the two chairs of those two committees for their failure to have acted as you thought they should have acted.

10 But I thought that I detected and I want to put to you for your comment that you were not completely persuaded that those reasons were convincing.

And that you thought that at least part of the explanation lay in the fact that they were extremely unkeen to exercise this type of oversight power in the way you thought it should be done.

Is that a fair comment?

MR FROLICK: Yes.

20 **ADV FREUND SC:** Now having said that. I just want to deal, finally, with the ultimate fate of the Mineral and Energy Portfolio Committees' investigation. There has been evidence before this Commission that, to put it bluntly, the then Minister gave them the run around.

He appeared, he answered certain questions. He knew he had to come back. He was asked to come

back. He repeatedly failed to comply with undertakings to come back or arrangements to come back.

What then eventually occurred is that finally, a long time later, the committee ultimately lost its patience and said know we want to call the Minister to account and all we – we want to deal with this matter.

I think at that stage there had finally been a change of ministers. And they wanted to proceed with an inquiry and they needed – they appointed somebody to
10 assist them to proceed and to interview witnesses and start to prepare for an inquiry somewhat like the inquiry of the Portfolio Committee on Public Enterprises.

And the evidence had been that you could have stopped it. That the resources that were requested were refused and that effectively it was Mr Frolick that ultimately prevented that inquiry from taken place.

What is your comment on that?

MR FROLICK: That assessment is incorrect. And if I may
Chairperson just give the background to the point that the
20 advocate has now mentioned to say I could have put a stop to it.

As you can recall Advocate in a pre-briefing that we had, I made reference to a certain letter that was written and I do not know if you eventually – because I just managed to source this letter today that was written to that

committee.

Because what happened was – and I will send it through to you, of course. And I my apologies for not sending it through earlier. I had to spend some time today myself in the office to find this letter.

What happened was, is that, as far as this committee is concerned, the chairperson after receiving the letter came to me and I – my view was that the reasons that were advanced that the minister was not available.

10 And towards the end of 2017, the Minister came to the committee and various matters were raised. The Minister was then supposed to come back but fell ill. But then the events start happening very quickly Chairperson after the 2017 National Conference at Nasrec.

On the 14th of February 2018, President Zuma resigned. From the 15th of February 2018, President Ramaphosa is elected as President.

And on the 22nd of February 2018, I received a letter from the chairperson of the committee indicating
20 more or less that the committee had now got to appoint where they say that they want to proceed but they will require resources.

And before I replied to the letter of the chairperson, he came to me in person and I said to him: What is the problem? What is the resources that is

required? Quantify it. We have got the legal advisor that permanently assist the committee and you must decide how you want to proceed.

On the 26th of February 2018, there was a Cabinet reshuffle and the Minister was replaced by the current Minister of Minerals and Energy.

I can recall that afterwards the chairperson came for me again and the chairperson said: No, what the committee now wants to do is – and there is
10 correspondence that I have in that regard – is to have, and that is what was decided by the committee, is to have an overall inquiry over everything associated with Mineral Resources in the company.

But I said but that is – your scope has now changed. It is not the same as it was as we discussed previously. And there was a to and thro of letters again between us.

The chairperson came to me again and said: You know what. I must report back to my committee. I
20 wrote back to the chairperson on the 6th of June 2018. But before that, we also had a meeting as comrades.

I went with the chairperson to the new minister, Minister Mantashe where this issue of the inquiry was mentioned. The Chief Whip that was currently, to take up the matter with the new Minister so that he can understand

where this is coming from.

And to cut a long story short. After that discussion, it was agreed that the scope of this inquiry that they want to have must be looked at because now long will it take for the committee to do an inquiry over all Minerals and Resources and entities in the country.

And in the communication that I have that I will also forward to you, I refer to the discussions that we had and in one line and that is the letter dated on the
10 6th of June 2018, I said in April this year, and that is 2018, the Deputy Chief Justice wrote to the Speaker to request copies of all relevant information and documents pertaining to state capture enquiries conducted by Parliament in three committees.

The Speaker has exceeded to this request and requested me to interact with the Commission. In the budget on debate of Parliament on the 22nd of May 2018 I reported to The House that I have met with the lead investigator of the inquiry, Mr November, the former AG at
20 the office of the Chief Justice on the 18th of May 2018 and handed over to the Commission all relevant documents of the work that was done.

And that referred specifically to Public Enterprises and Home Affairs. We also agreed that Parliament will assist the Commission as to meet...

Now I then did not receive a costing. And in the meantime the Chief Whip said to me: But you know, this is taking way too long. We had a discussion with the Speaker as well.

And this letter is addressed or to the Speaker, the ANC Chief Whip, the Secretary to the National Assembly and also to the Advocate Mandela who at time was also acting as the Secretary for Parliament or assisting the Parliament.

10 And in there we clearly state or I clearly state that the committee needs to clarify the scope and form of this inquiry as well as the oversight work it now wants to undertake in the light of the judicial commission state of intention to commence its proceedings in August 2018.

If I may Chairperson. This is the letter that I will forward as soon as I am done here to Advocate Freund. It reads on the 17th of September 2018, Inquiry into State Capture. It is addressed to the chairperson and says:

20 “My discussions with you on the above matters refers.”

I said:

“You will recall to you on 15 June 2017 and again on 23 August 2017 on the need for the committee to investigate allegations in the public domain on state capture.

I also propose that the point of departure should be to invite the former Minister to respond to these allegations.

I also emphasise that the aforementioned process should commence and that the committee should report back to the National Assembly without delay.

10 Unfortunately, for various reasons this was not done and the committee thus missed a golden opportunity to investigate the matter in 2017.

As you are aware the Judicial Commission on State Capture that is headed by the Deputy Chief Justice is now well underway.

Parliament is cooperating with the Commission headed by the Deputy Chief Justice Zondo and numerous documents have been exchanged with the Secretariat.

20 It will thus be duplicating the work of the Commission of the committee at this stage commence with a parallel investigation on the same matter.

I wish to emphasise that the matter of resourcing of the committee to conduct the investigation into state capture is not an issue at this stage.

The necessary financial, human and logistical support would have been availed to the committee last year.

The committee is also reminded that it should now conclude matters in front of it and not embark on new and substantive matters as we approach the end of the 5th Parliament.

Formal and legacy reports are due to be tabled on 23 November 2018 and is expected that
10 committees will be seized for concluding their work in the last few months left of this term.”

The text of this letter Chairperson was agreed to and approved by the Speaker as well as the Chief Whip of the ANC.

And that is why this letter is copied to the Honourable Speaker, the Honourable Mbete then, the Deputy Speaker, the Honourable Tsenoil and to the Chief Whip of the ANC, the Honourable Mthembu.

I must finally, as far as this is concerned, add
20 that the Secretary to the National Assembly, Mr Xaso and myself had a meeting with Mr Nombembe at the offices in Johannesburg.

And this letter of parallel investigations was raised and it was agreed in that meeting that parallel investigations should not take place because it could be

that Parliament now while the Commission is starting its work is embarking on a certain course of action, have different outcomes and the Commission arrives at different outcomes.

ADV FREUND SC: Now I have put that allegation to Mr Nombembe who disputes it. Mr Nombembe says it is quite correct that Parliament undertook to cooperate and did cooperate by furnishing, as it were, the product of any investigations it had done.

10 But that he had said in no meeting that he attended that the Commission's stance was that Parliament should referring from doing oversight that was otherwise willing or minded to do. Do you dispute Mr Nombembe's version?

MR FROLICK: Well, it was the task for the Secretary of the National Assembly who was part of that meeting. That is what I take out of that meeting that was there. And of course Mr Nombembe cannot tell Parliament not to do its oversight work but as far as the Terms of Reference of the
20 Commission is concerned and that what Risk Committee wanted to do...

 There was agreement between the Speaker, the Honourable Chief Whip of the majority party and myself had due to the time-lapse that has occurred, it would be a parallel process running parallel to what the Commission

intended to do.

ADV FREUND SC: Now you requested the four committees to commence their investigations in June of 2017 long after the Public Protector had directed that there should be an inquiry but before the inquiry had in fact been appointed and before the inquiry had in fact got going. I think you will agree with that.

MR FROLICK: That is correct.

ADV FREUND SC: The Public Enterprises Portfolio
10 Committee ran an inquiry that ran substantially into 2018 and as I understand it with your support. Is that correct?

MR FROLICK: Well, the Public Enterprises Portfolio Committee did extensive work and they always received my support.

ADV FREUND SC: And that continued well after the establishment of the present Commission that you are testifying before.

MR FROLICK: They concluded their work before this Commission started their work.

20 **ADV FREUND SC:** No, on the contrary. Their report was adopted by Parliament, speaking from memory, about October of 2018.

MR FROLICK: Well, the report could have been adopted then but it does not mean the committee worked up to October 2018.

ADV FREUND SC: Well ...[intervenes]

MR FROLICK: No... Can I just explain? I do not have that detail in front of me in terms of when that committee concluded their work but the bulk of their work was done in 2017 and in the beginning of 2018.

ADV FREUND SC: Well, I do not want to engage in that detailed analyses of that with you but I what I do want to put to you is this. You maybe being unfair to the Portfolio Committee on Minerals and Energy when you say to them:
10 Well, if you do not get it done before the Zondo Commission is up and running it is too late for you to do it now.

You may be being unfair for this reason, that they immediately summoned Minister Zwane shortly after your letter. In fact, on the very day that the issue came up for debate. He did not come then but he came the next week.

He then gave them the run around for two or three months. From that time onwards, they were trying –
20 now in the beginning of 2018 – they were trying to exercise their oversight powers.

And the record is repeat with references to people who alleged that they came to you for resources necessary to pursue this inquiry. Your attitude was there is no money for it. That is why I am not approving it. I

understand you do not agree with that?

MR FROLICK: I am afraid I must disagree with you. And that is why I will forward the relevant letters to you tomorrow and also Legal Services in Parliament was throughout part of this process.

And I must also stat to you that there was never a summons issued to Minister Zwane to appear in front of a committee. Your information is incorrect. If you can produce that summons to me then I - I have not seen it.

10 **ADV FREUND SC:** No, I have not seen it either. I am not saying it was a summons. What I am saying is that there were a number of agreements and arrangements made for him to come which for one reason or another did not come about ...[intervenes]

MR FROLICK: Well ...[intervenes]

ADV FREUND SC: ...to such extent that that committee became exasperated and decided to conduct an inquiry and the inquiry was focussed on allegations of state capture, Guptas' and the very allegations that you said they should
20 investigate and they say you refused them the resources to pursue that.

MR FROLICK: I am afraid the record will show that that the Honourable Zwane was summonsed to appear in front of that committee. He was not ...[intervenes]

ADV FREUND SC: I accept that because I know that is

not correct.

MR FROLICK: He was summonsed in front of that committee. The situation is Chairperson is that without any other intent a decision was taken by the Chief Whip of the majority party and the Speaker and I agreed with it that it would be a parallel process running with the State Capture Commission in terms of their mandates that the then recently elected President of the Republic and the Terms of Reference were clear and this committee was
10 going to do exactly the same.

ADV FREUND SC: Mr Frolick, thank you for time. I have no further questions.

MR FROLICK: Thank you sir.

CHAIRPERSON: Thank you very much Mr Frolick. We appreciate that you availed yourself again. Thank you very much. You are not excused.

MR FROLICK: Thank you very much Chairperson. It has been a very long day for your as well. And thank you for the platform.

20 **CHAIRPERSON:** Yes, thank you very much. Mr Freund?

ADV FREUND SC: Chair, obviously, from my perspective that disposes of the business for the day.

CHAIRPERSON: Yes.

ADV FREUND SC: The intention from our side is to resume at Wednesday evening at five p.m. with Ms

Letsatsi-Duba's evidence.

CHAIRPERSON: Yes. And what is your estimate of how long her evidence might take?

ADV FREUND SC: Two hours?

CHAIRPERSON: Ja, okay. No, that is fine. So on Wednesday, five o'clock or as soon as possible thereafter depending on the day session we will – I will hear her evidence. Thank you very much to everybody who has stayed until this time. We appreciate it.

10 We are just trying the best we can to cover as much work as possible. But thank you very much. We will adjourn for the day and tomorrow during the day session we will continue with the PRASA evidence. This is just for the benefit of the public and the media.

We adjourn.

INQUIRY ADJOURNS TO 23 FEBRUARY 2021