

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

24 FEBRUARY 2021

DAY 349



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Recording & Transcriptions

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DATE OF HEARING:

22 FEBRUARY 2021

TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 24 FEBRUARY 2021

CHAIRPERSON: Good morning Mr Soni. Good morning everybody.

ADV VAS SONI SC: Good morning Chairperson.

CHAIRPERSON: Yes. Are we ready?

ADV VAS SONI SC: Yes. Chairperson, you will recall that among the witnesses who were going to be called today was Mr Auswell Mashaba and I made that point again yesterday relating to the fact that a summons had been
10 served on him to appear today.

I must record that Mr Mashaba is not here and subsequent to the exchanges we had, you and I Chairperson yesterday, his attorney has sent a letter to the Commission saying that Mr Mashaba will not be here.

CHAIRPERSON: Because of that, are you going to ...[intervenes]

ADV VAS SONI SC: Yes, I will give you a bundle ...[intervenes]

CHAIRPERSON: ...are you going to read it into the
20 record?

CHAIRPERSON: Are you going to read it into the record?

ADV VAS SONI SC: Yes.

CHAIRPERSON: Yes.

ADV VAS SONI SC: But I will give you... I want to deal with something Mr Chairperson, that it is not simple that he

is not coming but the circumstances though, we prepared a small bundle to indicate to you all the relevant exchanges relating to his non-appearance.

CHAIRPERSON: Yes.

ADV VAS SONI SC: But perhaps I should answer your question. I will give you a copy of that.

CHAIRPERSON: Ja.

ADV VAS SONI SC: But it will be...

CHAIRPERSON: Yes.

10 **ADV VAS SONI SC:** ...together with other correspondence.

CHAIRPERSON: That is fine.

ADV VAS SONI SC: May I have leave to hand it up Chair?

CHAIRPERSON: Ja. Thank you.

ADV VAS SONI SC: Chairperson, you will see in the bundle, there are a number of documents there. It is the document right at the – it is the last document in that bundle and it is a letter from Mr Cameron dated today.

CHAIRPERSON: Yes.

20 **ADV VAS SONI SC:** I should read it into the record.

CHAIRPERSON: Yes, please.

ADV VAS SONI SC: Just so that we... we...

CHAIRPERSON: Ja.

ADV VAS SONI SC: The record that he is not going to be here.

CHAIRPERSON: H'm.

ADV VAS SONI SC: It says:

“We address this communication to you on the instructions of our client [and the client being Mr Mashaba as appears above] with specific reference to the document and more specifically to the contents of your communication dated the 16th of February 2021...”

10

And then in the last paragraph:

“In closing, we confirm and record that our client will not be appearing at the Commission today and more particularly for our reason that our client does not accept that the document constitutes a lawful and legally binding summons...”

CHAIRPERSON: I am sorry. I am sorry. I am not sure that... I am looking at the last letter in the bundle.

ADV VAS SONI SC: Yes.

20 **CHAIRPERSON:** Is that correct?

ADV VAS SONI SC: Yes.

CHAIRPERSON: Okay alright. Are you still in the first paragraph or you have ...[intervenes]

ADV VAS SONI SC: No, I have moved to the last paragraph to get...

CHAIRPERSON: [laughs]

ADV VAS SONI SC: Oh, I am sorry.

CHAIRPERSON: [laughs] Ja.

ADV VAS SONI SC: I just wanted to ...[intervenes]

CHAIRPERSON: Ja.

ADV VAS SONI SC: And then I want to go through the correspondence.

CHAIRPERSON: No, no. That is fine. Just... I think, complete your reading. I will just have to...

10 **ADV VAS SONI SC:** As you please.

CHAIRPERSON: Ja, ja.

ADV VAS SONI SC: So in the first paragraph he says:

“We address this communication to you on the instructions of our client with specific reference to the document and more specifically to the contents of your communication dated the 16th of February 2021...”

20 Now Chairperson, I may just say as the prelude to the letter, the writer describes the document as the document purporting to be the summons that was served on Mr Mashaba.

CHAIRPERSON: H’m, h’m.

ADV VAS SONI SC: So they... he is signing... I do not recognise that.

CHAIRPERSON: H'm.

ADV VAS SONI SC: And then he says:

“As regards to the contents of paragraph 3 of your communication:

1.The recordal contained therein only came to the writer’s attention on the receipt of that communication, that he is saying not within the writer’s knowledge, then our communication date, it is 15 February 2021 was transmitted to you.

10

2.And we request that you furnish ourselves with a transcribed record of what took place at that hearing, as we hold instructions from our client to seek an opinion from senior counsel...”

And then the third paragraph then is

Chairperson:

“In closing, we confirm and record that our client will not be appearing at the Commission today, and more particularly, for our reason that our client does not accept that the document constitutes a lawful and legally binding summons...”

20

Ja, requested to acknowledge thereof.

CHAIRPERSON: H'm.

ADV VAS SONI SC: And it is signed by Mr Cameron, the attorney.

CHAIRPERSON: H'm. Yes.

ADV VAS SONI SC: Chairperson, the Commission dealt with this similar situation last week Chairperson, on Monday last week.

CHAIRPERSON: H'm. Yes.

ADV VAS SONI SC: Where a witness was summonsed to appear and did not appear.

10 **CHAIRPERSON:** Yes.

ADV VAS SONI SC: And as a result of that, the Commission has taken certain action to ensure that the disrespect displayed and the unlawful conduct is not gone unpunished.

CHAIRPERSON: Yes.

ADV VAS SONI SC: Now Mr Chairperson, what I want to say is. This letter that I just read does not appear in a vacuum.

CHAIRPERSON: H'm.

20 **ADV VAS SONI SC:** There is – there are seas of exchanges.

CHAIRPERSON: H'm.

ADV VAS SONI SC: Now I only want to deal with the relevant ones and they are contained in the bundle of documents I sent to you.

CHAIRPERSON: H'm.

ADV VAS SONI SC: You will see Chairperson that what is crucial in that set of documents is the summons which the – Mr Cameron calls a document that purports to be a summons.

CHAIRPERSON: H'm.

ADV VAS SONI SC: So that is – and when he received – soon after he received that, we got a letter from Mr Cameron saying that they do not recognise that
10 document as a summons.

CHAIRPERSON: H'm.

ADV VAS SONI SC: They will not appear. We, the very next day – and that Chairperson happened on Monday last week.

CHAIRPERSON: H'm.

ADV VAS SONI SC: When Mr Cameron wrote to us. On Tuesday we wrote back to say that you will be aware that a similar issue arose at the Commissions hearing yesterday and we are saying to you it is not open to your client to
20 simply ignore the summons. If he wants to challenge the validity of the summons he must do so in court but until it is set aside it retains its validity.

CHAIRPERSON: H'm, h'm.

ADV VAS SONI SC: And it is then Chairperson that you and I had that exchange yesterday relating to what was

ging to happen today.

CHAIRPERSON: Yes.

ADV VAS SONI SC: And the last letter I have just read is a response to our previous letter of the 17th.

CHAIRPERSON: Yes.

ADV VAS SONI SC: And the exchange yesterday.

CHAIRPERSON: H'm, h'm.

ADV VAS SONI SC: Now Chairperson, the approach of the Legal Team to this is that Mr Mashaba's conduct cannot
10 go unanswered.

CHAIRPERSON: H'm.

ADV VAS SONI SC: He cannot defy a summons. He is obviously entitled to challenge it...

CHAIRPERSON: H'm.

ADV VAS SONI SC: And what we would like to do Chairperson is to go through the documents through with you because of course if there is sufficient calls, then in terms of the – of Section 6 of the Commissions Act, he would be entitled not to come.

20 **CHAIRPERSON:** H'm.

ADV VAS SONI SC: But the question is whether it is that and should you be satisfied based on the information that you have that there is not a sufficient cause before you to then introduce legal steps against Mr Mashaba.

CHAIRPERSON: Ja.

ADV VAS SONI SC: Chairperson, I say that also having regard to the point you made last week Monday when this situation first arose before the Commission where there was a defiance of an appearance of a summons to appear.

And the point you made Chairperson is that that is going to lead to more such defiance's, and that is exactly what this is. And it is for that reason that we submit that the matter must be dealt with formally now and steps taken as you as the Chairperson would...

10 **CHAIRPERSON:** Yes. So this may well be the start ...[intervenes]

ADV VAS SONI SC: That might be.

CHAIRPERSON: ...of more people who will defy summonses issued by the Commission.

ADV VAS SONI SC: Yes.

CHAIRPERSON: And refuse to appear before the Commission which obviously undermines in a very significant way the work of the Commission when people who have knowledge of certain transactions and events
20 that are relevant to the investigation of the Commission refuse to appear when they have been served with summonses and this may defeat the objectives of the Commission.

And I note that in the letter Mr Mashaba's attorney does not put up any factual or legal grounds for

his client's view that the summons that was served on his client is not a summons or is not valid.

That is what also Mr Zuma's attorneys did in their letter to say he was not going to appear last week. They said the summons was irregular without saying even grounds on which they were saying the summons was irregular.

So these – this witness is basically doing the same thing. And we may well see more. I hope not. Yes,
10 okay alright.

ADV VAS SONI SC: Chairperson, then may I go through the documents as they appear before you? You will see the first document Chairperson is the proof of service of the document on Mr Mashaba.

CHAIRPERSON: Of the summons?

ADV VAS SONI SC: Of the summons.

CHAIRPERSON: Ja.

ADV VAS SONI SC: On Mr Mashaba.

CHAIRPERSON: Because it was a summons?

20 **ADV VAS SONI SC:** Yes.

CHAIRPERSON: It was not just a document?

ADV VAS SONI SC: No, it was not.

CHAIRPERSON: It was an important process, legal process. It was a summons and it was labelled as such?

ADV VAS SONI SC: Yes.

CHAIRPERSON: Yes.

ADV VAS SONI SC: And of course, the service is not an issue because the very fact that they are challenging it means they received it.

CHAIRPERSON: H'm.

ADV VAS SONI SC: But I just say that we took all steps to ensure that there were no procedural grounds on which that could be challenged.

CHAIRPERSON: H'm, h'm.

10 **ADV VAS SONI SC:** Then Chairperson, the next ...[intervenes]

CHAIRPERSON: And of course, the Commission has issued, from what I remember, many summonses over the past three years, both summonses for witnesses or people to appear as well as summonses for the production of documents.

I do not know if I saw the affidavits are close to or about one thousand. I am not sure. Or whether it was close to above hundred. I am not sure. But whether it was
20 hundred or around hundred or one thousand, it is still a high number.

ADV VAS SONI SC: Yes.

CHAIRPERSON: And mostly people have accepted the summonses and complied with them.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Most of the time.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Okay.

ADV VAS SONI SC: So the summons Chairperson reads:

“Summons to appear as a witness...”

And it records – and this is the – I just point out Chairperson that in terms of the Commissions Act, the format of the summons must be in terms as determined by yourself Mr Chairperson.

10 **CHAIRPERSON:** H’m.

ADV VAS SONI SC: And this is the – this is the manner in which the summonses have been issued. We kept with the secretariat.

CHAIRPERSON: H’m.

ADV VAS SONI SC: And it alerts Mr Mashaba to the fact that the summons is issued in terms of Section 3.2 of the Commissions Act to be read with the Proclamation 3 of the – published on the 25th of January 2018, Government Notice 105 published on the 9th of February 2018 as the
20 Rules of the Commission.

And Chairperson, the terms of the summons read as follows:

“The sheriff or his deputy inform Mr Mashaba...”

And the address is there ...[intervenes]

CHAIRPERSON: Well, let us include his name.

ADV VAS SONI SC: Oh.

CHAIRPERSON: So that – because it is as if the summons just put the surname without the name.

ADV VAS SONI SC: No, I am sorry.

CHAIRPERSON: Yes.

ADV VAS SONI SC: Yes.

“Inform Mr Auswell Mashaba... [and his address being AM House 20, Bavaria Avenue ...[intervenes]

10

CHAIRPERSON: Ja, or maybe you might not need to repeat the address.

ADV VAS SONI SC: Oh, the address, yes.

CHAIRPERSON: Yes, ja. But it is there.

ADV VAS SONI SC: Yes.

CHAIRPERSON: H’m.

ADV VAS SONI SC: And then:

“He is to be informed that he is hereby summoned to:

20

a) Appear before the Commission personally at the Civic Centre, 158 Civic Boulevard, Braamfontein, Johannesburg at 10:00 a.m. on the 24th of February 2021... [That is today.] ...for the purposes of giving evidence before the Commission and then be questioned about

matters arising from the relevant parts of the affidavits and/or the reports in the annexure hereto...”

CHAIRPERSON: H’m.

ADV VAS SONI SC: And Chairperson, I just point out that that annexure refers to the affidavit of Mr Molefe dated the 25th of August 2016. The second document listed in Annexure A is Mr Mashaba’s affidavit dated the 30th of November 2020 in response to Mr Molefe’s affidavit
10 in which... Sorry. In which he or his legal representative furnished to the Commission.

Now Chairperson, I should just add that that is the affidavit that was submitted pursuant to the 10.6 Directive that was issued for him to respond to certain matters.

CHAIRPERSON: So he has previously complied with a 10.6 Directive issued to him?

ADV VAS SONI SC: Yes.

CHAIRPERSON: For him to file a certain affidavit?

20 **ADV VAS SONI SC:** Yes.

CHAIRPERSON: He filed – he complied?

ADV VAS SONI SC: Yes.

CHAIRPERSON: But now he is not complying with the summons?

ADV VAS SONI SC: No.

CHAIRPERSON: Ja, okay.

ADV VAS SONI SC: And the third document is the report of the administration of the estate of Swifambo Rail Leasing and Liquidation and Rail Pro Holdings (Pty) Ltd in Liquidation dated the 18th of February, which was provided to you on the 4th of December 2020.

I should just add Chairperson that the affidavit in which he responded, he responded to both these matters Chairperson.

10 Then Chairperson, the – if I could go back to the terms of the summons. It is said there in bold:

“Your failure to comply with the requirements set out in paragraph A without sufficient cause constitute an offence under 6.1 of the Commissions Act of 1947 as amended...”

And it is dated the 9th of February and it is signed by the Secretary of the Commission, Professor Mosala.

20 **CHAIRPERSON:** Yes-no, that is fine. Will you just arrange for everybody to say: “will constitutes” and offence and “not constitutes”?

ADV VAS SONI SC: Yes.

CHAIRPERSON: Ja.

ADV VAS SONI SC: Yes, yes.

CHAIRPERSON: Ja. And then the secretary should make

sure.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Yes, continue.

ADV VAS SONI SC: So that is the terms of the summons that was served on him Chair. Now ...[intervenes]

CHAIRPERSON: Did they tell him – they tell him he is required to appear before the Commission?

ADV VAS SONI SC: That is right.

CHAIRPERSON: They tell him the venue, the address
10 where he must appear. They tell him what he must give evidence about and what he will be questioned about. It says are matters arising from the affidavit listed in Annexure A or documents listed in Annexure A. It tells him the date when to appear and it tells him the time. And it is issued by the Secretary of the Commission.

ADV VAS SONI SC: That is right, yes.

CHAIRPERSON: And it is signed by the Secretary of the Commission.

ADV VAS SONI SC: Yes.

20 **CHAIRPERSON:** And it is clear from his heading that the summons is from the Commission.

ADV VAS SONI SC: It is.

CHAIRPERSON: It has got the logo of the Commission.

ADV VAS SONI SC: Logo of the Commission.

CHAIRPERSON: On the face of the – on the first page.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Yes, okay.

ADV VAS SONI SC: So Chairperson, on the face of it, nothing appears to be untoward or irregular about this summons that was served.

CHAIRPERSON: Ja, ja.

ADV VAS SONI SC: Now Chairperson, you will recall that the summons was served on him on the 9th – on the 10th as recorded in the furthest document produced by the hearing.

10 **CHAIRPERSON:** And ...[intervenes]

ADV VAS SONI SC: That is ...[intervenes]

CHAIRPERSON: And so, obviously... Where is the sheriff's return?

ADV VAS SONI SC: That is the first page Chairperson.

CHAIRPERSON: Oh, that is the first one.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Okay. In any event, it is clear from his attorney's letter that they received the summons.

ADV VAS SONI SC: Yes.

20 **CHAIRPERSON:** It is just that they say they do not regard it as a summons.

ADV VAS SONI SC: Yes. And they are not challenging the issue of service.

CHAIRPERSON: Ja, ja, ja, ja. And we do not know what it is that it makes them think it is not a summons.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Uhm... Yes?

ADV VAS SONI SC: So one day after the service of the summons on him, I should also add Chairperson just for completeness sake. The summons was also emailed to the attorney who has been representing Mr Mashaba. It was emailed to the attorney and for safety sake there was services as well.

Then Chairperson, on the 15th of February, five
10 days after the summons was served on Mr Mashaba, Mr Cameron on his letterhead – this is Mr Mashaba’s attorney – writes to Ms Vangate(?), who is the – a member of the Legal Team dealing with this matter and who has dealt with Mr Cameron before.

He says... Oh, sorry. He gives her as a reference but he addresses the letter to the Secretary of the Commission but I do not know why he says: Dear Ms Vangate.

He then says:

20 “Our client, Mr Auswell Mashaba, the document purporting to be a summons for the purposes of procuring our client’s attendance before the Commission of inquiry into allegations of state capture, corruption and fraud in the Public Sector including organs of

state (The Inquiry) on the 24th of February 2021 (The Document), we address this communication to you on the instructions of our client with specific reference to the document...”

Which clearly is a reference to the summons. It says:

“Our client has instructed ourselves to record that:

10 1.He does not recognise and accept the lawfulness and/or the legal validity of the document.

2.Arising from that recordal referred to herein above, our client will not be attending the inquiry.”

And then there is:

“You are requested to acknowledge receipt hereof. Yours faithfully, Attorney Cameron.”

20 That letter is dated the 15th of February Chairperson. On the 16th of February, the Secretary of the Commission wrote to Mr Cameron in the following terms on the Commission’s letterhead to Mr Cameron, his address and it was sent by email.

It says:

“Dear Mr Cameron. The Judicial Commission

of the Inquiry re the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (The Commission) re your letter of 15 February 2021 in respect of the summons served on your client, Mr Auswell Mashaba:

10 1. We note the contents of your letter under reply which was sent to the Commission at 04:40 yesterday...”

Now the relevance of the time Chairperson is reflected in paragraph 2, which reads:

“This is just about the time the Commission’s hearing of yesterday was being finalised...”

And the – just for context Chairperson. The hearing is the hearing concerning Mr Zuma’s non-appearance.

CHAIRPERSON: Last Monday, last week ...[intervenes]

ADV VAS SONI SC: Last week, Monday, yes.

20 **CHAIRPERSON:** Ha.

ADV VAS SONI SC: Yes.

“The Commission’s Legal Team dealing with state capture at PRASA has requested me to bring to your attention and that of Mr Mashaba, which I hereby do, that among

the matters that emerges unequivocal at that hearing are the following:

3.1. A witness on whom a summons to appear, the Commission has been served, is required to comply with the terms of the summons unless he or she had it set aside by a competent court prior to the time he or she had been summoned to appear.

10

3.2. Unless the summons has been set aside, it is not open for a witness who is of the view that a summons is not lawful or legally valid to not to comply with what the summons requires him or her to do.

3.3. a witness who does not comply with the terms of the summons without sufficient cause is, in terms of Section 5 of the Commissions Act of 1947 in terms of which act a summons was issued, guilty of an offence and on conviction may be liable to imprisonment of up to six-months.

20

4. In the light of the foregoing, the stance of the Commission's Legal Team on PRASA is that Mr Mashaba is required to appear before the Commission on the 24th of February 2021 and comply with the

other terms of the summons. Neither your letter nor its contents which seemingly deliberately broadly records only Mr Mashaba's allegation that the summons is not lawfully and legally valid without setting aside the basis of that allegation, constitutes sufficient cause for him not to appear.

10 5. I also record that a copy of your letter, this response and further correspondence, if any, will be made available to the Chairperson of the Commission..."

Now it is in terms of that Chairperson that we wanted it to be known that these are the matters that will be placed before you today for a determination for what is to be done.

And Chairperson, that letter was sent to Mr Cameron on the 16th of February 2021 and it emphasise two points Chairperson. It says to Mr Cameron: We are telling you and your client.

20 Now we heard nothing from Mr Cameron until yesterday evening when Ms Vangate got a call from him and then this morning we got this letter. This is the letter I have read but just for completeness sake Chair because it is a response to our letter of the 17th – sorry, the 16th.

"We address this communication to you on the

instructions of our client with specific reference to the document and more specifically to the contents of your communication dated the 16 February 2021.”

It says:

“As regards to the contents of paragraph 3 of your communication, the records contained therein only came to the writer’s attention on receipt of that communication, that the same was not within the
10 writer’s knowledge when our communication dated the 15 February was transmitted to you.”

Now I do not know what the relevance of that is because – and I am saying that, Chairperson, because whatever was discussed at the Commission, the law remains the same, the law is he must comply with the summons. Mr Cameron did not have to be told by the Commission, it was just that the Commission was putting him and his client on terms that we are telling you that this is what Mr Mashaba is required to do and so that professed ignorance does not
20 take the matter any further. 2:

“We request that you furnish ourselves with a transcribed record of what took place at that hearing as we hold instructions for our client to seek an opinion from senior counsel.”

And then says in closing:

“We confirm and record our client will not be appearing at the Commission today and more particularly for the reason that our client does not accept that the document constitutes a lawful and legally binding summons.”

Now in response to that last paragraph, Chairperson, I make the point that in our letter we say but you just baldly state and it appears to be deliberately so that the summons is not legally binding and it is not lawful. It is an
10 indication – tell us what is wrong so that when this matter is debated this morning we can determine whether there is any cogency in what your client is saying? Of course that is as bald as the initial allegation and as bald as what Mr Zuma’s attorney said to you, Chairperson.

Now they then say we request acknowledgement of receipt hereof. And, Chairperson, the question that arises, is what should the Commission do?

CHAIRPERSON: Well, this conduct by anybody, the conduct of defying summons to appear before the
20 Commission, without having gone to court to have it set aside if somebody thinks the summons irregular or not valid but simply to defy it and not appear before the Commission is totally unacceptable and everything should be done by the Commission and the law enforcement agencies and everybody concerned to put a stop to it

because if it spreads it will be the beginning of chaos in our legal system.

ADV VAS SONI SC: Absolutely.

CHAIRPERSON: That is what it would mean.

ADV VAS SONI SC: Yes.

CHAIRPERSON: If it spreads, soon it will be happening in the magistrate's courts in various parts of our country, it will be happening in the various high courts throughout the country because it would seem that sections in our society
10 will be believing that it is acceptable conduct to simply defy summons.

ADV VAS SONI SC: Let us not forget, Chairperson, the Labour Courts where these rights of vulnerable...

CHAIRPERSON: Yes.

ADV VAS SONI SC: Among the most vulnerable in our society where an employer just defies summons to appear.

CHAIRPERSON: Ja. Ja, employers in the Labour Court will defy when they are required to appear there, it will just – it is just going to mean chaos. The secretary of the
20 Commission is instructed to lay a criminal complaint against Mr Auswell Mashaba for his failure to appear before the Commission today in accordance with the terms of the summons that had been served on him to appear before the Commission at ten o'clock this morning and the legal team is requested to assist the secretary in preparing

the necessary affidavit or statement to be lodged at the relevant police station and that needs to be done urgently because this type of conduct cannot be allowed to go on without the legal process being put in motion to deal with it for too long. So that is what should happen. Ja.

ADV VAS SONI SC: As you please, Chairperson. Chairperson, it is a pity and I say that because on the objective facts, and that is the extent to which the Commission's investigations are being hampered by Mr
10 Mashaba's non-appearance. Chairperson, on the evidence on his own version as set out in the affidavit he has submitted, Mr Mashaba does not dispute that he was in charge of Swifambo when it was awarded the contract.

Chairperson, you will also recall that Mr Molefe gave evidence about a meeting between Mr Mashaba and himself where Mr Mashaba said he knew that the Hawks were investigating him and that he wanted, in a sense, to come clean. He then said that he had been approached by Mr Mabunda, the front for the company that would be
20 awarded the contract.

In his response – and that was Mr Molefe's replying affidavit in the Swifambo High Court application, we have dealt – we have referred to many times which judgment of the High Court setting aside the award as being corrupt was endorsed by the Supreme Court of Appeal and the

Constitutional Court, having looking at the application for leave to appeal, refused right leave to appeal.

So what we have, Chairperson, is concerns by the highest courts in the land about a R3,5 billion contract. Now among the allegations made about Mr Mashaba, Chairperson, is that he was aware that – well, he did not have the requisite skills and so on, he became a front for a Spanish company which was then awarded the contract.

The amount that has been paid in respect of that
10 contract, Chairperson, for 70 locomotives, is more than R2,6 billion. In return, our country has received 13 locomotives. I say all of this, Chairperson, as a precursor to our next witness who investigated this matter.

CHAIRPERSON: But also, it is important to say it so that the public understands that the witness who has defied the summons had been called about this very important transaction relating to Swifambo.

ADV VAS SONI SC: Yes and that is the point, that at the
20 end of the day there is no dispute even from him that he was involved. He did not even file, as Mr Molefe said, he did not even file the answering affidavit in the High Court. He only filed an affidavit in response to the replying affidavit of Mr Molefe. Now all of that, Chairperson, is commented upon both by the High Court and the Supreme Court of Appeal.

In other words, he would have thrown a great deal of light on what happened. With an allegation being made that ...[intervenes]

CHAIRPERSON: One second, Mr Soni, I just realised that my phone was not off and in this way I am reminding everybody to put their phones off. Yes?

ADV VAS SONI SC: So what we have, Chairperson, is somebody who could throw light to the public as to how it came about that a contract worth eventually R3,5 billion, 10 although 2,78 billion has been paid, how is it that that could happen? He would have been able to throw light and, Chairperson, the long suffering public has a right to know how its hard-earned rands are being wasted away in contracts of this nature. Where did that money go? There are allegations that are made that - he in fact says so in his 10[6], Chairperson, I will refer you to, he in a document attached to his 10[6] says that I was asked – I was forced to pay money to people who said they were collecting money for the ANC and I agreed to pay R18 million. He 20 says so. But he says I do not know if the ANC received it. The person to whom I gave the money says he did not give it to the ANC. But that is not the point, the point is he says that I paid that.

Now if that is not corruption is on his part, whoever else may be involved, one wants to know what is. And

especially with a contract, as the next witness will show, is so fraught with difficulty and when one looks at how the money was distributed through Mr Mashaba's company, one shudders to think how all of this could have gone on from 2017 when this report was sent to the Hawks and today there is not a single person that has been arrested. And so Mr Mashaba's presence, Chairperson, would have allayed some of those [indistinct – dropping voice]

Now I know he says in previous correspondence
10 and he says in his [indistinct] 14.49 affidavit that the liquidator has laid charges against me and the liquidator indeed has and I do not want to implicate him.

But the Constitutional Court in the Zuma matter made it very clear that the right against self-incrimination is a right that must be exercised in relation to specific questions, it is not a blanket right which entitles a person to say – not only not to come but to say I am not going to answer any questions. It responded to what Mr Zuma's legal representative had said to you, Chairperson, so that
20 we will put Mr Zuma in court – I mean, in the witness box and he will not say anything and the Constitutional Court said you cannot.

That is why Mr Mashaba's presence today would have assisted so much in one's understanding of what went on in the Swifambo contract. But I want to say something

more, Chairperson, one of the reasons we have the person who conducted the forensic investigation for PRASA and who submitted a 112 page report to the Hawks who initially told him that they are going to look at this and they will probably ask him to do a report on Siyangena as well but after he submitted his report he never came back, Chairperson.

Now why that is relevant, Chairperson knows, this is a forensic report that does two things. It looks at all the
10 issues that were raised in the court papers, that is the advantage one has, and it looks at when you look at the investigator did, was what he calls a first level review which is looking at the flow of money from PRASA to Swifambo and from Swifambo to different people and what he shows you are all the links – and when you put the whole picture together, it all makes sense because you ask yourself when the evidence is being led but why was this company paid this amount and having regard to the allegations, it all makes sense and the picture emerges
20 from the report, but at least Mr Mashaba would have been able – would have been given an opportunity to explain whether the picture we think that emerges is a correct picture and that is what the Commission is about.

Chairperson, again I am still dealing with Mr Mashaba. You might remember that the Constitutional

Court when it required Mr Zuma to appear, and he did not appear last Monday, made this point that commissions serve different purposes but one of the purposes of this Commission is to allay public concerns about a matter that has worried the public for the last ten years, the extent to which our state entities and government departments have been corrupted and effectively, in certain instances, cabinet.

Now the public – what Mr Mashaba is doing, is denying the public its right to know what happened in this matter which on all versions he is involved in. Whether good or bad is irrelevant but he has to come and explain to the public and explain to you, Chairperson, who has to make a report to the Commission, that is the brief you have been given by the President.

So the nonappearance of Mr Mashaba is a very serious inroad into the Commission's attempt to fulfil its mandate to let the public know and that is an added reason and an aggravating factor that when we are assisting the Secretary of the Commission, we will be putting in the request that the Secretary makes to the law enforcement department.

CHAIRPERSON: Okay. No, thank you.

ADV VAS SONI SC: Mr Chairperson, then I am in a position to call my first witness for the day, Chairperson.

CHAIRPERSON: Who was going to be your second. Your first witness now that Mr Mashaba is not here or was he ...[intervenes]

ADV VAS SONI SC: Mr Mashaba was going to be the first witness.

CHAIRPERSON: Yes, yes.

ADV VAS SONI SC: And then we were going to call. Sorry, yes – no, sorry – yes, who was going to be the second witness.

10 **CHAIRPERSON:** Yes, okay, you do not need any setup, you are ready, so I do not need to adjourn.

ADV VAS SONI SC: Perhaps if you just gave us five minutes because Mr Suskin...

CHAIRPERSON: Okay, alright. Or should we just take this time for the tea adjournment?

ADV VAS SONI SC: It may be most convenient.

CHAIRPERSON: Yes so that when we come back then ...[intervenes]

ADV VAS SONI SC: And go with...

20 **CHAIRPERSON:** Okay, we will take the tea adjournment now instead of quarter past eleven and we will come back at quarter past.

ADV VAS SONI SC: As you please.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Mr Soni.

ADV VAS SONI SC: As you please. Chairperson, before we call Mr Sacks, may I just place on record I have been told that 2861 processes have been issued by the Commission.

CHAIRPERSON: Summonses?

ADV VAS SONI SC: Summonses, yes.

CHAIRPERSON: Oh, that is a very high number.

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

CHAIRPERSON: Okay.

ADV VAS SONI SC: And it is for appearance and for documents.

CHAIRPERSON: And for documents?

ADV VAS SONI SC: Yes.

CHAIRPERSON: Okay, thank you.

ADV VAS SONI SC: May we call our next witness?

CHAIRPERSON: Yes, please administer the oath or affirmation?

20 **REGISTRAR:** Please state your full names for the record?

MR SACKS: [indistinct]

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

MR SACKS: [indistinct]

REGISTRAR: Do you consider the oath binding on your

conscience?

CHAIRPERSON: Sorry, please speak up so that it can be recorded. Start afresh please?

REGISTRAR: Please state your full names for the record.

MR SACKS: Ryan Marc Sacks.

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

MR SACKS: No, I do not.

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

MR SACKS: Yes, I do.

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

MR SACKS: So help me God.

RYAN MARC SACKS: (duly sworn, states)

CHAIRPERSON: You may be seated.

MR SACKS: Thank you Chairperson.

20 **CHAIRPERSON:** Thank you.

ADV VAS SONI SC: Mr Sacks, keep your mask off because it muffles the recording.

MR SACKS: Thank you, Counsel.

ADV VAS SONI SC: Sure. Mr Sacks, what is your profession?

MR SACKS: I am a chartered accountant, Chairperson.

ADV VAS SONI SC: And in terms of the nature of the work you do?

MR SACKS: Chairperson, I specialise in forensic auditing investigations, in supporting civil and law enforcement investigations.

ADV VAS SONI SC: You have before you your curriculum vitae, is that correct?

MR SACKS: That is correct, Chairperson.

10 **ADV VAS SONI SC:** Chairperson, we unfortunately did not include this in the bundle we gave you. Just for reference purposes can I hand it up and we can put it as ...[intervenens]

CHAIRPERSON: Ja, okay.

ADV VAS SONI SC: At the end of mister, I just want him to confirm. I do not think I need to go into it in detail, it is just for recording purposes Chair, and we could include it Chairperson at the end of the report itself, rather than the annexures and or perhaps the end of the affidavit

20 Chairperson, that may be a better place to include it, which would then make it 726.1 and 2. Bundle L, page 726.1 and 2. Mr Sacks, do you confirm ...[intervenens]

CHAIRPERSON: You will arrange for it to be numbered properly?

ADV VAS SONI SC: I will, yes.

CHAIRPERSON: Did you say it is or it is not an annexure to the affidavit?

ADV VAS SONI SC: I thought we would just include it, it is not at the moment.

CHAIRPERSON: It is a standalone document.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Okay, so it will need to be an exhibit, is that right?

ADV VAS SONI SC: Yes, yes.

10 **CHAIRPERSON:** Is the report an annexure to the affidavit?

ADV VAS SONI SC: It is.

CHAIRPERSON: Because if the report is an annexure to the affidavit, then and this letter is a standalone document, then it should not be between the affidavit and the reports.

ADV VAS SONI SC: Yes.

CHAIRPERSON: It should rather be after the report.

ADV VAS SONI SC: As you please Chairperson. Then can we make it 954.1 and point 2. The report itself is
20 ...[intervenes]

CHAIRPERSON: It goes up to 954?

ADV VAS SONI SC: Yes.

CHAIRPERSON: And the document at 955 is not part of the report?

ADV VAS SONI SC: No, no.

CHAIRPERSON: Okay, alright. So we will change what we wrote earlier on and it will be 954.1 and 954.2.

ADV VAS SONI SC: As it pleases.

CHAIRPERSON: Okay, alright at the right time then we will need to admit this as an exhibit.

ADV VAS SONI SC: Yes. Mr Sacks, do you confirm the correctness of what is contained therein?

MR SACKS: Yes, I do Chairperson.

ADV VAS SONI SC: And how many years of experience do
10 you have in forensic investigation?

MR SACKS: I have 15 years' experience Mr Chairperson.

ADV VAS SONI SC: Now, one of the matters that you are investigating is the VBS investigations.

MR SACKS: That is correct Chairperson.

ADV VAS SONI SC: And in regard to PRASA, what investigations were you involved with?

MR SACKS: Chairperson ...[intervenes]

CHAIRPERSON: I am sorry Mr Soni and Mr Sacks, did you forget that we admit his affidavit Mr Soni?

20 **ADV VAS SONI SC:** No, no I was just sorry, but perhaps I should do that. I was going to.

CHAIRPERSON: Ja, you can go to the report, yes.

ADV VAS SONI SC: Mr Sacks, in regard to the investigation you did for PRASA, what was it in relation to?

MR SACKS: Chairperson, initially I was appointed by

Werksmans Attorneys to assist in the investigation occurring at PRASA. Thereafter I was appointed by the DPCI, the Hawks as the forensic accountant to investigate this Swifambo investigation.

ADV VAS SONI SC: And you then prepared an affidavit and report based on those investigations?

MR SACKS: That is correct Chairperson.

ADV VAS SONI SC: Now there is an affidavit which appears in Bundle L from page 720 to 726. Is that your
10 affidavit?

MR SACKS: Please bear with me Chairperson.

CHAIRPERSON: You look at the black numbers at the left hand corner for page numbers.

MR SACKS: Yes, I have got it Chairperson. Yes, I confirm this is my affidavit Chairperson.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Right. Now in relation to this affidavit, there is a signature on page 725. Whose signature is that?

20 **MR SACKS:** That is my signature Chairperson.

ADV VAS SONI SC: Do you confirm that is what is, sorry is this your affidavit?

MR SACKS: Yes Chairperson, this is my affidavit.

ADV VAS SONI SC: You confirm what is contained in this affidavit is true and correct?

MR SACKS: Yes Chairperson, it is true and correct.

ADV VAS SONI SC: Now attached to this affidavit as one of the annexures, and you will see that that appears at paragraph 11 of your affidavit, you say you prepared a report and that report is Annexures RS3.

MR SACKS: That is correct Chairperson.

ADV VAS SONI SC: Now is it correct that RS3 appears from page 843 and that is just the report itself, to 954.

CHAIRPERSON: What are the page numbers?

10 **ADV VAS SONI SC:** Oh, sorry Chairperson. It is 843.

CHAIRPERSON: Yes.

ADV VAS SONI SC: Up to 954.

CHAIRPERSON: I take it is the same as what starts at page 727?

ADV VAS SONI SC: I was going to, I in fact asked that that be removed from your file.

CHAIRPERSON: Yes.

ADV VAS SONI SC: Because it is exactly the same document.

20 **CHAIRPERSON:** Yes.

ADV VAS SONI SC: Then we removed, I was asked for the first one to be removed, because it is not marked Annexure RS3.

CHAIRPERSON: Yes.

ADV VAS SONI SC: But it is exactly the same document.

CHAIRPERSON: Yes.

ADV VAS SONI SC: I do not know why it was produced.

CHAIRPERSON: Is the report the last document on the, in the bundle or there are other documents?

ADV VAS SONI SC: There are, so the ...[intervenes]

CHAIRPERSON: Annexures to the report?

ADV VAS SONI SC: Annexures to the report.

CHAIRPERSON: So if we, if you removed the last one if there are two and then marked this one, the first one is it

10 S3 or whatever?

ADV VAS SONI SC: RS3.

CHAIRPERSON: Yes, will that not help with the pagination in the sense that if you remove the one that starts, the first one you might have a gap in terms of the pagination?

ADV VAS SONI SC: Chairperson, this is the difficulty.

CHAIRPERSON: Ja.

ADV VAS SONI SC: In your, in everybody's file ...[intervenes]

CHAIRPERSON: Ja.

20 **ADV VAS SONI SC:** RS3 starts at 843 so I was, I initially marked the first one. It is just when I saw that ...[intervenes]

CHAIRPERSON: Yes.

ADV VAS SONI SC: The annexure is marked RS3 and it is referred to in the affidavit, it does not matter, but for my

purposes now Chairperson it is going to be more convenient to take out the first one.

CHAIRPERSON: Yes. Okay, well we can do that. Then what should be done is a page should be inserted there, which you will make a note to say there was a ...[intervenes]

ADV VAS SONI SC: A duplication.

CHAIRPERSON: A report that was a duplication.

ADV VAS SONI SC: Yes.

10 **CHAIRPERSON:** And it has been removed. It was from page whatever to whatever, so that whoever reads then understands the pagination.

ADV VAS SONI SC: Yes, I had given that instruction.

CHAIRPERSON: Yes.

ADV VAS SONI SC: I am sorry about that.

CHAIRPERSON: Okay, no that is fine. Okay. Alright. Have we reached a stage where you asked me to admit the affidavit?

20 **ADV VAS SONI SC:** Yes. Well, let me just ask him if he confirms the correctness of the report Chair.

CHAIRPERSON: Ja, okay.

ADV VAS SONI SC: So RS3 is your report, is that correct?

MR SACKS: Yes, it is Chairperson.

ADV VAS SONI SC: Do you confirm what is contained in the report is true and correct?

MR SACKS: Yes Chairperson, I confirm that.

CHAIRPERSON: Yes.

ADV VAS SONI SC: Chairperson, then I ask leave to admit Mr Ryan's affidavit as Exhibit SS24 together with the annexures to the affidavit, but in particular RS3 which is the report.

CHAIRPERSON: The affidavit of Mr Ryan Mark Sacks starting at page 720, is admitted together with its annexures and will be marked as Exhibit SS24.

10 **ADV VAS SONI SC:** As you please Chairperson. Now Mr Sacks, you said you had been initially commissioned or engaged by Werksmans to do the investigation into this Swifambo matter. I know the Werksmans matter was [indistinct], but in regard to that, the investigation into Swifambo, you then said that the Hawks had asked you to do the investigation. Is that correct?

MR SACKS: That is correct Chairperson. I was officially mandated by the Hawks in late December 2015 to perform this Swifambo investigation.

20 **ADV VAS SONI SC:** Okay.

CHAIRPERSON: Yes, just remember to adjust or bring the mike closer Mr Soni ...[intervenes]

ADV VAS SONI SC: Sorry, yes.

CHAIRPERSON: Speak up a bit.

ADV VAS SONI SC: Now I am raising that because you

have asked me to place on record that you did not want to give evidence before the Hawks had been informed that you would be giving evidence on this matter, is that not so?

MR SACKS: That is correct Chairperson.

ADV VAS SONI SC: And I just want to place on record that the Hawks have been told that Mr Sacks would be giving evidence on this matter and they are aware of the report as well as the nature of his evidence, Chairperson and it is
10 just that we did not want to create a problem on this issue, because you will realise the sensitivity of, you might remember Mr Molefe had to go to court to get the Hawks to investigate, but there are developments that perhaps Mr Sacks will deal with in the course of his evidence Chairperson. Now let us just deal with your affidavit first of all. You say in paragraph 4 that you were forced to appear here by virtue of a summons that was served on you, is that correct?

MR SACKS: That is correct Chairperson.

20 **ADV VAS SONI SC**: And why was, why did you want that procedure to be followed?

MR SACKS: Chairperson, the report that I produced is very confidential in nature. I was prepared for the Hawks, accordingly I required the summons or to allow myself to attend these proceedings to divulge the contents of my

findings.

ADV VAS SONI SC: Then at paragraph 6 you set out how you became involved in the investigations and you say that you had initially been engaged by Werksmans to do the wider PRASA investigation. Is that correct?

MR SACKS: That is correct Chairperson. We were engaged to perform the forensic auditing aspect of the investigation that Werksmans Attorneys were appointed for by PRASA.

10 **ADV VAS SONI SC:** Now just so that there is no confusion about names, at that time you were called a different entity. What were you called at that time?

MR SACKS: Chairperson, at that time my company was called Hawk Forensics SA Pty Ltd and as a result of global branding changes by Crow International, we are now called Crow Forensics SA Pty Ltd.

ADV VAS SONI SC: But it is the same ...[intervenes]

MR SACKS: Chairperson, the same company.

20 **ADV VAS SONI SC:** Then in paragraph 7 you make the point that you were then appointed by the Hawks to do the investigation. Just ask you, to do that you had to sign certain confidentiality agreements and they appear as RS1 and RS2.

MR SACKS: That is correct Chairperson.

ADV VAS SONI SC: And that is the reason why you

wanted a summons and why you asked the Commission to inform the Hawks about your appearance?

MR SACKS: That is correct Chairperson.

ADV VAS SONI SC: Alright. Now let us deal with the, your initial dealings with the Hawks. Just tell the Chairperson what was indicated would happen after this report. You deal with it in paragraph 8.

MR SACKS: Chairperson, I was appointed to perform this Swifambo forensic accounting investigation. It was also
10 anticipated at the time that I would be appointed by the Hawks to perform a forensic accounting investigation into Siyangena Technologies, and that appointment never transpired. Then or subsequent to the time I was dealing with this Swifambo matter.

ADV VAS SONI SC: Now at that time, who in the Hawks was heading the team looking at these matters?

MR SACKS: When I was appointed, General Mosipi was the, my understanding was the head who confirmed my appointment with Swifambo. Later a General Khana
20 replaced General Mosipi and during his tenure as far as I am aware during that time I was not appointed to do the Siyangena Technologies forensic investigation.

ADV VAS SONI SC: Can I just have some time frames, when were you appointed by the Hawks? If you look at paragraph 7 you give the date.

MR SACKS: 28 December 2015 I was appointed by the Hawks Chairperson, to do the Swifambo investigation.

ADV VAS SONI SC: Sounds [indistinct] and I just say that in passing, it looked like they wanted to get on with it, between Christmas and New Year.

MR SACKS: That is my understanding too Chairperson.

ADV VAS SONI SC: Alright, and then when did, you say General Khana took over. About when was that?

MR SACKS: I am not sure Chairperson of the actual dates
10 he took over, but I was present at a meeting on or around
April 2016 Chairperson, where I attended the premises, the
headquarters of the Hawks where amongst many other
investigation team members, General Khana headed the
meeting and one of the items, topics of discussion was the
appointment of Crow or Howard Forensics at the time,
Crow Forensics now, to do the Siyangena Technologies
forensic investigation as over and above Swifambo.

ADV VAS SONI SC: Now that is 16 months after your
initial appointment.

20 **MR SACKS:** It was, ja ...[intervenes]

ADV VAS SONI SC: April 2017.

MR SACKS: April 2016. It was, that is ... Chairperson,
that date is not included in my affidavit regarding that
meeting but again I was appointed December 2015 for
Swifambo. The meeting I referred to occurred in April

2016, give or take four months, four months later.

ADV VAS SONI SC: Alright. Now you then say that you were asked to make a presentation at a meeting with the Hawks.

MR SACKS: That is correct Chairperson. To jump in time, so December 2015 I was appointed to do Swifambo. April 2016 is the said meeting I referred to with General Khana. In March 2017 to the best of my recollection I had a meeting with the Hawks at their, one of their offices in
10 Pretoria to discuss the Swifambo investigation. At that point, it was communicated to me that a report would be required. If I may divulge Counsel, in April 2017 I received an email from the Hawks to ask for a meeting to discuss my findings to date as the Hawks, I was advised that the Hawks were meeting with the NPA. The prosecution, the team responsible for Swifambo, and they wanted to obtain my findings for that meeting with the NPA. That was 11 April 2017 if I stand to be corrected. On the 19th of April 2017, so now it is a few days later, I indeed met with the
20 Hawks, with the Brigadier Makanyane and Colonel Magabosha. If I recall those were the members of the Hawks team, in which I handed over my report which forms part of my affidavit and that report is dated, or is dated 20 April 2017. I recall I had to make one change which I emailed through to the Hawks and Chairperson, that was

the last communication I had with the Hawks on this matter.

CHAIRPERSON: 2017?

MR SACKS: Yes Chairperson.

CHAIRPERSON: And they have not been in touch with you in any way?

MR SACKS: Subsequent to the issue of my report, I have not received any note of communication from the Hawks regarding this specific report I gave to them.

10 **CHAIRPERSON:** Okay.

ADV VAS SONI SC: Now just so that there is no dispute about it, the report that you gave to the Hawks on the 20th of April, is the same report that appears at RS, as Annexure RS3 to your affidavit?

MR SACKS: Yes Chairperson, that is correct. This is the latest and most recent version of my report, dated 20 April 2017. It has not been updated or amended subsequent to this date.

20 **CHAIRPERSON:** I see that in paragraph 10 of your affidavit, you refer to a draft preliminary report.

MR SACKS: Yes Chairperson.

CHAIRPERSON: That is not this one or is it this one?

MR SACKS: Chairperson, the reason why I refer to this draft preliminary is because we were in the midst of a very comprehensive investigation which I am sure Counsel will

lead me into the contents of that investigation, and the report, I advised the Hawks at that time that the findings are preliminary, as is the nature of the investigation. I was still awaiting further information to complete my investigation and the findings contained in this report, were very crucial because it confirmed the flow of funds from PRASA to Swifambo and how Swifambo utilised that money. The, the next anticipated round of investigation was to assess and investigate the recipient of that money
10 and what they did, how they utilised that money, essentially PRASA's money.

ADV VAS SONI SC: Just again to confirm, the report that appears at RS3 is that same report. It is just that you still call it a draft preliminary report, because you have not taken it to the second level which we will get to in a moment.

MR SACKS: That is correct Chairperson.

CHAIRPERSON: But is the position that despite the report being labelled as a draft preliminary report in terms of this
20 paragraph 10, I have not looked at it again to see whether those words appear on it. Is the position that as far as you are concerned, the report represents your final findings or not really?

MR SACKS: No, it doesn't present my final findings. There were, there was additional matters to investigate and

confirm.

CHAIRPERSON: Yes.

MR SACKS: As my report alludes to certain transactions that I required further information for.

CHAIRPERSON: Hm.

MR SACKS: Certain allegations and suspicions that we had that I required the assistance of the Hawks to provide me with further information to confirm the flow of funds. So to summarise, this is still very much a preliminary
10 report. Why it was draft report, is because I had not received any comments and I was, from the Hawks, and I am still awaiting further information which I clarified clearly in my report what was required to complete a final first level report, which I noted in this report was the first level. Without getting into technicalities, first level in my mind was flow of funds from PRASA to Swifambo, Swifambo to who Swifambo paid. Second, the second level required was those parties who received money from Swifambo, how they distributed the money or what they did with the money
20 because the suspicions or allegations at the time was that the money was not for commercial or there is no business rational for the disbursements of funds from Swifambo to these entities or individuals and then from what, how those entities and individuals utilised that money, and Counsel and I will deal with that as it is dealt with in my report

Chairperson.

CHAIRPERSON: But is the position that the reason why the report is not final, is the reason that because there was some further work to be done in regard to certain aspects that you were suspicious of your investigation, but there are some findings that do not need any further work to be done, but others still need further work or is the position that the entire report is still work in progress?

MR SACKS: Chairperson, you are correct in your first
10 point. Certain findings are final and certain findings are still subject to further investigation. Hence it is still, it was still a draft report. I have just required specifically just a bit more information for my first round of investigation in order to call it final, but you are correct. Some findings were final, some findings were subject to further investigation.

CHAIRPERSON: Mr Soni?

ADV VAS SONI SC: As you please. I will just elaborate on this Chairperson, because I understand ...[intervenes]

20 **CHAIRPERSON:** Ja.

ADV VAS SONI SC: The difficulty. I perhaps should have canvassed it a little more. Mr Sacks, the when you were appointed by the Hawks in December 2015, PRASA had already filed its application in the High Court, is that correct?

MR SACKS: That ...[intervenes]

ADV VAS SONI SC: I think they filed it in November 2015.

MR SACKS: I, Chairperson if you just indulge with me ...[intervenes]

ADV VAS SONI SC: Ja.

MR SACKS: I will get those dates in my report.

CHAIRPERSON: That is fine.

MR SACKS: That is correct Chairperson, Counsel is correct regarding the civil application.

10 **ADV VAS SONI SC:** Now but between that time, December 2015 and the time you sent this report to the Hawks, were the Hawks assisting you with the investigations you were doing? When I say assisting, providing assistance that you wanted like 205's to banks. Section 205 applications to banks and so on.

MR SACKS: Chairperson, the Hawks were assisting in terms of providing bank statements we required in terms of Section 205 subpoenas. Which was the foundation of my report in April 2017, and I required further information. By
20 its very nature, the flow of funds analysis across in array of bank accounts is quite detailed work acquiring information, so this report was I guess at a juncture where we had enough information to conclude on certain findings as Chairperson you so referred to, however I required more information to confirm certain other findings, so the answer

to counsel's questions between 2015 and April 2017 I had received assistance from the Police, the Colonel who was assisting me in providing this information.

Subsequent to the issue of my report I did not receive any further information which I requested, and which I required.

CHAIRPERSON: So you gave the Hawks your draft preliminary report, they knew that it was not a final report in terms of it as a whole, they knew that you still needed to
10 do some further work in regard to some features of the investigation, and you gave them this draft report on the 19th of April 2017, according to them up to now they have never come back to you to ask you to complete the parts of the investigation that you wanted to complete. Is that right?

MR SACKS: That is absolutely correct Chairperson.

CHAIRPERSON: And in a few weeks' time it will be four years since you gave them, because next week, it is March then after that it is April. So in a few weeks' time, it will
20 be four years since you gave the Hawks your report, and they have never come back to enable you to complete the investigation.

MR SACKS: That is correct, Chairperson.

CHAIRPERSON: And they have never said to you if there is any problem.

MR SACKS: I have not heard one word regarding any problems, Chairperson.

CHAIRPERSON: Yes, and you would not be aware if, for whatever reason, they decided that somebody else must complete the investigation. I do not know if it would make sense but you have never heard of anything like that?

MR SACKS: No Chairperson, I have not.

CHAIRPERSON: Yes, okay alright, and was there at any stage where they might have been unhappy with how you
10 were going about the investigation or anything?

MR SACKS: Chairperson I am not aware of anything to that effect.

CHAIRPERSON: They never raised any issues?

MR SACKS: Nothing was communicated to me at all.

CHAIRPERSON: Okay, alright.

ADV VAS SONI SC: When you met them in April 2017. What impression did you get - what sorry, did you present your report on the 19th of April?

MR SACKS: That is correct, Chairperson.

20 **ADV VAS SONI SC:** And what impression did you get when after you presented your report?

MR SACKS: Chairperson, in my view, my key take away from that meeting was it was a general lack of interest into what I was explaining in the meeting specifically, I specifically recall in my report contains one exhibits, which

summarise in totality, the flow of funds.

I tried to summarise it as best as possible into one page that could catch the attention of a reader of this report, and on presentation of this one pager, where it was very clear as to who was receiving money from Swifambo. My take away from the meeting was that there was no real interest in what I was telling the recipients, participants and recipients of my report in that meeting

CHAIRPERSON: Who was the leader of the Hawks team
10 and whom you presented the report?

MR SACKS: If you indulge, indulge me, I just want to get...[intervene]

CHAIRPERSON: Was it General Khana?

MR SACKS: No, General Khana was not present in that meeting.

CHAIRPERSON: Yes.

MR SACKS: I recall; it was a Brigadier Mackanyana. There were a few members of the Hawks team, the Brigadier Mackanyana, there was a Colonel Magaboshe, I
20 recall maybe one or two lower level policemen.

CHAIRPERSON: But at that time, the person to whom you were supposed to report was it General Khana or was it somebody else?

MR SACKS: It was Brigadier Mackanyana who – I was never, as I recall I was never officially introduced

personally to say this is the person, your point person, but through the correspondence I ascertained it was a Brigadier Mackanyana who is responsible for the Swifambo investigation and for overseeing the Swifambo investigation?

CHAIRPERSON: Yes, okay alright Mr Soni.

ADV VAS SONI SC: Now, in paragraph 8, you talk about a General Moseepi where you say that you got the impression in your meetings with him or meeting with him
10 that your next brief would be the Siyangena matter.

MR SACKS: That is correct, Chairperson.

ADV VAS SONI SC: When was the last time you meet General Moseepi?

MR SACKS: Chairperson I – to be correct counsel I have never met General Moseepi, I do understand that it was under his instruction the investigation would occur.

In 2015, I was appointed through correspondence by the DPC under the head of General Moseepi to do Swifambo between that dates and April 2016, General
20 Khana had replaced General Moseepi. So I personally was not involved in those higher level delegations of the investigations, I dealt with the Hawks Policeman responsible for the investigations, and besides that one meeting, which are referred to in April 2016, where General Khana presided over that meeting, that was my only

interaction with the - what I would call the authorities of the Hawks.

However, in order to maintain impartial, I did not get involved in those discussions about who is going to appoint or how the investigation is going to be run, I am an independent expert. I get appointed by the Hawks to do my work, and I prepare an independent expert report which I had done in this case and presented to the Hawks on April 2017.

10 **ADV VAS SONI SC:** Now, when you were asked to present to the Hawks in April 2017, what did you understand the purpose of that presentation?

MR SACKS: Chairperson I was communicated by Colonel Magaboshe to say they require my preliminary findings, as the Hawks were meeting with the NPA on around that time. Accordingly, they required more preliminary findings as part of their discussions with the NPA.

ADV VAS SONI SC: And you have then indicated to the Chairperson that you did not find much enthusiasm in
20 regard to your presentation.

MR SACKS: That was my take away Chairperson from engagements at that time.

ADV VAS SONI SC: Now, in your report – sorry before we deal with the report itself, we talked about bank statements. In order for you as a private investigator, to

secure bank statements of State entities or individuals, what process would have to be followed?

MR SACKS: Chairperson, I am not party to the process of obtaining those bank statements. It is a subpoena process, which the Police themselves have to serve, Section 205 subpoenas on financial institutions obtaining those required bank statements.

In the ordinary course of the forensic investigation, I would identify specific transactions requiring
10 investigation. I would advise the Police to say this is a transaction or bank accounts I require and the Police themselves would prepare such subpoenas and obtain them and provide the subpoenaed bank statements to my offices directly.

And I keep a record of those bank statements because for chain of evidence those bank statements will form part of my ultimate deliverable and evidence in a criminal proceedings.

ADV VAS SONI SC: All the bank statements that you refer
20 to and you annexed to your affidavit were obtained for you by the Police?

MR SACKS: That is correct Chairperson.

ADV VAS SONI SC: In your report, and we will go through it in a little while. You mentioned the following that there are certain bank statements, oh well certain bank accounts

you had looked at is, were the main bank accounts of Swifambo Leasing and Swifambo Holdings. But there were certain bank accounts, for example, I think you mentioned a Bidvest account that were apparently in the name of these entities, which you still required.

MR SACKS: That is correct Chairperson, as a result of still requiring a bank statements, hence my report was preliminary until I received these bank accounts. I could not conclude all transactions, as we will see my report
10 contains hundreds of transactions, some which I could conclude on, and some which required further information to conclude on.

ADV VAS SONI SC: Now, just to be clear as to what you have and what you did not have, you had all the statements that you required from the main bank accounts of Swifambo Holdings and Swifambo Leasing, would that be that be correct, the main bank accounts?

MR SACKS: Chairperson that is correct. The main bank accounts for Swifambo Holdings, Swifambo Leasings form
20 the basis for the majority of the investigation, and the bank accounts in this case, this Bidvest bank account was confirmatory of a payments where I knew where it had gone to I just for chain of evidence, I just needed that bank account to confirm, but I was able to conclude, in conclusion significant inflows and outflows of the Swifambo

Holdings and Swifambo Leasing bank accounts, as I had that information.

ADV VAS SONI SC: Now, those these the bank statements in respect of those accounts that you did not have, did you ask the Police to issue Section 205's in respect of them?

MR SACKS: Chairperson, it was as best as well, it was a fluid process due to the vast amount of bank statements or bank accounts we require. We had received quite a few
10 however, there was some that was still outstanding subpoenas that had been issued that had not been collected from the financial institutions by the Police, as well as further subpoenas required.

In the time that allowed, that I was allowed to perform my investigation. I guess it would be best considered as one half or one third of the investigation that we performed due to the high value of rands, billions of billions or R1.82.6billion, there as one could imagine there is a lot of bank accounts underpinning the flow of funds.

20 Hence there was certainly going to be further bank accounts to be requested, which that process was not completed.

ADV VAS SONI SC: And you make that clear in your report that in order to finalise, certainly the level one investigation you would require those statements in

respect of those bank accounts.

MR SACKS: That is correct, Chairperson.

ADV VAS SONI SC: And that never came after - you were never asked whether you still required after you had submitted your report?

MR SACKS: That is correct Chairperson.

ADV VAS SONI SC: Now, you say the Hawks were to meet the NPA, in regard to the criminal investigation you were engaged by the Hawks. You are doing the VBS
10 investigation. Do you have any communications directly with the NPA, would they come to you and ask your opinion on things?

MR SACKS: Chairperson the best way to put it is whenever I prepare a report, in this case for VBS a sworn statement I most certainly engaged with the NPA to finalise and settle these statements and there is a continuous engagement on a regular basis with the NPA.

ADV VAS SONI SC: Did the NPA ever contact you with regard to your preliminary report on Swifambo?

20 **MR SACKS:** Chairperson I was - I do not recall ever being contacted directly by the NPA certainly not to the extent that I would expect to have consulted with the prosecuting authorities in such an arena in such as the Swifambo report.

ADV VAS SONI SC: But were there any communications

between yourself and the NPA?

MR SACKS: Not that I recall Chairperson.

ADV VAS SONI SC: Now you say in paragraphs the - paragraph 13 that the report was still being finalised but you had completed your analysis in regard to the payment received and made in respect of about R2.6billion.

MR SACKS: That is correct Chairperson.

ADV VAS SONI SC: Now just - we do not need to go into exact figures. How much did PRASA pay in respect of the
10 Swifambo contract? You can just give us a ballpark figure.

MR SACKS: R2.6billion, Chairperson.

ADV VAS SONI SC: And to whom did it make those payments?

MR SACKS: Chairperson PRASA made those payments to Swifambo Holdings and Swifambo Leasing.

ADV VAS SONI SC: We going to deal – your report deals with those, are they a related company?

MR SACKS: Chairperson, Swifambo Holdings is the holding company for Swifambo Leasing.

20 **ADV VAS SONI SC:** And who are the main persons involved with Swifambo Holdings and Swifambo Leasing?

MR SACKS: Chairperson, to my understanding, Mr Auswell Mashaba was the main person running Swifambo Holdings, Swifambo Rail Leasing. There were additional directors per CIPC of those entities, but from the

information that was available to me, it appeared that Mr Mashaba was the person running the companies.

ADV VAS SONI SC: If the Hawks came back to you now to say look please finalise the report, is there still a lot of work to be done, I am just talking about the first level?

MR SACKS: Chairperson for the first level parts, no not much work would be done. Again, the first level part would be confirming the flow of funds, the payments or utilisation of money out of the Swifambo bank accounts to those
10 recipients, that does not require a lot of work, that was clear in my report.

What would require a bit more substantive work, Chairperson was those recipients of the money from Swifambo what they did with it and where that money went, it is a process of obtaining further bank statements to confirm those flow of funds.

ADV VAS SONI SC: Now, we know that annexure RS3 is your report, which is the third annexure to your affidavit. Then there are further annexures RS4.1 to RS4.4, what are
20 those just in brief?

MR SACKS: Chairperson those are the Swifambo Rail leasing and Swifambo Rail Holding bank statements.

ADV VAS SONI SC: Those are the ones that you used for your level one analysis?

MR SACKS: That is correct Chairperson.

CHAIRPERSON: Mr Soni, I know that when we took the tea break I said the purpose was so that when we started with Mr Sacks we would go right through but there is a need for us to take a short adjournment.

ADV VAS SONI SC: As you please Chairperson.

CHAIRPERSON: Let us just take a ten minutes' adjournment.

ADV VAS SONI SC: As you please Chairperson.

CHAIRPERSON: We adjourn.

10 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Okay let us proceed. Just remember Mr Soni that you are competing with the aircon noise.

ADV VAS SONI SC: Yes, yes.

CHAIRPERSON: So try and speak up.

ADV VAS SONI SC: I need to, yes.

CHAIRPERSON: Ja. I have been told that the aircon, you either switch it off or it is just like this. And I am told that sometimes on your side it is much hotter it seems than this
20 side. I do not know why. So sometimes I do not feel that it is so hot but I hear that it is hot on that side of the room.

ADV VAS SONI SC: [laughs]

CHAIRPERSON: So let us see what we can do.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Ja, okay.

ADV VAS SONI SC: Mr Sacks, we were talking about RS-41 to RS - of RS-4.1 to RS-4.4. Those are the supporting documents that you received from the bank.

MR SACKS: Yes, Chairperson. Amongst a few other bank accounts, these were the main Swifambo Rail Leasing and Rail Holdings bank statements.

ADV VAS SONI SC: Alright. And then in Annexure RS-5 you set out the list of documents that you had.

MR SACKS: Yes, that is correct Chairperson.

10 **ADV VAS SONI SC:** And you say in paragraphs 18 and 19 that that document is contained in about 20 arch level files and you have...

MR SACKS: That is correct Chairperson.

ADV VAS SONI SC: Chairperson, having regards to the contents of the report, they are not going to serve any purpose before this Commission.

CHAIRPERSON: Ja, ja.

ADV VAS SONI SC: Alright. Let us then go to your report Mr Sacks. And I just want to say because it may be helpful
20 that you in your index set out the headings under which the report has been drafted.

MR SACKS: That is correct Chairperson.

ADV VAS SONI SC: Alright. Now we do not need to deal with 1 because you have indicated that this is especially for the Hawks and it has a measure of confidentiality about

it.

MR SACKS: That is correct Chairperson.

ADV VAS SONI SC: Alright. And then you set out the background to the investigation and there are matches that constitute or there are several matches that constitute the ...[intervenes]

CHAIRPERSON: Well... I am sorry.

ADV VAS SONI SC: Yes.

CHAIRPERSON: I am sorry Mr Soni. I do note Mr Sacks
10 the – your report, RS-3 is not marked draft or preliminary
or have I missed that? Oh, there it is, draft preliminary
report. I saw in – you know, much – the first line it says
Report 4 without saying preliminary or draft.

MR SACKS: Yes.

CHAIRPERSON: But I see later on down the page you
have got draft preliminary report.

MR SACKS: Yes.

CHAIRPERSON: Okay alright.

ADV VAS SONI SC: And you make the point on that same
20 page Mr Sacks that this report is for discussion purposes
only and that, I take it, it arises from the fact that you have
been asked to appear with the Hawks on the 19th for the
purposes of discussing the report.

MR SACKS: Yes.

ADV VAS SONI SC: But there was no discussion thereon.

MR SACKS: That is correct Chairperson.

CHAIRPERSON: H'm. At that meeting, I take it that you would take those who were presenting, who attended the meeting, through the report, at least in terms of the main features. Is that right?

MR SACKS: That is correct Chairperson.

CHAIRPERSON: Okay alright.

ADV VAS SONI SC: And you indicated what is set out in the report, namely that you have looked at the fund or the
10 flow of funds from PRASA to the two Swifambo entities and then from the Swifambo entities who are the individuals or entities.

MR SACKS: That is correct Chairperson.

ADV VAS SONI SC: And you made it clear that it was based on the bank statements that they had procured for you.

MR SACKS: That is correct Chairperson.

ADV VAS SONI SC: Now you are saying that this was - the report came about as a result of the appointment of
20 Swifambo to – or the award of a tender to Swifambo by PRASA.

MR SACKS: That is correct Chairperson.

ADV VAS SONI SC: Alright. And then you refer to a Hillbrow case number and you indicate that the complainant was Mr Mamabolo.

MR SACKS: That is correct Chairperson.

ADV VAS SONI SC: Now just for context sake. Is the Mr Mamabolo who accompanied Mr Molefe to this meeting with Mr Mashaba in July 2015?

MR SACKS: That is my understanding Chairperson.

ADV VAS SONI SC: And did you have the affidavits he had – or the statements he had made in support of this criminal complaint?

MR SACKS: I had access to those affidavits Chairperson.

10 **ADV VAS SONI SC:** And you relied on them as well?

MR SACKS: Yes, Chairperson where relevant.

ADV VAS SONI SC: Yes. And then you had the Auditor-General's report of the 31st of March, dealing with fruitless and wasteful expenditure.

MR SACKS: Yes, that is correct Chairperson.

ADV VAS SONI SC: In relation to this Swifambo matter?

20 **MR SACKS:** Yes, Chairperson. I must add that the Auditor-General's report and Mr Mamabolo's affidavit it is all cursory background information. The focus of my investigation was purely on the bank records of Swifambo and where relevant if those other pieces of information could augment my findings, I would use it.

ADV VAS SONI SC: Yes, yes.

MR SACKS: Yes, Chairperson.

ADV VAS SONI SC: What though you do in your report

and just correct me if I am wrong, why all of this is important. You try and correlate the various complaints that were made with the flow of funds to and from Swifambo.

MR SACKS: Yes. So Chairperson, the best way to explain it is. The Swifambo contract is obviously it is of high value. It is quite a story from the moment it was accepted to ultimate a signature and then flow of funds.

I was – I took it upon myself in preparing this
10 report which would not form an affidavit in criminal proceedings. This is a report of findings for the Hawks.

I thought it would be beneficial to the Hawks to actually summarise all the civil pleadings because it puts out and it explains clearly how the whole tender came about, who the parties were to the tender, what the irregularities were to the tender.

So that when the police could read the flow of funds they could get context and it would make sense. If I just prepared a report of flow of funds without the story
20 that led up to the money going from PRASA to Swifambo, it would not have been as beneficial or as useful to the police.

And I thought – obviously due to the volume of civil papers underpinning the application to set the contract aside, I included all the applicable findings in

those affidavits, Mr Molefe and Mr Massaro's affidavit in this report.

And my findings were the flow of funds, the money. That was my detailed findings. That is what I was providing an expert opinion on.

ADV VAS SONI SC: But what it does is, anybody reading the report is going to say: Well, this money went to company X. And if you look at the allegations are made, you say it probably went because of that allegation.

10 **MR SACKS:** It connects the dot Chairperson.

ADV VAS SONI SC: Alright. Then we have already dealt with how you came to be appointed and so on. So we can leave that. And then – that is paragraph 3, the rest of paragraphs 2 and 3.

Now in paragraph 4, you introduce or you say that that is an introduction to the investigation. Could you briefly summarise what the purpose of this investigation was and what were you trying to achieve with this?

20 I know you have said part of this but just in relation to that question.

MR SACKS: Chairperson, my mandate was to perform a flow of funds analysis of the Swifambo bank accounts. Swifambo as collectively dispense from the Rail Holdings and Swifambo Rail Leasing.

My objective was to analyse how the money from

PRASA flow to Swifambo and what that money was used for. How it was utilised. So that my mandate – just to do – my objective was to give an opinion on those findings, on the R 2.6 billion specifically.

ADV VAS SONI SC: And to look whether there were unusual payments or the timing was unusual. Would that be correct?

MR SACKS: That is correct Chairperson.

ADV VAS SONI SC: Then in paragraph 5, you deal with
10 the scope and methodology. So we were talking about the bank accounts that you looked at put to you the details of which you got through the Hawks via to Section 205 subpoenas issued to the financial institution. Now you looked at mainly two bank accounts. Can you tell the Chairperson which those were?

MR SACKS: Chairperson, the two main bank accounts was a Swifambo Rail Leasing, Standard Bank account number 022682570 and the Swifambo Holdings, Standard Bank account number 202538117.

20 **ADV VAS SONI SC:** And why did you choose those two accounts?

MR SACKS: Chairperson, I choice those two accounts because those were the two bank accounts into which PRASA made payments for the Swifambo contract. Specifically, the contract states that the payment should be

made to Swifambo Rail Leasing.

However, payments were also made to Swifambo Rail Holdings specifically the first payments which was an irregularity in terms of what the contract stated between PRASA and Swifambo.

ADV VAS SONI SC: And that is why you analysed both because to see where the payments were made in terms of the contract.

MR SACKS: ...the utilisation, I was also performing
10 analysis in terms of how the contract, from a cash loan point of view was being performed. I did not note that from the outset the funds between the two companies were being comingled. So for the purposes of this report, I clearly stated, I see that is the one and the same entity because there was – you cannot define the cash flow activity one come direct separately.

Swifambo Rail Holdings, Swifambo Leasing, the money is seen as one and PRASA paid into both those accounts even though again they were only supposed to
20 pay into the Rail Leasing's Standard Bank account.

ADV VAS SONI SC: And that is because of the term of the contract?

MR SACKS: Yes, Chairperson.

ADV VAS SONI SC: Okay. Now at paragraph – and we will come to that. I mean, I think you do deal with it in

more detail. In paragraph 5.2 you make the point that this is a first level analysis.

And I know you dealt with it a little earlier. Can you explain to the Chairperson what you were try to achieve with a first level analysis and then what you were trying to achieve with a second level analysis.

MR SACKS: Chairperson, again. The first level, as I explain in my report, is simply confirming flow of funds from PRASA to Swifambo and who Swifambo paid. How
10 they utilised that money. Then I drew a line.

And then I said the second level analysis is those recipients of money from Swifambo, how did they utilise their money. As – again, the flow of funds analysis was the very nature when you are dealing with lot of bank accounts it requires a lot of supporting information.

At this time when I prepared the reports, we were still again in the midst of completing first level analysis... the money which was mostly completed subject to one or two provisos which I put in the report.

20 But then it was anticipated and explained clearly that I needed to the second level analysis in order to conclude my investigation and provide an ultimate opinion as I was mandated to do which again I was not – I was not – I never completed.

ADV VAS SONI SC: Now with the first level analysis, you

can just conduct that by looking at the bank accounts, where the money came from. So you compare the source of the money to the account in which it was received. Would that be correct?

MR SACKS: That is correct Chairperson.

ADV VAS SONI SC: Now what would the second level – in order to conduct a proper second level analysis, what more would you need?

MR SACKS: Chairperson, PRASA pays Swifambo
10 R 2.6 billion. I see the money coming into Swifambo's bank accounts. I see entity A had been – as a recipient of R 30 million from Swifambo.

I – the first, through subpoena, I get entity A's bank statements. I can confirm then that Swifambo pays money to that account. What entity A did with the money?

Considering how all the allegations and suspicions what the money was used for who, for example, meetings between Mr Molefe and Mr Mashaba and other investigations.

20 Remember, this is a – Chairperson, this is a – an all encompassing investigation. I am just providing the flow of funds but there are also allegations and suspicions as to what the money is used for.

And I take that information and I marry it up to the flow of funds to see, yes, there is an allegation that

this person received money, gratuitous payments. The bank statements have now shown that that person received this gratuitous payments where there is no commercial basis and so forth.

So the first level is to say: Well, here is the payment from Swifambo into entity A's bank accounts. I had entity's A bank account. I confirmed the receipt. Now what did entity A do with that money? Where did that money go? That is the second level analysis and that is
10 where I required more information to perform that...

So we can say, ultimately, at least at the end of the day, at least this is where PRASA's money gone based on all the allegations and the suspicions.

ADV VAS SONI SC: Now I take it one of the questions in his case that you were looking at is. Where the person who received the money from the Swifambo entities directly or indirectly. Where the person who received the money or did the persons perform some service which added value for the money they received?

20 **MR SACKS:** Chairperson, to summarise. As it is set out in the civil papers, it was established and judged by the Supreme Court, to my understanding, I was not part of that process, that Swifambo – the contract was irregular and it was set aside and Swifambo was a fronting company.

In a nutshell the majority, the bulk majority of

the funds would be going to a third party, foreign company who was manufacturing the locomotives.

And my analysis shows that Swifambo... Well, it has been established that Swifambo had no business operations. It had no cause or validation for the amounts that it had expended over and above the money that flowed to Vossloh or – Vossloh being the foreign manufacturer of the locomotives and sometimes to South African Revenue Services.

10 I state – it states in those papers that there is no commercial rationale for all these payments. At the time that I – well, information I was based on, you are looking at a three, four hundred million rands over and above the payments that went to Vossloh and to SARS.

And there is – as I say, there is no commercial basis from what I could see, my independent opinion and supported through this whole process, why Swifambo would be making those payments.

ADV VAS SONI SC: Then at paragraph 5.7.1, you make
20 the point about the accounting records of Swifambo.

MR SACKS: Yes, Chairperson. So my investigation was - focussed solely on the bank statements. When you are performing a forensic investigation you would hope to receive additional supporting information that could help you unravel the cause or business reason for a payment.

And each and every company would have a book of records and supporting information. So for example, there would be a general ledger or a balance sheet and income statement or invoices that could help me understand or help an investigator understand or could point the investigator to say: Well, what could this payment be for?

Not saying that the accounting records would be accurate. Generally in an investigation where there is
10 suspicion of fraud or corruption or theft, those documents could be manipulated.

However, all I had was the bank statements but as I state in my report, the bank statements were revealing enough. The bank statements say – says all.

I do not believe that there would be supporting information. I just made that point just to qualify that all I had was bank statements. It is...

And I do understand that subsequent in the liquidation of Swifambo, the liquidator supported my
20 conclusions or the findings that I had and the liquidator would have access to financial records. And the liquidator's report substantively supported my findings at this time. However, the liquidator's report was not part of this criminal investigation process.

ADV VAS SONI SC: Yes. I mean, in fact, it has only been

drawn up in February 2020.

MR SACKS: Chairperson, if I was allowed to complete the investigation, I would have obtained this information and drawn these conclusions. I had, again, in my independent expert view, the flow of funds supports all the allegations made.

And as counsel and I go through, we will see the quantum's of money flowing out and who the recipients of that money is, PRASA's money.

10 **CHAIRPERSON**: What do you need in order to complete your investigation?

MR SACKS: Chairperson, amongst other things, I need more bank accounts. There is ...[intervenes]

CHAIRPERSON: Is the position that all that the Hawks needed to do is to come back to you and say continue. We give you the authority to continue. And to the extent that you may need them to play a supportive role in your investigation by doing the paperwork that may need to be done in order to obtain bank - information on bank
20 accounts of recipients. Is that all that you would need from them?

MR SACKS: That is probably the main pieces of information I would need. Obviously, there would be – in all investigations be some other information that would arise out of – the investigation is not explored.

You are correct Chairperson that the bank accounts is what I really needed. If I can continue on the same trajectory that I was busy with and the toing and froing with the... The colonel...

I was busy working with a very competent colonel at the time who obviously was not involved at high decision making in the Hawks but he certainly was a very helpful resource.

And we were working closely together and I said:
10 Colonel, I need this bank account. He will go and get that bank account for me. That stopped. So, yes, you are correct.

CHAIRPERSON: So basically, you would need the authorisation – you would have needed their authorisation that you must continue and then to the extent that legally you might need them to do certain things for you because you could not do them. Then they would just do that.

But if you could complete the investigation without them, but legally, you would still complete it, is it
20 not?

MR SACKS: Yes, I ...[intervenes]

CHAIRPERSON: There is a way of completing it without them?

MR SACKS: I cannot complete the investigations without them. So I need the authority to go and get subpoenas for

me.

CHAIRPERSON: That is if you do it for them.

MR SACKS: Yes.

CHAIRPERSON: Ja.

MR SACKS: Yes, if I do it for them.

CHAIRPERSON: If you do not do it for them, you do not need their permission.

MR SACKS: Yes.

CHAIRPERSON: Because you have got the report.

10 **MR SACKS:** Yes. Yes, that is correct.

CHAIRPERSON: You have done the investigation. You have got the report.

MR SACKS: Yes.

CHAIRPERSON: They are not giving you the go-ahead.

MR SACKS: Yes.

CHAIRPERSON: It is in the public interest that you should complete the investigation.

MR SACKS: Yes.

20 **CHAIRPERSON:** And if there is another body that can legally say we are interested in you completing this. I am not sure it should be a problem.

MR SACKS: Yes, Chairperson. Obviously ...[intervenes]

CHAIRPERSON: I do not know if they... I have just sitting with the report for four years. They can have any grounds to come and say: No, no. Please, do not do it for

somebody else. We are interested in it.

MR SACKS: Yes, that is correct Chairperson.

CHAIRPERSON: Ja. But I am just asking from the point of view of your willingness.

MR SACKS: Yes.

CHAIRPERSON: That provided everything was done legally ...[intervenes]

MR SACKS: Yes.

CHAIRPERSON: ...you would have no problem.

10 **MR SACKS:** Yes, Chairperson that is correct. I did not stop the investigation.

CHAIRPERSON: Yes. [laughs]

MR SACKS: [laughs]

CHAIRPERSON: Well, yesterday we – there was a – or was it the day before, there was a debate about whether a certain sentence in a letter meant that the ...[intervenes]

ADV VAS SONI SC: Yes.

CHAIRPERSON: ...he wanted to stop the investigations. [laughs] Okay alright. Continue Mr Soni.

20 **ADV VAS SONI SC:** As you please Chair. Now in your – in paragraph 7, you indicate the information that is still outstanding.

MR SACKS: That is correct Chairperson.

ADV VAS SONI SC: And you confirm that that is all that is outstanding, as the Chairperson said, if you were to

complete your report.

MR SACKS: Yes, Chairperson that is correct.

CHAIRPERSON: What is your estimate of how much time you would need if you were to be asked legally to do whatever was outstanding?

MR SACKS: Chairperson, I will not lie. It is not a – it is quite a difficult question because I do not control the process.

CHAIRPERSON: Yes.

10 **MR SACKS:** Yes. I, you know, it is a process of information flow.

CHAIRPERSON: H'm.

MR SACKS: Requesting further information analysing that information.

CHAIRPERSON: H'm.

MR SACKS: There is also either – as I say, in this investigation I was assisted by other investigators ...[intervenes]

CHAIRPERSON: Yes.

20 **MR SACKS:** ...who helped me ...[intervenes]

CHAIRPERSON: With certain aspects.

MR SACKS: ...with certain aspects of the investigation.

CHAIRPERSON: Yes, yes.

MR SACKS: The key part of such a wide or vast flow of funds analysis is forensic ...[intervenes]

CHAIRPERSON: Ja.

MR SACKS: ...hearty assistance.

CHAIRPERSON: Ja.

MR SACKS: In terms of putting all the bank records into some kind of electronic format...

CHAIRPERSON: H'm, h'm.

MR SACKS: ...to make that investigation quick and efficient.

CHAIRPERSON: H'm.

10 **MR SACKS:** It is costly also.

CHAIRPERSON: H'm, h'm.

MR SACKS: When you are looking at – well, with 20 lever arch files already of bank accounts.

CHAIRPERSON: H'm, h'm.

MR SACKS: To try and flow – to marry the flow of funds amongst the bank accounts.

CHAIRPERSON: H'm.

20 **MR SACKS:** And some bank accounts Chairperson could have thousands of transactions. Some would only have two transactions and you have to make a call.

CHAIRPERSON: H'm, h'm.

MR SACKS: There are a hundred transactions. I need the bank to tell me which bank account it went to. And just say, for example Chairperson, it went to an individual company. We have to establish through police work or

intelligence work who that individual is, what company is that, what is the rationale.

CHAIRPERSON: H'm.

MR SACKS: By very nature, this type of investigation is concealment of funds. The information is not readily available. And as soon as you go and ask an individual entity: What do you use this money for?

And not putting up their hand up and say: Oh, sorry. I do not have any basis for this. You know, so there
10 is a large – it is a team, it is a working team of which I am one aspect. However, I am the person who is doing the flow of funds analysis.

CHAIRPERSON: H'm, h'm.

MR SACKS: I was the appointed person for the money.

CHAIRPERSON: So it is difficult to say?

MR SACKS: No, so I would say hypothetically, it took one year to get to this point amongst all the reasons of meetings and correspondence and getting information, maybe one more year to complete the second flow
20 analysis.

CHAIRPERSON: Okay.

MR SACKS: It is hard – it is difficult to say.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Chairperson, may I just point out and it relates to the question you have asked. We have

consulted with the liquidator who is going to be our next witness.

CHAIRPERSON: Yes.

ADV VAS SONI SC: And for various reasons, they have had to do a forensic analysis.

CHAIRPERSON: Okay.

ADV VAS SONI SC: So it may be that the question – and what is ...[intervenes]

CHAIRPERSON: Yes.

10 **ADV VAS SONI SC:** ...whatever is on your mind ...[intervenes]

CHAIRPERSON: Might be answered.

ADV VAS SONI SC: Well, and one can take the matter further on that basis.

CHAIRPERSON: Yes.

ADV VAS SONI SC: That some of the work has since been – well, some work has since been done.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Of a forensic nature.

20 **CHAIRPERSON:** Okay.

ADV VAS SONI SC: I did not pursue that too much with him but I know that there is...

CHAIRPERSON: Yes. Okay. No, that is alright.

ADV VAS SONI SC: Ja.

MR SACKS: Counsel, if I may? I just one point I should

add at this point is that crucial to any investigation is a case plan of which a forensic audit forms one aspect of that plan. I was not aware of that case plan.

I, in a meeting leading up to my report, there was a meeting just before I sent my report. There were still discussions of what is the case plan. All this information in my report, not all of it is going to find its way into the statement, into criminal evidence. The NPA might say no, we do not want you to pursue that payment, we do not want
10 you to pursue this payment. So that aspect still has to be done, that case plan. I cannot say well, I have finished my report it is now time to go arrest people. There is a lot of teamwork involved even just to get to that point which in another investigation I am doing very similar, I see how that works. Yes, we need to finish the work for this investigation to complete and, as counsel says, there is more information, which I never had the time because of the liquidation which would escalate completing the flow of funds, then we move on to the charges, who is going to get
20 charged, how are they going to get charged, what is the evidence, affidavits, supporting and so forth, so forth.

CHAIRPERSON: Okay.

ADV VAS SONI SC: You have had a look at the liquidator's report. I am not talking about the forensic report. We are going to come to that because what I

understand you to say is that what you have found is to a large extent reinforced by what is contained in the liquidator's report.

MR SACKS: That is correct, Chairperson.

ADV VAS SONI SC: But we will deal with that to see where there is a synergy between your so-called preliminary report and their final report to shareholders of February last.

MR SACKS: That is correct, Chairperson.

10 **ADV VAS SONI SC:** Alright, now you make the point in paragraph 8 that your analysis does not constitute an audit for the purposes of international standards on auditing. I take it that is a disclaimer of sorts.

MR SACKS: Yes, Chairperson, it is just a pure disclaimer.

ADV VAS SONI SC: Then let us look at paragraph 9 where you deal with the background to the appointment of Swifambo. Many of these details or much of this information has been presented to the Commission mainly by Mr Molefe when he gave evidence and he gave quite
20 extensive evidence. I would just like you to indicate what in regard to the background the Chairperson should keep in mind?

MR SACKS: Chairperson, I guess what is most important to this tender and as I have set out in – how it is explained in the civil application is how at all times the – the

Swifambo contract was always intended to go – or the locomotive tender was always intended to go to Swifambo and how it was set up *inter alia* along the request for proposals, the bidding, the companies who participated, the valuation, the adjudication, it all points to Swifambo receiving this contract and what is also important is that Swifambo was not - they never – there were glaring irregularities in terms of Swifambo being that company in terms of not having properly registered for tax purposes, 10 not having the relative experience in rail and the fact that they were going to outsource the manufacture completely to another foreign company which at the – until – what is important is that until Swifambo actually signed the contract with PRASA there was no contractual relationship with their partner or subcontractor and that whole relationship was not properly detailed or transparent in this whole process. So bearing in mind how Swifambo got it and the pricing of the contract ultimately it is a – PRASA was pay – when it signed a rand denominator contract, in 20 actual fact it was a Euro contract, all of that is just – it was irregular from the beginning part right until end of signing the contract and ultimately to the flow of funds and you receive money. So I guess, to counsel's point, I hope I have clarified that.

ADV VAS SONI SC: I just wanted to raise one point that in

paragraph 11.6 of your report – you see, in paragraph 9 you deal with the background to the appointment of Swifambo, I just want – and that is why I thought, you know, point out that the date of the contract is important or the date of the issue of the tender, which being December 2011, because maybe we should first look at paragraph 11.6 to 11.11 because those are matters – what, 11.6, 7 and 8 because those are matters that come before the issue of the tender.

10 **MR SACKS:** Chairperson.

ADV VAS SONI SC: Will you deal with those – and I know it is before the tender.

MR SACKS: Yes.

ADV VAS SONI SC: Can you set out the important events that preceded the issue of the tender?

MR SACKS: Chairperson, as I read from my report, PRASA published the request for expressions of interest which is RFEI on 24 and 26 July 2009 that ...[intervenes]

20 **ADV VAS SONI SC:** And that you are reading from paragraph 11 ...[intervenes]

MR SACKS: 11.6, sorry. Paragraph 11.7, May 2011, the first involvement of Vossloh who ultimately was the partner or subcontractor to Swifambo inspected PRASA's fleet. June 2011, in paragraph 11.8, a Mr Daniel Mthimkhulu, who was the former PRASA chief engineer authorised the

supply of air conditioning systems from Vossloh and then that led up – those are the events leading up to the RFP being published on 27 and 28 November 2011.

What was important in paragraph 11.10, that the RFP was collected by someone from a company called the S Group as it was denoted on the register and not from a representative of Swifambo and this, in paragraph 11.11, Swifambo responded to the tender as Mafori Finance Vryheid, trading as Swifambo Leasing on 27 February 10 2012. The subparagraph to that is Swifambo Holdings acquired Mafori Finance Vryheid on 7 February 2012, so the company that responded to the tender was essentially a brand new company, it had only been around for the purposes of, I guess, responding to this tender was 20 days old.

ADV VAS SONI SC: Now the S Group. We have heard evidence on a different matter relating to a payment being made to the Siyaya Group. Is this the same group you are talking about?

20 **MR SACKS:** My understanding, Chairperson, is there is a collection of companies under the nomenclature S Group including Siyaya and as my report will go into, I identify specific Siyaya entities that were beneficiary of funds from Swifambo.

ADV VAS SONI SC: And who was the person behind the S

Group and the Siyaya Group?

MR SACKS: Chairperson, my investigation, as my report sets out, is the actual signatories of bank accounts and directors of companies that received money from Swifambo was an individual by the name of Makhensa Mabunda.

ADV VAS SONI SC: On behalf of the S Group?

MR SACKS: On behalf of S Group or linked companies.

ADV VAS SONI SC: Right, then you make the point that the tender was issued on the 2 December 2011 – sorry, the
10 RFP was published on that day and there were six people who responded one of them being Swifambo. Now in paragraph 9.4 you list the shareholders of Swifambo. Who were they?

MR SACKS: Chairperson, the shareholders at the time of Swifambo was Mr Auswell Mashaba, Identity Capital Partners (Pty) Ltd, Thintamakhosi Empowerment Trust and Hadassah Mining House (Pty) Ltd.

ADV VAS SONI SC: Okay, we can then ...[intervenes]

CHAIRPERSON: Maybe that might be the convenient
20 time, Mr Soni?

ADV VAS SONI SC: As you please, Chair.

CHAIRPERSON: Let us take the lunch adjournment, we will return at two o'clock. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue. Now Mr Sacks, we are dealing with the shareholders of Swifambo on page 855 and you had identified them and then thereafter on page 857, paragraph 9.11 you set out the directors of Swifambo Leasing. Who were they?

MR SACKS: Chairperson, the directors per CACP were Auswell Mashaba, Cynthia Michelle Parish, Jacqueline Nowandle Mboweni and Makshoni Daniel Mashele.

ADV VAS SONI SC: Now in regard to Ms Parish, what was
10 the information that you had?

MR SACKS: The information per the investigation was that Ms Parish was a United States citizen. She was recorded as the chief legal counsel of an entity named Musa Capital and that Musa Capital was a beneficiary of funds from Swifambo, significant funds.

ADV VAS SONI SC: And that, you identify the amounts in your report.

MR SACKS: Yes, I do Chairperson.

ADV VAS SONI SC: Yes. Now at paragraph 10 you deal
20 with the payments that Swifambo received from PRASA and you deal with this later again, but there are two, if you look at table 1, two of the eight payments were made to Swifambo Rail Holdings and the others were made to Swifambo Rail Leasing. What is the significance just in terms of the contractual issues?

MR SACKS: Chairperson, the contract between Swifambo and PRASA clearly stated that the payments were to be made into a Standard Bank account held in the name of Swifambo Rail Leasing, and my report details that two of the payments made by PRASA to Swifambo being the first payment and a payment later on, were paid into Swifambo Rail Holdings bank account, which was not in accordance with the contract.

ADV VAS SONI SC: Now in paragraph 10.3 you say that
10 the first payment of four hundred and sixty thousand, R460 526 306-00 was made to Swifambo Leasing, is that correct?

MR SACKS: That payment was ...[intervenes]

CHAIRPERSON: Sorry, to Swifambo Holdings.

MR SACKS: Yes, that was paid to Swifambo Holdings.

ADV VAS SONI SC: And the significance is the first payment is made to a non-contractual entity.

MR SACKS: That is correct Chairperson.

ADV VAS SONI SC: But you also make another point
20 about the timing between the conclusion of the contract and the first payment. How many days elapsed between the signing of the contract and the first payment?

MR SACKS: Chairperson, the contracts between PRASA and Swifambo was signed on 25 Marc 2013. The first payment from PRASA to Swifambo in the amount of

R460 526 216-00 was paid from PRASA to Swifambo on 5 April 2013, 11 days after the contract was signed.

ADV VAS SONI SC: And the amount was 460 million?

MR SACKS: Yes, and Chairperson it was paid prior to the performance of the condition president which required a performance bond to be provided by Swifambo Rail Leasing, which was not in place at the time the payment was made.

CHAIRPERSON: 460 million of course Mr Soni being a
10 nearest figure rounding.

ADV VAS SONI SC: Oh, I beg your pardon.

CHAIRPERSON: Yes.

ADV VAS SONI SC: Yes.

CHAIRPERSON: The actual amount is more than that.

ADV VAS SONI SC: That is so. Now later in your report you deal with who were the beneficiaries of that first batch of payment, I mean that first payment.

MR SACKS: That is correct Chairperson.

ADV VAS SONI SC: Now can I ask you was Vossloh - who
20 was the person providing the locomotives, a beneficiary of any of that payment from ...[intervenes]

MR SACKS: Yes Chairperson, they were. As my report explains Vossloh was paid 116 days after Swifambo received the money, in an amount of 290 million rand. Of the 460 million, 290 was paid to Vossloh. Prior to Vossloh

receiving 290 million rand, approximately 150 million rand was expanded to other individuals or entities.

ADV VAS SONI SC: And the payment to Vossloh was made 119 days after the contract. After receipt of the money?

MR SACKS: 116 days Chairperson. Three days difference.

ADV VAS SONI SC: Alright. Now one of the factors, sorry and then you point out that in paragraph 10.4 but we are going to deal with each of those payments in a little while,
10 but you point out that six of the payments were made to Leasing and two to Holding.

MR SACKS: That is correct Chairperson.

ADV VAS SONI SC: What was the total amount to Holding?

MR SACKS: The total amount paid to Holdings, I have not calculated it on the report, approximately 900 million rand. 904 million rand.

ADV VAS SONI SC: And this is a non-contracting party.

MR SACKS: Yes Chairperson.

20 **CHAIRPERSON:** I am sorry. You are now where about, still at ...[intervenues]

ADV VAS SONI SC: Sorry, 10.4 Chairperson.

CHAIRPERSON: Sorry?

ADV VAS SONI SC: 10.4 on page 859.

CHAIRPERSON: Okay.

ADV VAS SONI SC: I thought we should move into the meat because a lot of it is background and ...[intervenes]

CHAIRPERSON: That is fine, that is fine.

ADV VAS SONI SC: Now in paragraph 11.1 to 11.5, you deal with matters that constitute what you say are unusual features about the contract or the award and the contract. Would that be correct?

MR SACKS: That is correct Chairperson.

ADV VAS SONI SC: Could you briefly summarise for the
10 Chairperson what those features were?

MR SACKS: Chairperson, I assume counsel is referring to the non-compliance?

ADV VAS SONI SC: Yes.

MR SACKS: By Swifambo with regards to the tender and I deal with this specifically in paragraph 11.12.

ADV VAS SONI SC: No, before we get there.

MR SACKS: Sorry.

ADV VAS SONI SC: Just in relation to the complaints that Mr Molefe had made.

20 **MR SACKS:** Excuse me counsel. Chairperson, as I explained earlier for the benefit of the police, I included the summary of the civil applications, and commentaries that were included in those applications that were relevant to portraying the picture of Swifambo for the police and I utilised the founding and replying affidavits by Mr Popo

Molefe and the responding affidavit proposed by Falice Mosaro who was, he claimed he was a group chief executive officer of Swifambo. In summary Popo Molefe in his affidavits, he contends that Swifambo had no previous involvement in the rail industry, prior to the award of the contract and was not in a position to perform the contract. Swifambo was set up for the sole purpose of obtaining the tender and had a fronting relationship with Vossloh. Swifambo had no business or commercial operations, other
10 than to be the middle man to earn the commission in a locomotive tender. In fact there was no evidence that Swifambo actually performed any work, other than to be a contracting party. Swifambo did not incur any cost of manufacture or any related cost relating to the completion of locomotives and essentially they added no value to the performance of the contract, which Mosaro did not explicitly deny in his responding affidavit.

ADV VAS SONI SC: Now you have pointed out to me, that when this matter went to the Supreme Court of Appeal, the
20 Supreme Court of Appeal very succinctly described what Swifambo's position was. How did you describe it? The passage that you have ...[intervenes]

MR SACKS: Can you be more specific?

ADV VAS SONI SC: You had, remember you showed me a passage.

MR SACKS: Yes, yes excuse me. I stated in my report that Swifambo obtained a three and a half billion rand tender for the supply of locomotives when it had no offices or infrastructure, no experience in the rail industry and no contracts to obtain and supply the locomotives at the time it got awarded the tender.

ADV VAS SONI SC: And that cult was adopted by the Supreme Court of Appeal?

MR SACKS: I cannot confirm that, sorry Chairperson.

10 **ADV VAS SONI SC:** Now in regard to ...[intervenes]

CHAIRPERSON: Mr Soni, you may ... it would be interesting to see what the difference is between the role played by Swifambo in this transaction and the role played in the asbestos project by the joint venture between Mr Sodi and Mr Mbambane.

ADV VAS SONI SC: Yes.

CHAIRPERSON: You will recall because you know the matter.

ADV VAS SONI SC: Yes.

20 **CHAIRPERSON:** That there Mr Sodie Mr Mbambane's joint venture, I forget what the name of the joint venture was, obtained a contract from the housing department of the province about 250 million rand in order to remove the asbestos ...[intervenes]

ADV VAS SONI SC: Yes.

CHAIRPERSON: In the houses in the Free State, but they themselves did not do any work.

ADV VAS SONI SC: Yes.

CHAIRPERSON: They got other people to do the work, paid them some money and kept the bulk of the money themselves.

ADV VAS SONI SC: Yes.

CHAIRPERSON: But they themselves did not do any work.

ADV VAS SONI SC: Yes.

10 **CHAIRPERSON:** So it would be interesting.

ADV VAS SONI SC: Yes. Yes, the notion of fronting ...[intervenes]

CHAIRPERSON: Yes.

ADV VAS SONI SC: And benefitting from fronting.

CHAIRPERSON: Yes, it may well be that Mr Sodie and Mr Mbambane's entity was not funding as such, but what may be common between that venture and Swifambo, is you get a contract. You do not actually do the work.

ADV VAS SONI SC: Yes.

20 **CHAIRPERSON:** But you get the money.

ADV VAS SONI SC: Money, yes.

CHAIRPERSON: You get paid.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Ja.

ADV VAS SONI SC: Yes, and then you pay where there is

...[intervenes]

CHAIRPERSON: Ja, you pay whoever, ja. Okay.

ADV VAS SONI SC: As you please, and the analogy is most appropriate. Now we have dealt, oh sorry. I was going to say that in paragraph 11.5.7 you make the point that the person who filed the answering affidavit in the Swifambo High Court matter was a Mr Mosaro. He is from Italy as I understand it?

MR SACKS: Chairperson, I cannot confirm where Mr
10 Mosaro actually comes from.

ADV VAS SONI SC: I understand though he is not from South Africa.

CHAIRPERSON: I am sorry, what paragraph did you say?

ADV VAS SONI SC: Sorry, 11.5.7 Chairperson.

CHAIRPERSON: Oh, okay ja. Mosaro.

ADV VAS SONI SC: Yes, now Chairperson, may I just make this point but I do not want to take too much of time. What the Supreme Court of Appeal, what the high court [indistinct], it said these are the allegations Mr Molefe
20 made in his founding affidavit and that is what the witness has more or less summarised. Then it looked at the answering affidavit and the answering affidavit was to this effect. All the complaints that PRASA makes are PRASA related irregularities. We do not know about them. Thinking that because they are PRASA related activities, it

could retain the benefits from irregularities, not knowing that our law has caught up with such persons. So the point I am trying to make Chairperson is both the High Court and the Supreme Court of Appeal say that these allegations have not been denied and they adopt these allegations as part of the irregular process and procedures that were adopted in awarding the tender to Swifambo. So I am not going to spend much time on this.

CHAIRPERSON: Ja.

10 **ADV VAS SONI SC:** Except to say that at various parts when Mr Sacks has testified, I will indicate that that is contained in this paragraph of the SCA judgment.

CHAIRPERSON: Yes, no because those are already findings of the Supreme Court of, High Court or and we can go and read them from there, but for purposes of the record and the fabric ...[intervenes]

ADV VAS SONI SC: Yes.

CHAIRPERSON: You can say these are the findings that were made that are relevant.

20 **ADV VAS SONI SC:** Yes.

CHAIRPERSON: And then we move on.

ADV VAS SONI SC: Absolutely. As you please Chairperson. Now in paragraph 10 point, 11.6 to 11.11 we have been through already just before lunch hour. Those were the matters that arose even prior to the issue of the

RFP.

MR SACKS: That is correct Chairperson.

ADV VAS SONI SC: And I just want you to keep that in mind, because you make a point later on that it looks like the whole bid was, I mean the whole process was tailored to suit Swifambo.

MR SACKS: That is correct Chairperson.

ADV VAS SONI SC: Alright. Then you go at paragraph 11.12 onwards, to look at their non-compliance with the requirements of the RFP. What are the main areas of non-compliance?
10

MR SACKS: Chairperson, particular statutory non-compliance was there is no tax clearance certificate submitted for Vossloh as required for joint venture partners. There was no tax clearance certificate ...[intervenes]

ADV VAS SONI SC: Sorry, each time will you just give me a minute. That Chairperson, is adopted by the SCA in paragraph 10, that exact finding or that finding is made by the, it accepts it and says that is what happens. Sorry,
20 just go ahead.

MR SACKS: “The tax clearance certificate submitted by Swifambo did not contain a VAT number.”

ADV VAS SONI SC: That too at paragraph 10 Chair.

MR SACKS: “The bid did not comply with the local content

requirements as the locomotives were to be designed and manufactured in Spain.”

ADV VAS SONI SC: That is at paragraph 11 of the SCA judgment Chair.

MR SACKS: “The bid did not contain evidence to support Swifambo’s claims that it and its shareholders had previous experience in the rail industry, and in terms of which the final further [indistinct] pursuant to the RFP was required to.”

10

ADV VAS SONI SC: That is at 11 and 12 of the SCA judgment Chairperson.

MR SACKS: “At the time that the bid was submitted, Vossloh was not a co-bidder as the founder ...[intervenes]

CHAIRPERSON: Sorry, is that complete? It looks like the sentence is not complete.

MR SACKS: Sorry.

CHAIRPERSON: There is:

20

“1, 2, 3, 4 there that was required to be technically and financially qualified to provide the solution sought by PRASA,”

and then:

“11.12.4.2 have sufficient experience in similar projects.”

11.12.4.3 have the commitment and resources to provide the services required in the project, and

11.12.4.4 be able to carry out all the obligations of the contract.”

MR SACKS: Yes Chairperson, sorry I jumped to the next paragraph. My mistake.

CHAIRPERSON: Ja, so whoever reads the transcript wonders, there is a gap. You know, the sentence that is
10 incomplete and then there is a next sentence.

ADV VAS SONI SC: Yes, and ...[intervenes]

CHAIRPERSON: So I just wanted just to complete that.

ADV VAS SONI SC: And those are essential requirements.

CHAIRPERSON: Yes.

ADV VAS SONI SC: Because that is the purpose to say can you, we are going to pay you, can you do the job?

CHAIRPERSON: Ja, ja. Okay.

ADV VAS SONI SC: So yes Mr Sacks, I may have pushed you along a bit, but carry on.

20 **MR SACKS**: The Chairperson corrected me. The next paragraph:

“At the time the bid was submitted Vossloh Espanya SA was not a co-bidder as defined in the RFP and Swifambo had not concluded a subcontract with Vossloh. The bid indicated

that Swifambo would rely solely on the experience and technical capabilities of Vossloh Espanya SA to fulfil its obligations. There was no legal relationship between Swifambo and Vossloh Espanya and therefore no indication that Swifambo could perform.”

ADV VAS SONI SC: That is reflected in paragraph 12 of the SCA judgment.

10 **MR SACKS:** “Furthermore the bid indicated that Swifambo intended to enter into a joint venture with Vossloh Southern Africa. There is a reference to Vossloh Southern Africa Holdings Pty Ltd which was incorporated as a shelf company, Main Street 951 Pty Ltd by 29 November 2011. On 17 May 2012 the company’s name changed to Vossloh Southern African Holdings Pty Ltd.”

ADV VAS SONI SC: Can I just go back to the date of incorporation of Vossloh Southern Africa. You see it is the 290th of November 2011? You see that?

20 **MR SACKS:** Yes Chairperson.

ADV VAS SONI SC: That is paragraph 11.12.

MR SACKS: Yes.

ADV VAS SONI SC: I want you to go back to paragraph 9.1 on page 855 and compare the date when people were invited to bid for proposals.

MR SACKS: Chairperson, as stated in paragraph 9.1 PRASA issued a request for proposals on 2 December 2011.

ADV VAS SONI SC: No, on the 29th it provided bid proposals.

MR SACKS: On the 29th, excuse me.

ADV VAS SONI SC: Sorry, 27 November.

MR SACKS: The 27th November 2011 and PRASA invited bid proposals and on the 2nd of December 2011 PRASA
10 issued a request for proposal and going back to paragraph 11.12.6, Vossloh Southern African Holdings was incorporated on 29 November 2011. So smack bang in the middle.

ADV VAS SONI SC: Two days after the bid ...[intervenes]

MR SACKS: Ja.

ADV VAS SONI SC: The invitation for bids.

MR SACKS: That is correct Chairperson. Counsel, shall I carry on?

ADV VAS SONI SC: Yes, yes sir.

20 **MR SACKS:** Paragraph 11.12.7 Chairperson:

“The RP required the joint venture to be in place by the time the bid was submitted. Being 27 February 2012 by Swifambo. Accordingly there was non-compliance of the RFP. In any event, Swifambo never entered

into a joint venture with Vossloh Southern Africa. It entered into a subcontracting arrangement with the Spanish entity, Vossloh Espanya.

ADV VAS SONI SC: Now just pause there for a moment. From a legal point of view, what was the risk to PRASA as a result of this [indistinct]?

MR SACKS: Chairperson, I am an accountant, I am not a lawyer. However ...[intervenes]

10 **CHAIRPERSON:** I was about to ask you that.

MR SACKS: I will however, I will ...[intervenes]

CHAIRPERSON: Maybe he should just ask you what was the risk, and leave out legal.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Maybe based on your experience as an accountant you might be able to answer that general question rather than the legal aspects.

MR SACKS: There is no right of recourse for PRASA simply put. They were putting themselves at tremendous
20 business risk. You have a contracting with a different party, or for Swifambo contracting with a different party and I actually to my knowledge that is how it played out due to PRASA contracting with Swifambo and Swifambo contracting with a foreign entity.

ADV VAS SONI SC: Has it been a joint venture, both of

them would have owed a duty to PRASA?

MR SACKS: Yes, yes Chairperson.

ADV VAS SONI SC: Alright, and then you deal with Swifambo's financial standing next.

MR SACKS: Yes Chairperson:

10 "Swifambo's financial standing was unsatisfactory in that Swifambo's auditors, Van Wyk Auditors, confirmed that Mafori Finance trading as Swifambo Rail was a new company and had not traded before. Swifambo's bankers, Standard Bank confirmed that Mafori's bank account had recently been opened and indicated that Swifambo had no financial history which the bank would use to evaluate his financial viability."

20 **ADV VAS SONI SC:** Can I just stop you there for a moment. How difficult would it be to check what the financial standing is as you have reflected in 11.12. In other words, how would PRASA protect itself against this sort of risk?

MR SACKS: Chairperson, I guess the answer is PRASA could not protect itself from that kind of risk.

ADV VAS SONI SC: But would it not ask for financial statements as part of their protection?

MR SACKS: Chairperson, I am not preview to what the

information the PRASA bid committees would have asked for. However, it is evident that this was a company that had no operating history. Obviously it goes without saying that PRASA was exposing itself to substantial risk. What information they should have called for or ought to have called for, I can only say in the general business term that this is kind of information they should have assessed at the time. I cannot confirm what they did or did not do within PRASA.

10 **CHAIRPERSON:** Yes, but I think Mr Soni was asking more at a general level.

ADV VAS SONI SC: Yes.

CHAIRPERSON: To say you cannot enter into a contract with an entity that you have not checked, just basic checks. Has it done this type of job before.

MR SACKS: Yes.

CHAIRPERSON: Is it sustainable. Is it going to be there in two weeks' time. Is it going to be there, who are the people who are behind it. What is its financial standing
20 and you enter into a contract to give it billions of rands. How can you do that?

MR SACKS: That is correct Chairperson.

CHAIRPERSON: I mean going back to the Free State Mr Soni.

ADV VAS SONI SC: Yes.

CHAIRPERSON: In Estina you have the similar situation.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Where the Department of Agriculture paid into Estina about I think at a certain time 30 million rand and the evidence revealed that I think the day before, or just before the 30 million rand went into Estina's account, Estina's balance in the account was if I am not mistaken about R16-00.

ADV VAS SONI SC: Yes.

10 **CHAIRPERSON:** No checking.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Nothing.

MR SACKS: Chairperson, I did perform that analysis as to what was in, to your point what how will the bank accounts look like at the time obviously PRASA would not be preview to that level of information, but most certainly as you stated correctly, a due diligence should have been performed comprehensive for the point in my contract.

20 **CHAIRPERSON:** Exactly, because I cannot just meet you today and I sign an agreement with you tomorrow and then I take millions of my money and give them to you on the basis that you will do X, Y, Z but I do not even know whether you have done that before, what is your financial standing. If you are talking about big amounts. Are you able to do the job? You know, what will I do if you

disappear into thin air? I cannot do that with my money, so why would I do that with tax payer's money?

MR SACKS: That is correct Chairperson.

ADV VAS SONI SC: And especially Chairperson, if I may make this point? When you know that the company which is going to be the supplier is an overseas company over which you have absolutely no control.

CHAIRPERSON: Exactly.

ADV VAS SONI SC: Or no power.

10 **CHAIRPERSON**: Ja.

ADV VAS SONI SC: Yes, sorry.

MR SACKS: The next point being Swifambo, Chairperson:

“Swifambo and Vossloh concluded the contract on 4th of July 2013 which was 16 months after the bid was submitted and after the contract was signed between PRASA and Swifambo on 25 March 2013.

20 **ADV VAS SONI SC**: So had PRASA done what you called due diligence, even a basic due diligence, it would have realised at the time it awarded the bid and at the time it signed the contract, there was no contract between Vossloh and Swifambo.

MR SACKS: Accordingly Chairperson, there was no guarantee that Swifambo could even perform. They had not signed the contracts, even the RFP called for a joint

venture, a subcontracting agreement completely different had not even been signed yet.

ADV VAS SONI SC: Yes no, no you are quite right.

CHAIRPERSON: I do not know if the two judgments, the High Court and the Supreme Court of Appeal, do reflect the identities of the people who made this decision in PRASA, whether they were the bid adjudication committee or whoever they were?

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

10 **CHAIRPERSON:** He might not know, but ...[intervenes]

ADV VAS SONI SC: He does in his ...[intervenes]

CHAIRPERSON: When you look at something like this ...[intervenes]

ADV VAS SONI SC: Yes.

CHAIRPERSON: You will immediately want to know who made this decision without doing this basic checking.

ADV VAS SONI SC: Yes.

CHAIRPERSON: So I am just saying I cannot remember whether the judgments do reflect ...[intervenes]

20 **ADV VAS SONI SC:** I do not think they identify the ...[intervenes]

CHAIRPERSON: Because the people who made that decision should be identified.

ADV VAS SONI SC: Yes, yes.

CHAIRPERSON: We should know who they are.

ADV VAS SONI SC: Who they are, yes.

CHAIRPERSON: Yes.

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

CHAIRPERSON: Because you know, you talk about PRASA having made this decision to enter into a contract with Swifambo, a company that had no history, that basically had nothing other than that it was going to be the middle man as it were, and lots of money were, was involved. I want to know which officials in the entity made this
10 decision?

ADV VAS SONI SC: These decisions indeed.

CHAIRPERSON: And the public need to know who they are.

ADV VAS SONI SC: Yes, yes absolutely.

CHAIRPERSON: But if we keep on just saying PRASA, PRASA, PRASA you know it is ... (intervenes).

ADV VAS SONI SC: Yes.

CHAIRPERSON: Ja okay.

ADV VAS SONI SC: And the point he makes with this - it
20 is a matter that perhaps should be considered in the submissions, we make to you or the recommendations you represent.

CHAIRPERSON: Yes, yes.

ADV VAS SONI SC: Because unless there is accountability in the form of some consequence

management which is a word – a phrase that is consistently used. Minister Peters kept referring to consequence managing.

CHAIRPERSON: I know you see something like this. The first thing is who made this decision? Who did not do his or her job? Was it incompetence? Was it negligence or was he or she part of a certain agenda? It is very critical because the person or persons who made this decision – these decisions may be – maybe they are still at PRASA.

10 Maybe they are in another SOB.

ADV VAS SONI SC: Indeed yes doing the same thing.

CHAIRPERSON: And whenever these projects – these transactions are discussed their names are never mentioned. It is just PRASA, PRASA.

ADV VAS SONI SC: PRASA yes.

CHAIRPERSON: Yes.

ADV VAS SONI SC: But importantly ... (indistinct). Yes Mr Sacks.

20 **MR SACKS:** Chairperson the last point in this – set out in the report was the point which I recall it again. Point I made was Swifambo obtained the R3,5-billion tender for the supply of locomotives. Who had no offices or infrastructure, no experience and no contracts obtained and supply the locomotives. As established the contract for supply was only signed with ... (indistinct) after the

fact.

ADV VAS SONI SC: That is prettily stating what happened. I mean it is basically as that.

MR SACKS: Yes Chairperson.

ADV VAS SONI SC: But I mean you could – you could really be in the hallway ... (indistinct) and then get a contract like this.

MR SACKS: Yes chairperson I suppose so.

CHAIRPERSON: Now is the position that despite you're
10 looking at some of the documentation and affidavits relating to this you could not come across who the officials were who made this decision as well or ... (intervenes).

MR SACKS: Chairperson the affidavits actually dealt with specific PRASA individuals – key individuals involved at various junctures in the tender being awarded. I cannot confirm if that was every single person involved. But in the course of the broader investigation in which we were performing forensic audits – the Werksmans investigation it was investigated at length who the individuals were.

20 The names mentioned in this contract are key senior individuals pertaining to Swifambo. But these individuals were management for PRASA. So I guess all procurement – this falls under procurement.

CHAIRPERSON: Yes I think Mr Soni we need to get to who made the decisions. And if there are – if there are

contracts that were signed, who signed those contracts on behalf of PRASA. So and to the extent that we deal with Siyangena(?) in regard to other matters. It is important that if there are contracts that have been concluded irregularly or corruptly it be made quite clear who the people are who made the necessary decisions.

ADV VAS SONI SC: In fairness Mr Chairperson, Mr Sacks does identify the person who signed this contract and he identifies some of the individuals who ought to have
10 ensured that proper mechanisms were put in place at the start. He does deal with that.

CHAIRPERSON: Yes, no, no that is fine.

ADV VAS SONI SC: But in ... (indistinct).

CHAIRPERSON: There might be different people who had different roles to play. But ultimately somebody makes the decisions.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Whether it is one person or a committee but there is a decision maker and that is the final person
20 who needs to check whether he or she has been provided with all the information that needs to be in place before making the decisions?

ADV VAS SONI SC: Correct.

CHAIRPERSON: Okay.

ADV VAS SONI SC: But we will do that analysis looking

at the contracts themselves because they were ...
(indistinct).

CHAIRPERSON: And of course the sudden witnesses who have testified before the commission from PRASA may know who had the power to make those decisions at that time.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Such as Ms Ngoye.

ADV VAS SONI SC: Yes.

10 **CHAIRPERSON:** And Mr Dingiswayo.

ADV VAS SONI SC: Dingiswayo.

CHAIRPERSON: They might know that these are the people who would have made these decisions.

ADV VAS SONI SC: Yes.

CHAIRPERSON: And then the question of obvious somebody must have signed the contract. So who signed that kind of thing? Because before you sign a contract you want to satisfy yourself that proper decisions have been made and you are signing with the a party that is credible.

20 **ADV VAS SONI SC:** Indeed.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Now in paragraph 11.13 you deal with the meeting between Mr Molefe, Mr Mamobolo and Mr Mashabe together with a fourth person. That is according to Mr Molefe's affidavit. Evidence on that has been led Mr

Sacks, I am just pointing it out.

But just because all of these persons, especially Mr Mashaba again refers to Mr Mabunda. Would you briefly summarise what Mr Molefe said in his affidavit in the replying – or in the replying affidavit in the Swifambo application to the High Court.

MR SACKS: Chairperson Mr Molefe in his replying affidavit explained his meeting with Mr Mashaba, Mamobola and the other person was Mashila Mklala, he is
10 a member of board and actually ... (indistinct) committee chairperson. This meeting was on 31st August 2015 which Mashaba explained how he is approached by Makhensa Mabunda to participate in this tender to supply PRASA with locomotives. And Mashaba also dealt with his interactions with Maria Gomez and how Gomez wanted money for the movement. Counsel do you want me to read or ... (intervenes).

ADV VAS SONI SC: No, no, no you can just summarise.

MR SACKS: Oh so, so essentially this meeting was about
20 Mashaba explaining to Mr Molefe and the other participants how he was – got involved in the tender and how money had to be paid by PRASA to Swifambo and thereafter to support the movement. And the meeting talks about specific cash flows especially to a company.

How Swifambo would pay money to a company

called AM Consulting Engineers which is Mashaba's company and how AMC Consulting Engineers would pay an entity called Simulex which was Gomez's company. And the meeting was to discuss some of the values of amounts to be paid.

But ultimately the information provided by Mashaba about the payments is corroborated by the flow of funds analysis that we performed from Swifambo to AMCE – AM Consulting Engineers and the second level flow of funds
10 analysis which was going to be performed which confirm flow of funds to a company called Simulex.

Which I understand that the liquidator actually confirmed the flow of funds. That information was not available to me at the time I prepared my report. That ... (indistinct) that meeting was about.

ADV VAS SONI SC: Chairperson may I interrupt at this point? I thought we need not deal too long with this point and the reason is. These are the allegations that Mr Molefe made. You will recall that we also filed in the
20 affidavit to – as an annexure to the affidavit of Mr Molefe, Mr Mashaba's reply in Swifambo.

Now very interestingly Mr Mashaba then in his CM13 that he filed last year – CM100, I beg your pardon – expands on this issue. Now again just so that there can be some certainty when you are doing your report

chairperson. You need not go into this is what Mr Molefe said.

You can go straight to what Mr Mashaba said - in his two affidavits. Well the CM100 is part of an affidavit – well notes to it. And what he said in his replying affidavit. I am going to that a little later if that suits you chairperson. Because that actually ties in with the flow of funds and it fits in with exactly how the money was dispersed.

But I thought I just ... (intervenes).

10 **CHAIRPERSON:** Yes.

ADV VAS SONI SC: I am not down playing this but again you will be saved the task of deciding ... (intervenes).

CHAIRPERSON: Yes, no, no.

ADV VAS SONI SC: Let Mr Molefe - Mashabe speak for himself.

CHAIRPERSON: Ja, no that is in order.

ADV VAS SONI SC: And the document chairperson is quite revealing. Exactly what he says.

CHAIRPERSON: Okay no that is fine.

20 **ADV VAS SONI SC:** You are aware of those documents now. You did not have it when you did your report but it has now been made available.

MR SACKS: Chairperson I am aware of these documents that counsel proposed to me now.

ADV VAS SONI SC: Okay so I am going to – I want to

refer to it at a particular time. Are you okay with that ...
(intervenes).

MR SACKS: I am okay with that chairperson.

ADV VAS SONI SC: Alright now you have dealt with – up to now the complaints that Mr Molefe made in his affidavit or the observations he made about the points that had been done irregularly. The next issue you raise is the ... (indistinct) in the tender process itself. And you deal with that at paragraph 11.14 to 11.50.

10 **MR SACKS:** That is correct chairperson.

ADV VAS SONI SC: Okay now let's start off with the irregularities in the tender process. What were the irregularities according to Mr Molefe in his affidavit?

MR SACKS: Chairperson Mr Molefe stated that evaluation process improper. His supporting documentation could not be found. Need assessments was not performed for the locomotives. Approval from the Minister of Transport was not obtained as it ought to have been. There was no indications that National Treasury received a written
20 submission as it ought to have.

There was no proper budgeting for the provision for the purchase of the locomotives. Daniel Mtimkulu was instrumental to procuring from and contracting with Swifambo in his role as the executive manager engineering services PRASA Rail, forged his qualifications. In a

disciplinary hearing Mtimkulu was found guilty of grouse dishonesty, fraud and bringing the name of PRASA into disrepute.

ADV VAS SONI SC: Sorry if you can just stop there. Because again when we go into these allegations that were made, ... (indistinct) said that Swifambo's answer is, we do not know about that. That is PRASA's – you cannot hold it against us. Of course because it was a self review that contention was found to be without merit.

10 And as you will see that they then say that Swifambo was not an innocent party in all. (Indistinct) at 11.22.

MR SACKS: Chairperson the technical specifications of the locomotives were designed to match the exact specifications of the Vossloh locomotives to ensure Swifambo was awarded more points during the technical evaluation. Swifambo was the only bidder who met the 70% threshold for technical evaluation.

20 **ADV VAS SONI SC:** So sorry could you stop there for a moment. Who determined what these specifications were for these locomotives?

MR SACKS: Chairperson I am not privy to that level of information. I would imagine the people involved are the senior people in procurement and engineering would determine those technical specifications.

ADV VAS SONI SC: Well the Supreme Court of Appeal found it was Mtimkulu who – as the head ... (intervenes).

MR SACKS: The head of engineering as I say yes. But the PRASA SCM – SCM standing for supply chain management, compliance check. The PRASA SCM compliance check overlooked that a tax clearance certificate was not submitted for ... (indistinct).

Swifambo's bid did not contain evidence to support it claims that its shareholders had previous experience in
10 the rail industry. No documents were provided in Swifambo's bid to confirm that they have entered into joint venture ... (indistinct) Southern Africa.

This was essential considering the bid indicated that Swifambo would not rely on experience and technical capability of ... (indistinct) to fulfil its obligations. The PRASA BEC ... (intervenes).

ADV VAS SONI SC: Sorry before ... (indistinct). How difficult is it to determine whether these criteria as required by the RFP have been ... (indistinct).

20 **MR SACKS:** Chairperson it is not difficult to establish if a company has a tax clearance certificate. It is not – as ... (indistinct) due diligence about the capability of a company. It is not difficult to do unless no one wants to actually look.

ADV VAS SONI SC: I want to put this to you. If say there

was just no tax clearance certificate it would be – we can say somebody overlooked something, then there is no evidence to support the claim of previous experience. There is no documents to show that there was a joint venture.

Collectively what does that suggest to you about the persons who allowed Swifambo to pass to the next phase of the bidding process?

MR SACKS: In my opinion it points to retention.
10 Essentially chairperson to ignore the glaring efficiencies that the company was tendering for ulterior motives as you suggested earlier. But that is my opinion.

ADV VAS SONI SC: Alright then – sorry you were at 11.24.

MR SACKS: 11.24, the PRASA BEC which is the bid evaluation committee did indeed raise serious concerns about the compliance of Swifambo's bid. These concerns were dismissed by the erstwhile chief procurement officer, Chris Mbata, advised the BEC to focus on the technical
20 evaluation only as SEM had checked the compliance aspect.

During the course of the bid process prior to evaluation the tender documents were in the possession of Brenda Malongete, an independent consultant at her private home. This factor is considered to be extremely

irregular. In terms of the procurement policy the preparation of a technical scoring sheet was the task of the CFSC, not the BEC as was performed in this instance.

Some of the members of the BEC suspected that in the application of the scoring sheet to Swifambo that the specification had been tailored to fit Vossloh's Locomotives. The suspicions in this regard coupled with a concern over the compliance of Swifambo's bid caused them to suspect that the tender had been rigged.

10 The tailoring of the specification meant that the award of the tender was weighted in favour of Swifambo's bid before the scoring process commenced. The scoring demonstrates the advantage Swifambo had over the other bidders. Although Swifambo derived the systems from the tailoring of the specification and its favour, for Swifambo to achieve the compliance threshold of 70% further manipulation of the scoring was required which was evident upon review.

20 Including large gaps in the manuscript scoring sheet, additional lines and electronic combined scoring sheet but not an individual scoring sheet. The electronic combined scoring sheet was last amended by Ntombeziningi Shezi, SCM PRASA ... (indistinct) chairperson of the BEC. In summary there were actual documentation required – the tick boxes were manipulated.

Members of the BEC were placed by individuals who were not part of the BEC and rounding of numbers in favour of Swifambo.

ADV VAS SONI SC: Sorry you said you were in the process – the BEC itself was restructured.

MR SACKS: That ... (indistinct) alleged by my affidavit.

ADV VAS SONI SC: Chairperson may I just make one point? You might remember Mr Sacks said that the tender documents were in the presence of Brenda Malongete.
10 When Ms Ngoye gave her versions – cannot remember ... (indistinct). But on the first occasion or the second occasion but I suspect it was the first occasion.

Will not remember – you indicated that there was a ... (indistinct) legal entity that Mr Montana created. There was ... (intervenes).

CHAIRPERSON: Yes I kind of remember but I cannot ... (intervenes).

ADV VAS SONI SC: Yes I am just saying that she is the person who was mentioned at that time as having been an
20 external legal advisor ... (intervenes).

CHAIRPERSON: Oh yes was it Ms Govender ... (intervenes).

ADV VAS SONI SC: So she was the internal person. Ms Govender was the internal person. Ms Malongete was the external person.

CHAIRPERSON: Oh there was an external and internal one.

ADV VAS SONI SC: Yes.

CHAIRPERSON: The one I was thinking about is the one who was internal and who went to Ms Ngoye, went to take files.

ADV VAS SONI SC: That is the one.

CHAIRPERSON: Yes okay.

ADV VAS SONI SC: That is the one who said I am an
10 officer of the court.

CHAIRPERSON: Yes, yes, yes.

ADV VAS SONI SC: But ... (indistinct) Malongete's names comes up again and in circumstances you will appreciate – I do not want you ... (intervenes).

CHAIRPERSON: Yes okay, okay.

ADV VAS SONI SC: Yes Mr Sacks. Sorry I just wanted to give context because the persons involved their fingerprints appear at different places.

MR SACKS: Yes chairperson. So ja apart from the
20 specifications being tailored and calculations manipulated to suit the Swifambo bid the methodology adopted in scoring process is irrational.

Another glaring irregularity that undermines the technical evaluation is that Swifambo offered the Euro 3000 model, diesel locomotive in the bid and that was the

locomotive evaluated. PRASA acquired the Euro 4000 diesel locomotives that were not evaluated.

ADV VAS SONI SC: Just stop there. In its bid a particular locomotive with certain specifications is set out.

MR SACKS: That is correct chairperson.

ADV VAS SONI SC: This is for Swifambo's bid, is that correct?

MR SACKS: That is correct chairperson.

ADV VAS SONI SC: But when the contract is – or when
10 the tender is awarded, the tender is awarded on the basis that it will supply a different – a completely different locomotive – a different specification.

MR SACKS: Yes that is correct chairperson. It was actually referred to as a ... (indistinct) 4000 and as I would like to say, Swifambo offered a locomotive that drives on one side of the road. But since PRASA ... (indistinct) a locomotive that drives on the other side of the road.

This essentially ... (indistinct) in that context. And those locomotives transpired were not suitable for the
20 railway as I understand it.

ADV VAS SONI SC: The point here made that it is – it undermines the technical evaluation. Does it not go beyond that? I mean are you not supposed to say you have been awarded the points for this locomotive. You must supply those locomotives because that is the basis on

which you beat the other competitors.

Although the process may have been unfair but nevertheless that is the basis of which you ... (indistinct).

MR SACKS: I would agree with that assessment chairperson.

ADV VAS SONI SC: So the bid evaluation committee and nobody evaluated the Euro 4000 which is what Swifambo supplied.

MR SACKS: That is correct chairperson. Carry on. The
10 BEC recommended that Swifambo be appointed as approved bidder. There were various irregularities and areas of concern identified pertaining to the functions of the CTPC, the BAC – bid adjudication committee and FCIP with regards to approving the bid of Swifambo. The BAC recommended the appointment of Swifambo to be based on outright purchase option.

The decision to purchase when the ... (indistinct) is irregular and irrational and cannot be explained, an entire process until that point had been directed ... (indistinct).

20 **ADV VAS SONI SC:** Sorry can we just stop there? The RFP provided for companies to offer leases to PRASA or to lease locomotives to PRASA.

MR SACKS: It is my understanding chairperson.

ADV VAS SONI SC: But when the award is made the award is made on the basis that those locomotives would

be purchased.

MR SACKS: That is my understanding chairperson.

ADV VAS SONI SC: Did anybody else offer to your knowledge locomotives for sale as it were as did Swifambo?

MR SACKS: Chairperson to my knowledge the other bidders all bid for a leasing option, not for an outright purchase option.

ADV VAS SONI SC: Because that is what the RFT asked
10 for ?

MR SACKS: Yes chairperson.

ADV VAS SONI SC: Alright then you say the person who appears to have prompted the switch ... (indistinct) a leasing to sale was a Mr Brian Alexander.

MR SACKS: That is correct chairperson.

ADV VAS SONI SC: Do you know how that came about?

MR SACKS: Chairperson I do not know how it came about as it stated in the affidavit the capacity which Alexander performance analysis is unclear. It falls outside the
20 structures contemplating the procurement policy. It appears to directly influence the decisions to change the scope of the tender from lease to outright purchase. This is highly irregular considering that it is inconsistent with the RFP and the procurement process.

ADV VAS SONI SC: Now just to come back to the fact of

the change from the contract with lease to the contract of lease to a contract of sale. Swifambo as I understand it and that is the conclusion you draw or Mr Molefe draws, was formed especially to bid for this tender.

MR SACKS: That is correct chairperson.

ADV VAS SONI SC: It adopts the name Swifambo leasing.

MR SACKS: That is correct.

ADV VAS SONI SC: A company ... (indistinct) to lease then is required to sell.

10 **MR SACKS:** Does not correlate chairperson.

ADV VAS SONI SC: Okay then you were talking about the board itself.

MR SACKS: Yes chairperson.

ADV VAS SONI SC: I just in fairness to the board that was established or the board that was constituting in – at the end of July 2014. That is the Popo Molefe board. Is not the board that looked at this tender?

MR SACKS: That is correct chairperson.

20 **ADV VAS SONI SC:** And who was the chairperson of that board?

MR SACKS: Chairperson the chairman at that time was Sifiso Norbert Buthelezi.

ADV VAS SONI SC: So you say then next on the 24th July ... (intervenens).

MR SACKS: 2012 chairperson.

ADV VAS SONI SC: Oh sorry 2012 yes. Now you mentioned Mr Buthelezi and you mention Mr Montana as the two people that were present together with the other board members ... (indistinct).

MR SACKS: Which I have stated in the affidavit yes chairperson.

ADV VAS SONI SC: And Mr Montana was the CEO – the group CEO and Mr Buthelezi was the chairman of the board.

10 **MR SACKS:** That is correct chairperson.

ADV VAS SONI SC: Then what was the board's decision?

MR SACKS: After considering incorrect information about the Swifambo bid, the board approved Swifambo as – in terms of the tender. The decision was irrational, arbitrary and in breach of the board's obligations as explained in Molefe's finding affidavit.

ADV VAS SONI SC: Yes now in regard to yourself – what you did when the flow of funds analysis, you also looked at people who played a role in the bidding process. What
20 role did you find perhaps unusual?

MR SACKS: Chairperson when we were doing the analysis of the bank accounts of Swifambo we identified the beneficiaries or recipients of funds from Swifambo and based on the descriptions contained within the bank statements or how it flowed to other bank accounts if any

individual entity name came up in that analysis that was previously identified within the broader investigation we could link – we could link names to money. I think what Counsel is alluding to is Swifambo as will be shown in the flow of funds analysis paid money to an entity called Sibenza Forwarding and Shipping Pty Limited and statutory records show that Siphizo Buthelezi was the former – who was the former Chairperson of PRASA was a previous director of Sibenza, in other words, just by pure
10 investigative links a recipient of funds, being Sibenza, was linked to a former Chairperson of PRASA, being Buthelezi.

My report does go on to say that this aspect needs to be further investigated, I did not draw any conclusions as to that, it's purely just stating, here's an entity who received money, here is an individual who's linked to that entity and to the police we need to investigate, or this needs to be investigated further and that would form part of the next level of investigation.

ADV VAS SONI SC: How much did Sibenza receive?

20 **MR SACKS:** Chairperson, Sibenza received R99million from Swifambo.

ADV VAS SONI SC: I just want to ask, and this is the broader picture, originally the intention was whether to buy or lease, it was going to be 80 locomotives, is that correct?

MR SACKS: 88 Locomotives.

ADV VAS SONI SC: Sorry, 88.

MR SACKS: Yes.

ADV VAS SONI SC: Eventually, because of the fluctuation in the value of the rand that figure was reduced to 70, is that correct?

MR SACKS: That's my understanding.

ADV VAS SONI SC: But after the High Court had set aside the award only a small number of locomotives, were, in fact supplied.

10 **MR SACKS:** I think it is common cause, Chairperson, that only 13 locomotives were ever supplied prior to the suspension of the contract by PRASA under Popo Molefe's Board as which precipitated the investigation. I do not have any knowledge, after; of how many other locomotives were due to come but 13 is the number of locomotives that arrived in South Africa.

ADV VAS SONI SC: Now, the R99million that was spent then must have been a forwarding of 13 locomotives.

20 **MR SACKS:** There could be a commercial basis, subject to confirmation, I agree with counsel that this money paid to Sibenza could have been for the customs and forwarding related cost to bring the locomotives in.

ADV VAS SONI SC: But, if it was, the amount in respect of each locomotive was then about R7.5million.

MR SACKS: I agree with counsel's calculations,

Chairperson.

CHAIRPERSON: It's quite an interesting figure.

MR SACKS: That's correct Chair.

CHAIRPERSON: R99million, that's it.

ADV VAS SONI SC: [Indistinct 3.53] take locomotives from here to there and...

CHAIRPERSON: Ja, but as you say, it may well be that there is a commercial reason but we just – you just didn't get to that point in your investigation or is that something
10 that you're going to deal with later?

MR SACKS: Chairperson, I just – if you indulge me I just wrote what I said with regarding to these payments, I said that ...[intervenes].

ADV VAS SONI SC: Where do you say that?

MR SACKS: Sorry, Chairperson, paragraph 14.10.8 it's quite a few pages further on when I'm dealing with the flow of funds to Sibenza because I deal with those actual payments, when you're ready I can just...[intervenes].

CHAIRPERSON: Maybe you could – now that we have
20 raised it, maybe you can just quickly deal with it.

MR SACKS: Yes, so as I'll be – as Counsel will know, my report deals with the specific flow of funds and when it came to Sibenza I quantified...[intervenes].

CHAIRPERSON: You said its paragraph?

MR SACKS: 14.10.8.

CHAIRPERSON: Let me just get there, 14.10.8.

MR SACKS: Yes, it's Bundle L942.

CHAIRPERSON: Yes, I've got it.

MR SACKS: So, Chairperson, just for the benefit of this context of conversation I'll just read my concluding paragraph in my report, I said,

10 “Accordingly, considering the above, [above being the payments, the flow of funds and the relationships] and also taking into account the critical relationship between the former Chairperson of PRASA, namely Buthelezi, his undisclosed relationship to Sibenza meaning that the investigation showed that he didn't disclose his relationship to Sibenza to PRASA, and the context of the R3.5billion tender between PRASA and Swifambo, this aspect should be investigated further”,

20 That's purely – simply what I said that I couldn't draw a conclusion as counsel inferred but highlight in bold, has to be looked at further and as counsel said there could be a commercial basis, too early to draw a conclusion at the time I did my report.

CHAIRPERSON: Yes.

ADV VAS SONI SC: I'd like you to indicate who paid for the forwarding and what did the contract provide, you deal

with that in paragraph 11.36.5.

MR SACKS: Chairperson, the contract between PRASA and Swifambo stated that the cost of forwarding was for the cost of PRASA and not Swifambo, this is expanded on in the detailed findings but there was no information to me at the time that indicated that PRASA had paid for it. There were these payments to Sibenza which could indicate that Swifambo paid for it which I would imagine that, Swifambo had right of recourse to PRASA to pay that money. I guess
10 using counsel's rough but seemingly accurate calculation, R7million per locomotive times 70 locomotives will be a substantial sum for PRASA to have brought these locomotives in. Again, I can't comment further over and above that.

ADV VAS SONI SC: Chairperson, I just make this point and either Mr Sacks or the liquidator will deal with it. In the note to the CM100 Mr Mashaba says that Swifambo wrongly paid this amount on behalf of PRASA and it wants PRASA to pay Swifambo back and asked the liquidator to
20 claim the money back from PRASA, but of course the irony is this, just given what we've heard there is Mr Buthelezi, Chairman of the Board, aware of, according to Mr Molefe, aware of certain irregular...[indistinct – dropping voice] the contract is awarded to Swifambo, Swifambo is not required to pay the R99million that it did pay. Mr Mashaba

is – and that's the point I was making with Mr Sacks, he is Swifambo. How did that money get paid to Sibenza?

CHAIRPERSON: He should know, he should – he was the Chairman or Managing Director, I think, somewhere in his affidavit.

ADV VAS SONI SC: He says, he's the Managing Director.

CHAIRPERSON: It does – described himself as having the Managing Director and he would have been confronted with his questions, among others if he had come here.

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

CHAIRPERSON: Yes.

ADV VAS SONI SC: But more importantly, had the bill gone to PRASA, PRASA may have scrutinised them to see if what – the amount that was claimed by Sibenza and in fairness Mr Mashaba does reduce the invoices that Sibenza sent but the question is not whether there were invoices, the question is, not being contractually obliged to pay, why would Swifambo pay R99million?

CHAIRPERSON: It, certainly raises serious questions.

20 **ADV VAS SONI SC:** It does, Chairperson.

CHAIRPERSON: Ja.

ADV VAS SONI SC: But we will deal with that note as it appears in the CM100 Chair when we're dealing with ...[indistinct – dropping voice].

CHAIRPERSON: Hmm.

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

CHAIRPERSON: I think we jumped because we wanted to look at this aspect isn't it, didn't I interrupt your sequence?

ADV VAS SONI SC: Oh, sorry, sorry yes, I'm sorry yes.

CHAIRPERSON: Ja, we jumped from a much earlier page just to look at this last page.

ADV VAS SONI SC: Because we were talking about Sibenza, yes.

CHAIRPERSON: Ja, so I think we can go back to where
10 we were.

ADV VAS SONI SC: Mr Sacks?

MR SACKS: Yes, Chairperson, regarding to Sibenza on paragraph 11.36.3, Mamabolo alleges in his affidavit that,

20 "Buthelezi, while Chairman of the PRASA Board, failed to disclose his interest in Makana Investment Corporation which has a 15% shareholding, it is a company allegedly providing services to PRASA on the rolling stock. It's now been confirmed it has a 55% shareholding in Sibenza a preferred forwarding and clearing service provider to PRASA. In addition, per investigations at PRASA, into disclosure of interests Buthelezi did not disclose his interests in Sibenza",

And the next point I've already stated about the cost of forwarding.

ADV VAS SONI SC: But just getting back to...[intervenes].

CHAIRPERSON: I'm sorry just give me the page in terms of pagination, you know these paragraphs that you have in the report they are confusing because it's 11.6 something.

MR SACKS: Chairperson, I'm at page Bundle L872 at the bottom.

CHAIRPERSON: 872?

MR SACKS: Yes, Chairperson.

10 **CHAIRPERSON:** Okay, alright – okay we can continue.

ADV VAS SONI SC: Yes, but can I just take Mr Sacks back, Chairperson. You say that Mr Buthelezi has a 15% shareholding in Cadis a company which provides advisory services to PRASA or provided. Did he have that shareholding at the time Cadis was providing advisory services?

MR SACKS: Chairperson, I do not have knowledge of that, this is an allegation made by Mamabolo in his affidavit. This – just to re-emphasise, this information is
20 included in the report to alert the police to areas that they need to consider, I'm not stating that this is fact, this is an allegation. Certain issues have been dealt with in the SCA as counsel has agreed to but when you look at the flow of funds and you see R99million payment to a company called Sibenza without this context, on first reading, the police

might not ascertain who Sibenza is. This allows the police that knowledge gap and areas – or in my mind that they could go back and look to say, okay these are avenues for investigation.

ADV VAS SONI SC: Now you – one of the points you made when you went much further in your affidavit relating to Sibenza you said that needs to be investigated further, I take it the same would apply to these links or alleged links with Cadis?

10 **MR SACKS:** That is correct, Chairperson.

ADV VAS SONI SC: And you say that Mamabolo alleges that Mr Buthelezi did not disclose his interest in Cadis or in Sibenza?

MR SACKS: That's correct, Chairperson.

ADV VAS SONI SC: Now, at 11.37 you allege or you make the point that Mr Molefe alleges that these matters were brought to Mr Montana's attention before the Board approved the Swifambo bid. I take it that's – if you look at 11.3.6, that's before the 24th of July 2012?

20 **MR SACKS:** That's correct, Chairperson.

ADV VAS SONI SC: And he alleges that, Mr Montana didn't raise these matters at the Board meeting.

MR SACKS: That's correct, Chairperson.

ADV VAS SONI SC: And the inference that he draws from that, is that Mr Montana was determined to proceed with

the process that would result in the appointment of Swifambo?

MR SACKS: That's correct, Chairperson.

ADV VAS SONI SC: Now, these are all the red flags, and I mean some of them are quite high, flags that were probably burning themselves but forget that, you then say that there were other indications that all were not right and they were ignored, will you tell the Chairperson what those were?

MR SACKS: Chairperson, individual names by the name
10 of Bridgette Gaza raised serious concerns about Swifambo in an email on 6 November 2012 to both, Buthelezi and Montana and in another email to Mbatha on 20 November 2012. Despite these concerns Montana allowed the negotiations to proceed in a contract between PRASA and Swifambo was concluded thereafter, it was March 2013.

ADV VAS SONI SC: So, as of the date Ms Gaza raised these concerns the award had already been made?

MR SACKS: That's correct, Chairperson.

ADV VAS SONI SC: But the point you are making is, that
20 the process could have been stopped because there is an award but there still needs to be a contract.

MR SACKS: The contract had not been signed yet, it only was signed a few months later.

ADV VAS SONI SC: Then the point you make at 11.39 about the total contextual approach you've adopted, could

you just place that on record please, Mr Sacks?

MR SACKS: Yes, so the point I make, Chairperson, is that the irregular tender process and the appointment of Swifambo as the preferred supplier of the locomotives must be read in conjunction with, and context of the flow of funds. In other words, the tender process was the manner in which the implicated individuals were able to enter PRASA into a business relationship with Swifambo and from which they illicitly benefited from the contract. So
10 again, Chairperson, this is the reason why all this information was included. So, when you look at the flow of funds it makes sense.

ADV VAS SONI SC: But I just want to ask you this, even without the flow of funds if one looks at the matters that are raised in your report albeit that, to a large extent it's what Mr Molefe had alleged but as I'd pointed out it was subsequently accepted by the SCA Masterplan. Based even on that, there would be criminal investigations that should be...[indistinct dropping voice] for example the
20 Chairperson of a SOE not declaring an interest?

MR SACKS: That's correct, Chairperson, I think – this report is not, again it wasn't an affidavit this was a – I guess a factual findings, I was mandated to go and perform an analysis and give my views as to whether police should further criminal investigations and, I mean, to get to the

gist of it, the evidence produced in context of what the SCA had agreed with Mr Molefe, there was every indication that further investigation should have taken place. I'm not – I'm certainly not, in this case, a person to judge – you know Judge or Juror over here, I'm just saying these are the facts, this is what's being said, here's the money flow.

ADV VAS SONI SC: And your report is for the police at their request?

MR SACKS: That's correct, Chairperson.

10 **ADV VAS SONI SC:** Please tell us what we should look for in our further investigations, you've done these, now we're not even looking at the flow of funds we're just looking at the entire process, something seems amiss, that is what you're already saying.

MR SACKS: That was the point I included at this point, so yes, I agree with counsel. Something is amiss or the flow of funds correlates to the timeline of events.

ADV VAS SONI SC: Alright, then you deal, in the next section with the – up to now you've dealt with the
20 irregularities prior to – or the unusual happenings prior to even the RFP being issued then the process that the – the SCM process, then the adjudication process. Now you deal with the irregularities in the contract itself. Could you outline what those read please sir?

MR SACKS: Yes, Chairperson, first point is that the

contract between Swifambo and PRASA was concluded on 25 March 2013, the contract was signed by Montana...[intervenes].

ADV VAS SONI SC: Sorry, that was on behalf of PRASA?

MR SACKS: Yes, sorry on behalf of PRASA.

ADV VAS SONI SC: Who signed on behalf of Mashaba – I mean Swifambo?

MR SACKS: I do not – Chairperson I do not have the contract in front of me and I don't want to make any
10 assumptions but I would imagine if Mashaba claims to be the Managing Director he would have signed it but that's just subject to sight of the contract, we can clear that up.

ADV VAS SONI SC: Yes, somewhere I know that it is said that Mashaba had signed the contract, I don't know if it's one of the judgments anyway we're interested in PRASA now.

MR SACKS: So, yes the contract was signed by Montana on behalf of PRASA...[intervenes].

ADV VAS SONI SC: I just want to go back now. You had
20 said that prior to the meeting of the 24th – this is in 11.37, Mr Montana had been aware of some of the irregularities then on the 6th of November Ms Gaza brought certain other matters to his attention and then – now you are saying, on the 25th of March 2013, he signs this contract.

MR SACKS: That's correct, Chairperson.

ADV VAS SONI SC: What was the value of the contract that was signed?

MR SACKS: The value in rand terms was R3.5 billion, Chairperson.

ADV VAS SONI SC: This is the contract that was actually signed?

MR SACKS: Yes, Chairperson.

ADV VAS SONI SC: Alright, now you are given the irregularities in the contract, what were the irregularities?

10 **MR SACKS:** Carrying on from 11.42 Chairperson,

“The contract materially deviated from the terms of the RFP, the RFP required the lease of locomotives, the main contract provided for purchase of locomotives. The contract inexplicitly stated the RFP invited proposals for three options and one of them was the outright sale of locomotives to PRASA, this statement is incorrect. The competing bidders were not afforded an opportunity to bid on an outright sale as one of the options, this change of procurement strategy is fundamentally flawed and unlawful. The award of the tender to Swifambo and the conclusion of the contract, without the contractual involvement of Vossloh constitutes the material irregularity. Swifambo had no technical capacity and Vossloh had no contractual obligation

20

to design, manufacture and deliver the locomotives in terms of a contract, the risk to PRASA was palpable. The conclusion of the contract without the submission of the unconditional performance bonds as required by Swifambo within the time period prescribed in the RFP was irregular. In terms of the contract, the first 20 locomotives to be delivered were the Euro 4000 locomotives. The Euro 4000 was designed for the European rail network, not South Africa. The Euro 4000 does not comply with the specifications as set out in the RFP, chief of which the Euro 4000 has an overall vehicle gauge height of 4140mm. The RFP clearly shows that the maximum vehicle gauge height requirement is 3965mm. It will not be possible for Vossloh to reduce this height. The consequence of the material deviation from the locomotive gauge specification is that PRASA is saddled with locomotives that are not fit for purpose and unsafe to operate on the South African rail network”.

ADV VAS SONI SC: Yes.

MR SACKS: Can I carry on?

ADV VAS SONI SC: Yes.

MR SACKS: Okay, sorry Chairperson, carry on,

“On 11 April 2014 Mthimkhulu sent a memorandum

to Montana in which he requested a variation to the contract to include certain systems. According to Mthimkhulu the variation was required because the systems that came with the locomotives per the Swifambo proposal to PRASA were rudimentary and therefore needed to be upgraded to ensure that the locomotives were fitted and assembled with the latest technology. The additional cost to PRASA was R335million. The request was...[intervenes]”.

10 **ADV VAS SONI SC:** Sorry, it is dealt with in a page or two but just to put you in context, you’ll recall that Mr Dingiswayo gave evidence. One of the matters that he said led to his dismissal, and you must remember he travelled for half an hour and the meeting lasted ten minutes, he said that, he was asked to okay this contract – sorry, I make a mistake. This was the first edition to the contract, the next one is what he was asked to okay and is what led to his dismissal and Mr Nguyi’s dismissal. Sorry but I am wrong in saying that it is this contract, it is the
20 next contract.

CHAIRPERSON: Okay.

MR SACKS: So, Chairperson, this R335million was over and above the R3.5billion which would,

“Ceded the contract value by quite a significant amount and the suggestion that the proposal was

that the locomotives – what was required as rudimentary is nonsensical as the locomotives offered to PRASA by Swifambo were state of the art and the systems mentioned in the memorandum was standard feature. So, the affidavits contend that it's – a beggar's belief that now we have to change the locomotives when what we are buying for R3.5billion should be state of the art and now we have to change them. The contract value is R3.5billion, there was a draft third addendum which counsel just referred to which was prepared by Molengetti [?] and had been negotiated by Montana. The proposed third addendum to the contract would have resulted in a contract price increasing from R3.5billion to R5billion".

ADV VAS SONI SC: Sorry, just to put it in context, you've got the R3.5billion contract that is signed in July then...[intervenes].

MR SACKS: March.

20 **ADV VAS SONI SC:** Oh, sorry March then Mthimkhulu adds nearly 9% to the price, at the – another three ...[indistinct] thirty five million. That brings it to nearly R4million, R4billion?

MR SACKS: That's correct, Chairperson.

ADV VAS SONI SC: Then, if this had gone through it

would have been another billion rand.

MR SACKS: That's correct, Chairperson.

ADV VAS SONI SC: Now what happened to that recommendation or that proposal?

MR SACKS: Chairperson the draft third addendum was presented to PRASA's legal department where it came to the attention of Fani Dingiswayo, the General Manager of Group Legal Services for PRASA. Mthimkhulu asked the legal department to consider and approve the terms of the
10 third addendum. PRASA's legal department raised a number of concerns with the third addendum and refused to be drawn into the approval process. The concerns included the absence of Ministerial and Board approval for the amendment which increased the price of a contract previously approved by the Board. As a result, Dingiswayo and his superior, Martha Ngoye, the Chief Executive Risk Legal and Compliance for PRASA were unlawfully and summarily dismissed by Montana. Montana accused
20 Dingiswayo of using his position as the General Manager of PRASA's Group Legal Services to the detriment of PRASA. Ngoye was dismissed for questioning and objecting to Montana's decision to summarily dismiss Dingiswayo and then in summary, the third addendum was not approved by the Board and it remains unsigned.

ADV VAS SONI SC: Again, when we talk about the Board

now, we heard evidence that Mr Dingiswayo and Ms Ngoye were dismissed while Mr Molefe's Board was in place because he then asked Mr Montana to re-instate them, which Mr Montana did but he then, summarily suspended. So I'm just saying, this refusal was by Mr Montana – I mean Mr Molefe's Board, not Mr Buthelezi's Board.

MR SACKS: That's correct, Chairperson.

ADV VAS SONI SC: Alright, then you deal with the technical deficiencies and this is a matter that was highly
10 publicised, well I certainly saw the interviews relating to it but can you just indicate what the concerns were about the technical specifications that these locomotives had.

MR SACKS: Chairperson - excuse me, Counsel, would you like me to read or shall I just summarise?

ADV VAS SONI SC: If you could just summarise.

MR SACKS: Ja. Chairperson, I guess that ultimately everyone – the narrative is like the train that were being too – that were too high which, as was explained, with regards to the gauge height that talks about - my
20 understanding, I am not an engineer, but my understanding and part of being the investigation, understood that that was the key problem but I also understood, there were multiple other technical aspects that were wrong.

I did not deal specifically with them, suffice to say that besides the trains being too high and a few other

technical issues, the trains did not meet the requirements.

And just one point, that from the documentation, it appears... I am sorry. I am on paragraph 11.5.1.4 at the top of page 878. Just to jump ahead, as counsel has asked me to, to summarise.

From the documentation it appears that the agreement to a specification of 4 140 millimetres, well-knowing that the vehicles structure gage was 3 966 millimetres was crucially dependent and clueless and
10 dishonest conduct.

So Chairperson, again, it is like I cannot talk to the technical deficiencies. My understanding was, there were many technical deficiencies but the one that I think that we all know about is that the trains were too high.

ADV VAS SONI SC: That Chairperson is also the finding of the Supreme Court and the High Court and the Supreme Court of Appeal. You might recall they were quite critical about Mr Montana and...

CHAIRPERSON: [No audible reply]

20 **ADV VAS SONI SC:** Okay so there is an argument about hybrid and diesel locomotives. Is it an issue that takes the matter further? This is ...[intervenes]

MR SACKS: I have just repeated what – about what Molefe's replying affidavit says Chairperson. I do not really have much knowledge on that.

ADV VAS SONI SC: Yes. Now you then deal with the contract between Swifambo and Vossloh. I take it, one of the reasons you deal with this is, is that in Swifambo's answering affidavit, it is – it did not depose the setting aside of the contract. It deposed the just and equitable remedy that PRASA that was asking, namely the contract be set aside and that it pay back the money.

And what Mr Massaro does in his affidavit is this. If you do that, we will be running at a total loss and will in fact become bankrupt. Is that more or less as you –
10 how you understood ...[intervenes]

MR SACKS: Yes.

ADV VAS SONI SC: ...the reasons that this issue was raised?

MR SACKS: Yes, Chairperson that is how I understand Massaro's contentions in his affidavit.

ADV VAS SONI SC: Okay. But will you just tell us. Looking at the figures – and you can read the necessary figures – what was Swifambo or what was PRASA paying
20 Swifambo and what was Swifambo paying Vossloh according to the two contracts?

MR SACKS: Chairperson, the contract between Swifambo and Vossloh get to the crux of – essentially what I was looking for in the flow of funds analysis.

PRASA was not – remember we are busy with

investigating PRASA. We are not privy to what the contractual relationship was between Swifambo and Vossloh. We were not aware as to what price Swifambo was procuring the trains. We just knew what PRASA had paid Swifambo.

Obviously, as the investigation of Swifambo the police unravelled what Swifambo did with the money. A crucial part of this whole investigation was: How much did Swifambo pay Vossloh? How much was their price? The
10 price of the contract between PRASA and Swifambo stated a price per locomotive.

It said the contract is R 2.5 billion but the price per locomotive was stated and I am... Please excuse if I lose you and counsel when I start talking Euros and Rands, but the price they were going to pay was... Let me just... Bear with me for one second.

ADV VAS SONI SC: Five point three, I think ...[intervenes]

MR SACKS: Three point eight two, two... 3.8 million
20 Euros. That is on paragraph 11.5.3.1. The purchase price per locomotive agreed to between PRASA and Swifambo was three point three million, eight hundred and twenty-two thousand nine hundred Euros for a total contract value of two and hundred and sixty-seven million six hundred and three thousand Euros for 70 locomotives.

Chairperson, one of the most, I guess, misleading aspects of the contract is, the contract says two-and-a-half billion but PRASA is actually paying in Euros. It was a Euro contract even though we talk about a Rand contract.

They essentially – that is the price that PRASA was paying. It was paying two hundred and sixty-seven million Euros subject to currency fluctuations.

Massaro in his affidavit finally revealed the
10 contractual relationship between Swifambo and Vossloh and that contract shows that Swifambo was procuring the locomotives for three million six hundred and fifty-seven thousand fifty-two Euros.

That is as I have detailed on paragraph 11.5.3 just above, for a total contract value of two hundred and fifty-five million nine hundred and ninety-three thousand six hundred and forty Euros.

So for approximate, for rough purposes, Swifambo was making a mark-up of two hundred thousand
20 Euros, give or take, per locomotive and that was it.

So they would – and as I say in paragraph 11.5.4:

“Accordingly, based on the contract PRASA, Swifambo would earn a margin of hundred and sixty-five thousand eight hundred and forty-

eight Euros per locomotive were eleven million six hundred and nine thousand two hundred and sixty Euros in total”.

This is on paragraph 11.5.4. That is how I – how the contract set out the money in PRASA is what – Swifambo is paying this for the locomotives and then they are going to receive that from PRASA.

So in total, if you convert to Rand – and it gets very confusing with the exchange rate because the Rand
10 was weakening tremendously on and around the time of this contract, but the contract sets out a Rand/Euro currency foreign exchange rate of R 10,18.

Using that as an indicator that PRASA – Swifambo was going to make R 118 million on this contract as I explained on the 11.5.5. I – the contract talks about deviations and the foreign exchange. I think the key takeaway is that PRASA was exposed to tremendous foreign exchange risk because the Rand was weakening.

But purely, the contract PRASA between
20 Swifambo and Vossloh explains that Vossloh was – Swifambo is paying 3.6 million Euros charging PRASA 3.8 million Euros. They are going to make about R 118 million/R 120 million for their work. Well, I am not sure what the work was but that is what they will make.

And that is a very, very important point that

needs to be read in context with the flow of funds because of the money that flows from PRASA to Swifambo, Swifambo to Vossloh and how much Swifambo actually made. What was the margin or the profit or however you want to call it, the cash that sets Swifambo... And we will get to that.

But that whole section as – and counsel, I hope I have explained it clearly enough.

ADV VAS SONI SC: Yes.

10 **MR SACKS:** That is really the gist of it. Finally we saw what Swifambo was making out of this contract and what they would pay for the locomotives.

ADV VAS SONI SC: Just one further point I want to make is. The fluctuation in the Rand/Euro rate is what led to the reduction from 88 to 70 locomotives. Is that...

MR SACKS: Chairperson, that is my understanding. The 3.5 billion was 70 times the prevailing exchange rate. However, the – funny enough, the contract is never updated. It still had the old exchange rate.

20 So on reading of the contract it actually made no sense. It was still pinned at R 10,18 and without going into too much detail. The exchange rate was already at R 13,00, give or take, when the contract was signed even though the contract said the exchange rate is R 10,18 and...

But for a very small portion of it, PRASA was exposed to that foreign exchange rate and I think as time went on and if the contract was not suspended and it was – the contract – PRASA performed, they would have paid significantly more than – or even R 5 billion if that was approved because of the weakening Rand because the contract was a Euro contract, it was never Rand. They were not paying Rand. They were taking on the exposure of the foreign – the Euro.

10 **ADV VAS SONI SC:** And I gather that from what you said and just correct me if I am wrong. What was important is R 3.5 billion to get how many locomotives? How many locomotives can be bought from R 3.5 billion, is what we will take. So if it eventually became 50 it did not matter. That was the issue.

MR SACKS: Ja, I... Counsel... Chairperson, there is some merit in that argument. I do not know what would have transpired because of how this contract was being managed based on what I could see in the representations
20 and doing the investigative work.

At some point, if we had to go down the line and say if it was not for the stop, what would have happened to that R 3.5 billion would have spent but maybe only 30 locomotives were being delivered and Swifambo...

This is all just assumptions. Possible to say:

Where is our money? But the fund – the well would have run dry. And then PRASA would have gone back, I guess, to Treasury and say: We need more money for that.

But again, we must not lose sight of the fact of the flow of funds, what the money that Swifambo received was actually used for at the time the contract – and that is what the key focus of my report would be.

ADV VAS SONI SC: Yes. So the point we need to highlight at this point is, that in terms of the contract, the
10 two contracts between PRASA and Swifambo on the one hand and then Swifambo and Vossloh on the other hand. That Vossloh, if all went according to those contracts, the amount that Swifambo would make is just a little more than R 118 million.

MR SACKS: That is correct.

ADV VAS SONI SC: Yes.

MR SACKS: And it is a very important number that.

ADV VAS SONI SC: Now then in urging the court not to set aside the contract and to require the parties to go back
20 to their original positions, Mr Massaro argues that they would effectively be making a loss and that is a matter you deal with in the affidavit but it does not affect the validity of the contract or the criminal conduct. You are just looking at the argument. Would that be correct?

MR SACKS: That is correct Chairperson.

ADV VAS SONI SC: And that is the reason Chairperson. I am not going to deal with that issue at all.

CHAIRPERSON: [No audible reply]

ADV VAS SONI SC: Then let us look at the document that or the table that appears at page 881. Oh, sorry that is in relation to what Mr Massaro said. Is that correct?

MR SACKS: Yes, that is correct.

ADV VAS SONI SC: So we need not even worry about that either. Chairperson, up to page 890 deals with that
10 issue. It is not something we are interested in because in any case a decision has been made on that.

CHAIRPERSON: Ja. No, that is fine.

ADV VAS SONI SC: It should be set aside. Now let us look at, really, what the nub of things are and I know it is late in the day, but the flow of funds. Starting at page 891
Mr Sacks.

MR SACKS: Chairperson, so this essentially where my findings start. Up until this point is, as counsel has explained, these are that the affidavits deal with and now
20 build the picture for the police now to say: Let us look at what happened with the money.

So I started out by first analysing the bank accounts that I had that is shown in Table 3. I have mentioned the two Swifambo key accounts, Swifambo Rail Holdings and Swifambo Rail Releasing.

Swifambo had two other bank accounts which in terms of flow of funds analysis in court and to perform a complete analysis but those other two accounts were not significant into the ultimate flow of funds out of Swifambo.

But when you do a forensic audit report, it is important that we have to be complete so that no question can be raised but what about that other bank account. I have included it. It is dealt with. And my findings and my conclusions are drawn from a collective pool of Swifambo money, again, including Swifambo Rail Holdings which was not a party to the contract with PRASA.

So the – I guess for – well I will just - the relevant points about these bank accounts which I do not want to jump around but just for your benefit Chairperson.

I deal really with introducing each account which – and I am on page 892, paragraph 12.3. I talk about the Swifambo Rail Holdings accounts and I explained that this account was utilised interchangeable with Swifambo Rail Leasing main operating accounts.

PRASA made two payments to this account, the period of which I had the bank receipts, the bank statements from the police when the first transaction in this account was on 1 January 2011. I deal with the first receipts from PRASA in April 2013, and just some of the information that I received. I received the opening

documents. The opening documents are important because it tells you who the signatories are on the bank accounts.

I do – going onto the next page, page 174, I do the same with ...[intervenes]

ADV VAS SONI SC: Page 893.

MR SACKS: Sorry, sorry, sorry. Page 893. There is a different reference at the top right corner.

ADV VAS SONI SC: Yes.

MR SACKS: It is page 893, paragraph 12.4. I talk about
10 the Swifambo Rail Leasing accounts and how the first transaction was on 9 January 2014. And the next Rail Leasing accounts which is the Money Market account and that is – the first transaction was 9 January 2014 as well.

So this is just – I am setting – Chairperson to summarise without going into too much detail, I am setting the scene to what these bank accounts are and these are the accounts I am going to analyse.

And that the police can understand say, okay, these are the accounts. Now let us go see what has
20 happened with them. And that takes to the section of pre-activity which is a very important aspect of the report.

ADV VAS SONI SC: Yes. Before you go there can I just ask you something that is intriguing me? Perhaps I should have asked you outside the evidence aspect. At Table 3, which is at page 891, you say the total inflows into the

Swifambo bank accounts was R 4.979 billion. How is that – it is something I have not been able to...

MR SACKS: Yes. Sorry, this is what we call a nuance of flow of funds analysis. The amount that counsel correctly points out, includes transfers between Swifambo accounts. So when I take all the bank accounts and I add up all the credits and all the debits or the inflows and outflows, it includes transfers to and from.

So the R 4.9 billion includes transfers from to
10 say Swifambo Rail Leasing to Swifambo Rail Holdings or
from current account to call account. That has to be
ignored because it is not a third party flow of in and a third
party flow out.

And I stipulate what the inter account transfers
are and I... Sorry, just bear with me, please counsel.

ADV VAS SONI SC: Okay.

MR SACKS: Counsel, this would be a good opportunity
just to introduce this diagram for the benefit of
...[intervenes]

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

MR SACKS: Because it much clearer over here. So to
this point, I just want to make sure we understand the
...[intervenes]

ADV VAS SONI SC: Chairperson, may I ask. Mr Sacks
has drawn up a poorly representation of what appears at

page 901 and 905.

CHAIRPERSON: H'm.

ADV VAS SONI SC: I am just going to hand that up because it may be a convenient point for Mr Sacks to indicate to you the inflows and the outflows.

CHAIRPERSON: Yes.

ADV VAS SONI SC: And it does not say anything except represent pictorially.

CHAIRPERSON: Ja.

10 **ADV VAS SONI SC:** And in different colours.

CHAIRPERSON: Yes. No, that is fine.

ADV VAS SONI SC: Money coming and so on.

CHAIRPERSON: That is fine.

ADV VAS SONI SC: It is helpful.

CHAIRPERSON: It might help.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Ja, h'm.

ADV VAS SONI SC: Yes. I do not know where you want to include it Chairperson?

20 **CHAIRPERSON:** Well, for now, I am happy to have it on the side.

ADV VAS SONI SC: Yes.

CHAIRPERSON: And then later on it can be placed in the right place in the file.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Ja.

ADV VAS SONI SC: Yes.

CHAIRPERSON: H'm. Okay?

ADV VAS SONI SC: Sorry. Yes, go ahead.

MR SACKS: So Chairperson, I have prepared these pictorial flow of funds purely for this Commission. Due to the volume and the big numbers it is just easier to see it in diagram format. So the first page talks about ...[indistinct] points counsel ...[intervenes]

10 **CHAIRPERSON:** Which ...[intervenes]

MR SACKS: ...total flows ...[intervenes]

CHAIRPERSON: Which one is the first page?

MR SACKS: The one that says ...[intervenes]

CHAIRPERSON: These two are not numbered?

MR SACKS: ...that says ...[intervenes]

CHAIRPERSON: What? Are you looking at these ones or...?

MR SACKS: Yes, that is...

CHAIRPERSON: Okay.

20 **MR SACKS:** It says Swifambo Flow of Funds Summary, at the top. It says Cash Inflows ...[intervenes]

CHAIRPERSON: Oh, that would be the first page?

MR SACKS: Yes.

CHAIRPERSON: Shall we mark it 1, like page 1?

ADV VAS SONI SC: Yes, we can Chairperson.

CHAIRPERSON: Of the two pages?

ADV VAS SONI SC: Yes.

CHAIRPERSON: So... Well, Mr Sacks I am allergic to any document that is not paginated, that does not have page numbers.

MR SACKS: Fair enough Chairperson.

CHAIRPERSON: So. Okay alright. Yes. So you say let us start with that page?

MR SACKS: Yes. Yes, Chairperson.

10 **CHAIRPERSON:** Okay.

MR SACKS: I simply want to refer to this document because the bottom of this page and the bottom left corner talks about the total receipts into the Swifambo bank accounts and it is R 2.7 billion, R 2.710 659 196,00. And you can see on the bottom left corner.

CHAIRPERSON: H'm? Are you at the bottom corner?

MR SACKS: Bottom left corner. Just total receipts ...[intervenes]

CHAIRPERSON: Look at this side ...[intervenes]

20 **MR SACKS:** Bottom... It is the other page. Sorry.

CHAIRPERSON: Oh, page 2?

MR SACKS: Ja, sorry.

CHAIRPERSON: Okay.

MR SACKS: Yes, that is it.

CHAIRPERSON: I must look somewhere here?

MR SACKS: Ja, bottom left corner.

CHAIRPERSON: Oh, okay.

MR SACKS: The total says, total receipts.

CHAIRPERSON: Yes, okay.

MR SACKS: Yes. Sorry for that confusion Chairperson.

CHAIRPERSON: So the – at the bottom left of page 2 of the two documents, it reads total receipts into Swifambo bank accounts, R 2.7 billion.

MR SACKS: Yes.

10 **CHAIRPERSON:** That is a round figure.

MR SACKS: Yes.

CHAIRPERSON: Yes. Okay?

MR SACKS: And then, on the other side of the same page, it says total payments of R 2.5 billion.

CHAIRPERSON: On the opposite ...[intervenes]

MR SACKS: Yes.

CHAIRPERSON: ...corner of the same page.

ADV VAS SONI SC: It is on the right hand side, yes.

MR SACKS: Yes.

20 **CHAIRPERSON:** It says total payments from Swifambo bank accounts. Obviously, that must mean going out.

MR SACKS: Yes.

CHAIRPERSON: Payments going out.

MR SACKS: Yes.

CHAIRPERSON: R 2.5 billion.

MR SACKS: Yes.

CHAIRPERSON: That is a round figure.

MR SACKS: Yes.

CHAIRPERSON: Okay. So less than a million would have remained with Swifambo?

MR SACKS: Yes.

CHAIRPERSON: Yes.

MR SACKS: There was a balance.

CHAIRPERSON: Ja, a balance.

10 **MR SACKS:** There was a balance, bank accounts.

CHAIRPERSON: Yes.

MR SACKS: In that point in time.

CHAIRPERSON: Yes. So definitely most of the amount went out?

MR SACKS: That is correct Chairperson.

CHAIRPERSON: Yes, yes.

MR SACKS: And the reason why I point to this document now is because it ignores these inter-account transfers. This is purely money coming in from third party sources.

20 Obviously, in the main from PRASA coming in, R 2.6 billion and then who received the money going out. And it ignores inter-company transfers, inter-account transfers because that is misleading to assessing utilisation of money.

CHAIRPERSON: So would it be an accurate statement to say for all intense and purposes the amount received from

– into Swifambo bank accounts was from PRASA?

MR SACKS: That is correct Chairperson. And that is a very important information.

CHAIRPERSON: Yes, yes, yes. And then – and Swifambo paid out to other entities or recipients?

MR SACKS: Yes.

CHAIRPERSON: Most of that money?

MR SACKS: Yes.

CHAIRPERSON: That would be an accurate statement?

10 **MR SACKS:** Yes. And that is what my report deals with, who these recipients are.

CHAIRPERSON: Yes. Ja, okay.

ADV VAS SONI SC: Let us... Is it a convenient time to deal with the details of this?

MR SACKS: I think ...[intervenes]

ADV VAS SONI SC: Or do you want to do something first?

MR SACKS: Chairperson, it might be valuable at this point just to talk about ...[intervenes]

ADV VAS SONI SC: Paragraph 13?

20 **MR SACKS:** Paragraph 13.

ADV VAS SONI SC: Yes.

MR SACKS: The activity.

ADV VAS SONI SC: That is page 896 Chairperson.

CHAIRPERSON: Maybe we could... I see it is about one minute to four, four o'clock. Maybe we could take the...

ADV VAS SONI SC: Yes.

CHAIRPERSON: Some adjournment.

ADV VAS SONI SC: Yes.

CHAIRPERSON: You have an estimate of how long we might still be?

ADV VAS SONI SC: Chairperson, unfortunately, is going to be beyond five o'clock Chairperson.

CHAIRPERSON: Yes.

ADV VAS SONI SC: I know you have a ...[intervenes]

10 **CHAIRPERSON:** No, no. That is fine but just to give me an idea. How much beyond do you think? Half-past five? Maybe more than that?

ADV VAS SONI SC: It will be more than that.

CHAIRPERSON: Okay alright.

ADV VAS SONI SC: There are many aspects ...[intervenes]

CHAIRPERSON: Yes.

ADV VAS SONI SC: ...that the Commission ought to be interested in ...[intervenes]

20 **CHAIRPERSON:** Ja.

ADV VAS SONI SC: ...from this. When I asked the liquidator ...[intervenes]

CHAIRPERSON: Ja.

ADV VAS SONI SC: ...because the - both of them are giving evidence on similar things.

CHAIRPERSON: Yes.

ADV VAS SONI SC: The liquidator preferred that Mr Sacks being a Forensic Investigator ...[intervenes]

CHAIRPERSON: Ja.

ADV VAS SONI SC: ...deals with even matters that were sent to him by Mr Mashaba.

CHAIRPERSON: Ja.

ADV VAS SONI SC: He is not a forensic investigator.

CHAIRPERSON: Yes, yes.

10 **ADV VAS SONI SC:** So it ...[intervenes]

CHAIRPERSON: No, that is fine.

ADV VAS SONI SC: It will be longer. But the liquidator will be – once Mr Sacks has set the platform ...[intervenes]

CHAIRPERSON: Yes.

ADV VAS SONI SC: ...the liquidator would be...

CHAIRPERSON: Ja.

ADV VAS SONI SC: It would flow very quickly about the...

CHAIRPERSON: You know, what I am thinking is. We have the evening session.

20 **ADV VAS SONI SC:** Yes.

CHAIRPERSON: It may well be – I think the evening witness, it is estimated that she would take about two hours if I am not mistaken.

ADV VAS SONI SC: Yes, Chair.

CHAIRPERSON: And I am thinking that if Mr Sacks is

available, maybe we could go up to a certain point and then tomorrow morning we could continue before the liquidator.

ADV VAS SONI SC: Yes, yes.

CHAIRPERSON: In terms of the time that you think the liquidator will take, what is your assessment?

ADV VAS SONI SC: I do not think more than an hour and a half Chairperson.

CHAIRPERSON: Okay. So Mr Sacks might be needing
10 about two to three hours?

ADV VAS SONI SC: At least Chair.

CHAIRPERSON: At least?

ADV VAS SONI SC: Yes.

CHAIRPERSON: So I think if that is so, I think maybe we should go up to five.

ADV VAS SONI SC: Yes.

CHAIRPERSON: And then I am assuming he is available for us tomorrow. If he is available tomorrow then we can adjourn his evidence until tomorrow morning. Then we
20 start with him tomorrow morning. So I can do the evening witness and finish with that. And then we continue with him tomorrow. After he has finished, the liquidator can come.

ADV VAS SONI SC: Yes, the liquidator...

CHAIRPERSON: Mr Sacks, would that work for you? How

is your availability?

MR SACKS: I will make myself available Chair.

CHAIRPERSON: You will make yourself available. Thank you very much. Okay let us take a ten minutes' adjournment and then we continue with Mr Sacks' evidence until five.

ADV VAS SONI SC: Yes, Chair.

CHAIRPERSON: Okay we adjourn.

INQUIRY ADJOURNS

10 **INQUIRY RESUMES**

CHAIRPERSON: Okay, let us continue.

ADV VAS SONI SC: As you please, Chairperson. Mr Sacks, we were at page 896 and you were dealing with this topic of the pre-activities in the Swifambo bank account. Before we deal with the details, why do you regard these pre-activities as important?

20 **MR SACKS:** Chairperson, why I believe these pre-activities are important is because it confirms from a banking account point of view that Swifambo had no business activities prior to this leading up to the receipt of money from PRASA. So the allegations that it was a fronting entity is confirmed by its bank accounts, there was – as you yourself, Chairperson, you alluded to well, there is nothing in the bank account but R60, there was nothing in these account of substance, small deposits coming in

from linked individuals who received money, putting money in to pay for rent, to pay for furnishings and so forth, but the key takeaway is that there was no activity in these accounts and the first significant activity was the first receipt from PRASA into Swifambo Rail Holdings bank account and that summarises that section of this pre-activity.

ADV VAS SONI SC: But it reinforces a point you made much earlier that they had no experience in the rail
10 industry.

MR SACKS: Yes, it correlates with that, subject to, of course, Chairperson, if they had other bank accounts somewhere else but I think the investigation had already concluded or would have concluded that these were the bank accounts for Swifambo, there was no other bank accounts, no other activity but these accounts.

CHAIRPERSON: At the time was bidding, by the way, did they say they would rely on was it Sponge(?) company?

ADV VAS SONI SC: Vossloh.

20 **CHAIRPERSON:** Vossloh. Did they say they would rely on Vossloh for experience or expertise?

MR SACKS: I think that can be taken as a fact that they were relying on Vossloh.

CHAIRPERSON: Yes, yes.

MR SACKS: It was ...[intervenes]

CHAIRPERSON: There was no contract between them and Vossloh at that time, the contract came much later.

MR SACKS: Yes, yes, the contract – the actual contract came July 2013 when the contract between PRASA and Swifambo was March 2013.

CHAIRPERSON: Yes, yes, yes. Therefore, purely on that ground they should not have been given the job because there was no contract between them and Vossloh.

MR SACKS: My understanding, Chairperson, that was the
10 SCA confirmed that.

CHAIRPERSON: Yes. But again, Mr Soni, one keeps on referring to other transactions that the Commission has heard because also in regard to – with regard to the asbestos project, the joint venture did not have – a joint venture of Mr Sodi and Mr Mpambani did not have the expertise or qualifications or experience of removing asbestos which was the core job function that they were given the contract for.

ADV VAS SONI SC: Yes.

20 **CHAIRPERSON:** So you have here Swifambo who gets given a big job worth billions of rands but they do not have the expertise, they do not have any track record and they get given. Swifambo, Mr Sodi – I mean Mr Sodi and Mr Mpambani's venture and Mr Sodi conceded that in terms of legislation to remove asbestos from the roofs of the houses

you need a certain qualification which they did not have.

ADV VAS SONI SC: Yes.

CHAIRPERSON: So you ask yourself the question again – I mean, in regard to that one I asked the question whoever in the department decided to give them this must have known that this was a requirement.

ADV VAS SONI SC: Absolutely.

CHAIRPERSON: How did they not check whether that joint venture had the qualifications and the skills to do the
10 job.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Here too you ask the same question.

ADV VAS SONI SC: Absolutely.

CHAIRPERSON: Whoever made the decision at PRASA, how did they give this contract to Swifambo who had no experience, no track record and to the extent that they relied on Vossloh and said Vossloh would bring the expertise, that person made the decision to give Swifambo the job without saying where is the contract between you
20 and Vossloh to the extent that that could be accepted. But, of course, the question arises, if you do not have the expertise and the qualifications, why should you be given the job? Why should it not be the person who has the qualifications and the expertise who bids for the job? So these issues arise in regard – one can see some parallels.

ADV VAS SONI SC: Yes, yes.

CHAIRPERSON: Okay, alright.

ADV VAS SONI SC: And of course, Chairperson, if I may just point out, that our constitution presents one of the fairest mechanisms with the distribution of government work or state work and yet we see it time and again being totally ignored.

CHAIRPERSON: Yes. Yes.

ADV VAS SONI SC: And it something for the people of the
10 country that needs to stop because we are now in the situation in 2013 we have paid this money and we still do not have the locomotives. Our people still have to use taxis, our people still have to use buses, use old trains. This cannot be fair to them, Chairperson.

CHAIRPERSON: I mean this thing spreads all over because under the Transnet work stream you had entities such as the entity called Homix which was given money when they did no work of any substance, some words were used to say what they would do but in substance there was
20 nothing, they just were paid money. So it spreads all over.

ADV VAS SONI SC: Yes, yes.

CHAIRPERSON: I am sure under Eskom similar things were found also.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Okay, alright.

ADV VAS SONI SC: Mr Sacks, you were saying that these – the importance of the pre-activity, the prior activities on the bank accounts are important. Could you just briefly summarise what those are? We do not need them in detail, they are from 13.1 to 13.2 and then you summarise them in 13.3.

MR SACKS: Yes. Chairperson, in 13.1 I deal with the pre-activity in Swifambo Rail Leasing Standard Bank account. This was the bank account that was noted in the
10 contract that PRASA was to pay in terms of the contract with Swifambo and I know it is that – even though the
count was operational from 1 January 2012 there is
evidently no transactional or operational activity in this
account except for bank charges and insignificant receipts
with description Musa, which could refer to Musa Capital, a
company linked to Cynthia Parish, who was a director of
Swifambo.

The first significant transaction or activity occurred with the second receipt from PRASA in the amount of R64
20 million on 8 December 2013. So even though the account was opened on 1 January 2012 which on or around the time that Swifambo as an entity was formed, give or take months here or there, there was no activity in this account until two years later when it received a second PRASA payment. It never received the first one, as it should have,

so for two years there was no activity in this bank account again which supports the contention that it was not a trading entity.

The Swifambo Rail Holdings bank account, I also looked at that bank account and that bank account was opened on the 1 January 2011 and between the periods 1 January 2011 and 5 April 2013 – so we are looking at roughly a two year period where 5 April 2013 was when it received PRASA's first payment of R460 million. There
10 was receipts in that account totalling just over R1 million. So over a two year period it had received R1 million and the receipts had a description Siyaya Rail Solutions and as we explored earlier, Siyaya as a group of companies, S Group is linked to Makhensa Mabunda and Vossloh themselves, there were receipts coming into the bank account with the description Vossloh SA and Vossloh Track had paid money into this bank account.

ADV VAS SONI SC: Sorry, can I just stop you there? The contract between Vossloh and Swifambo was in July 2013,
20 is that right?

MR SACKS: That is correct.

ADV VAS SONI SC: These amounts that Vossloh deposited, remember – and I am just making this point, that it was Swifambo who was to pay Vossloh because Vossloh was manufacturing the locomotives. Were these

amounts received in Swifambo's account before the contract?

MR SACKS: Yes, that is correct.

ADV VAS SONI SC: So effectively Vossloh was funding Swifambo's existence prior to Swifambo's receiving money from PRASA.

MR SACKS: Existence or to use another word, Chairperson, to set up Swifambo.

ADV VAS SONI SC: Yes.

- 10 **MR SACKS:** And Chairperson then on the next page, the top of your page 898 in paragraph 13.2.5 I assess how that money was utilised and as I stated R1 million comes in. essentially, R1 million goes out with the description Growthpoint Properties, your 17 payments and Growthpoint – I think it is common cause Growthpoint is one of the listed property companies, so it was obviously the landlord for this office, they received R368 000 and payments with the description Delacovias Interior, ostensibly for office furnishings, R276 000 and then two payments to M S R
- 20 Mabunda which indicates payments to Makhensa Mabunda for R250 000.

So the takeaway from all of this analysis is there was no trade in these companies. Swifambo Rail Leasing itself had no money flowing through it until PRASA paid its second payment in and Swifambo Rail Holdings had no

activity in it but for the funding of rent and furnishings to set up a company which was funded for related parties – I use the word in conversational sense, Vossloh and Siyaya Rail Solutions and that leads up to where now PRASA pays money into the bank account of Swifambo, 460 million.

ADV VAS SONI SC: And then at 13.3.2 you say something about what these activities confirm.

MR SACKS: Chairperson, I state that in 13.3.2:

10 “Therefore the bank accounts confirm that Swifambo was a company set up for the locomotive tender with PRASA.

ADV VAS SONI SC: I see you do not say for the providing of locomotives.

MR SACKS: It was draft report, Chairperson, maybe...

ADV VAS SONI SC: No, no, no, I am just saying well-said, yes.

MR SACKS: Ja, ja. Yes, yes, I take your point.

ADV VAS SONI SC: And then at 13.3.3 the point you made earlier that the start-up costs were being paid by Mabunda,
20 Vossloh and Musa Capital, that is Ms Parish.

MR SACKS: That is correct, Chairperson.

ADV VAS SONI SC: Alright. Now let us get to the real heart of the issue, the flow of funds analysis. Again, level one is inflows analysis, is that correct?

MR SACKS: That is correct, Chairperson.

ADV VAS SONI SC: Okay. Now is this a good time to talk to the pictorial representation because, as I understand it, what you say in paragraph 14 is in effect what is set out in table 4.

MR SACKS: That is correct, Chairperson, the report just deal with a bit of preamble, some forensic technicalities, just to qualify, you know, how the – the analysis that I did but it is not relevant to the findings and counsel is correct, when we get to 14.2 we now get to what I included, a table,
10 what I call table 4 on paragraph 14.2 which summarises the in and outflows which essentially is shown per pictorial diagram which we discussed prior to the adjournment or the break.

ADV VAS SONI SC: It may be easier, and I am just suggesting, to deal with the pictorial representation because in a way it consolidates the individual entries on table 4 and it puts it out nicely so we do not have to do the sums again.

MR SACKS: Yes.

20 **ADV VAS SONI SC:** Would that be a convenient way to deal with that?

MR SACKS: Chairperson, it just – the pictorial one, the pictorial diagram is a highlight of key transactions. What the report actually also deals with is – Chairperson, in a bank statement there is descriptions showing money is

coming in and money is going out and what we are aiming to achieve in a flow of funds analysis is to identify descriptions that have the same description and total them up and say okay, well - for example, when you see PRASA money coming in, it might not say PRASA, PRASA, PRASA, PRASA, it will say PRASA with some code or Umjanji(?) or PRASA Crest or something. What we do is, we take all of those and say well, that is PRASA, we know that is PRASA, or categorise that PRASA, that is R2.6 billion. We do
10 something similar with all the outflows and we look for all the connecting transactions. That is the first part.

Obviously, the second part is to confirm our view on that that is the recipient of money. In my experience, as an expert, more often than not the description actually is the beneficiary. So when, for example, it says Vossloh, Vossloh received the money. Where it says Mashaba, Mashaba received the money. In certain instances I guess in an example of a forensic investigation where someone is trying to conceal a payment. No one is trying to conceal
20 payments over here because the perpetrator or the controllers of this bank account are the people who are making the payments but if you can think, Chairperson, in a company where you have a bookkeeper. A bookkeeper might put a different description to where the money actually went and in a criminal investigation would have to

go and prove that that was a concealment and who actually received the money in this case, at all times, with information that is available to me, these descriptions, as we will talk to, were actually the recipients, so – I mean, just there where it says AM Consulting Engineers, without looking at the documents, AMC Consulting Engineers which is a company controlled by Mashaba, AM Consulting Engineers did receive the money. When it says M S R Mabunda, M S R Mabunda bank account did receive the
10 money but with that knowledge in mind, we talk to now what the flow of funds actually shows.

ADV VAS SONI SC: Alright, let us look at the – as you said, the pictorial representation is highlights of what is contained in table 4, would that be correct?

MR SACKS: That is correct, Chairperson.

ADV VAS SONI SC: Right, let us start with the first one. Well, let us start with the inflows, that is R2,65 billion from PRASA to Swifambo, that is Swifambo Leasing and Holdings.

20 **MR SACKS:** That is correct.

ADV VAS SONI SC: And then you say there are the other inflows of about R60,45 million.

MR SACKS: That is correct.

ADV VAS SONI SC: Are any of them of any significance, those inflows?

MR SACKS: The inflows, Chairperson, of R60 million there, R38 million alone has the description SARS ...[intervenes]

CHAIRPERSON: I am sorry, Mr Sacks and Mr Soni, you are ahead of me, I was checking something at page 901 while you were moving on.

ADV VAS SONI SC: Yes, I thought you were and we are going to come to it.

CHAIRPERSON: So I am sorry to take you back. If you
10 want to go back and – ja.

ADV VAS SONI SC: We were looking at the pictorial representation.

CHAIRPERSON: Yes.

ADV VAS SONI SC: I think it is your second page.

CHAIRPERSON: Yes.

ADV VAS SONI SC: The one that says Swifambo flow of funds.

CHAIRPERSON: Yes.

ADV VAS SONI SC: Now I was asking Mr Sacks about the
20 first amount reflected on the left hand side that went into the Swifambo bank accounts.

CHAIRPERSON: And that is the 2.6 around about – I mean the round figure.

ADV VAS SONI SC: That is right, yes.

CHAIRPERSON: Yes.

ADV VAS SONI SC: So that is the amount from SARS – I am sorry, from PRASA.

CHAIRPERSON: PRASA, yes.

ADV VAS SONI SC: Chairperson, I just want to make one point if you have not missed it, it is okay. These amounts are to both Holdings and Leasing and then I was asking Mr Sacks about the R60,4 million reflected under that as further inflows into Swifambo and asking Mr Sacks is there any significance in any of the inflows. That is the question
10 he was answering.

CHAIRPERSON: Okay, okay.

MR SACKS: Chairperson, there is no significance in these inflows. The largest inflow is an amount of R38 million which had a description SARS VAT. So I would assume subject to confirmation that it was a VAT refund of sorts, but no, there is no other significant inflows.

ADV VAS SONI SC: Alright. Then we can go to the right hand side and when you - if you want to point out which number where precisely it is you can do that. But I mean,
20 some of it is obvious. When you say the first big recipient, I am not saying amount, was Vossloh. How many – are there many entries here on Vossloh? I see two.

MR SACKS: Chairperson, I am sorry to – we need to look at the pictorial diagram and then ...[intervenes]

CHAIRPERSON: I have it in front of me.

MR SACKS: Yes and then there is that table on page 901 which is the source information and I think counsel is referring to that but it says Vossloh received R1.8 billion and that is shown on that table. There were six transactions totalling R1.8 billion and that is how it flows but without losing sight or losing between the detail, Vossloh received R1.8 billion.

ADV VAS SONI SC: Okay. It was the major recipient.

MR SACKS: Yes.

10 **ADV VAS SONI SC:** Now this is out of the R2,6 billion.

MR SACKS: Yes, that is correct.

ADV VAS SONI SC: So we are looking ...[intervenes]

CHAIRPERSON: I am sorry, on the two pages, page 2, I am looking for any money that went from Swifambo to Vossloh. I do not see anything is that because there is nothing or I just have not looked closely enough?

ADV VAS SONI SC: No, Chairperson, I think you have got the pages inverted, it is the document Swifambo Flow of Funds.

20 **CHAIRPERSON:** Yes, that is page 2, for me.

ADV VAS SONI SC: Yes, yes. And you will see it is the first one right on the top.

CHAIRPERSON: Oh, oh, I think the problem is that the rest of the recipients are written in black, it is written in ...[intervenes]

MR SACKS: Yes, in red.

CHAIRPERSON: Ja, it is not easy to see it. Okay, now I see, okay.

ADV VAS SONI SC: Now just on that – that is the total amount they received. Let us put it at R1,9 billion, 1,87. Swifambo received R2,65 billion. Remember I said to you we must make a note that Mr Massero says their profit is 119 million.

MR SACKS: Yes, that is correct.

10 **ADV VAS SONI SC:** But I mean this would suggest something quite different.

MR SACKS: That is – Chairperson, that is point I said why it is so important, that R118 million profit that Swifambo ought to have made from this contract, the difference between the Euro PRASA they had paid for the – procured the locomotives and PRASA paid. They charged PRASA for the locomotive and without getting ahead of ourselves, when we – as counsel is pointing to, PRASA has paid 2.6 billion, they have paid 1.9 billion to Vossloh, you are
20 leaving R700 million and that – we look at that 700 million, it starts to reveal, reveals all as to well, where did the money go? It never went to Vossloh, so where was this money – where was – just in the first batch of 2.6 billion, where was it going? And that is what I have drawn conclusions on, on this one page diagram which

summarises, my report details the actual - [indistinct] 26.16 as you see the transactions, this one pager is good for information purposes but they want to know, okay, where did they – my report shows all the different payments, the dates, the descriptions, the amounts and that is on the remaining pages as well as saying who those banks – the companies that received, who the signatories are on those bank accounts. If it is a company, who the directors are of those companies, which counsel I guess
10 would get to but the overriding point, we are dealing now with R700 million difference between what PRASA paid and what Vossloh received.

ADV VAS SONI SC: Chairperson, you might remember I said that the amount of 119, in fact if I could just point out to you at page 879, Mr Sacks emphasises this. When he was dealing paragraph 11.55 he made the point that purely looking at the contracts the allegation is that Swifambo would be making a profit of R118 million but as Mr Sacks is now pointing out that it is actually R700 million and not the
20 profit but certainly it paid R700 million less than it received from PRASA.

CHAIRPERSON: Does that mean that there should be any amendment of that R118 million there or not really at page 879?

MR SACKS: Excuse me, 879.

CHAIRPERSON: Ja, Mr Soni just drew my attention to the fact that at 879 you said that Swifambo would contractually earn a profit of 118 million.

MR SACKS: Yes.

CHAIRPERSON: Right? But as it turned out, it seems it was about 700 million?

MR SACKS: I think is a good point to right now, Chairperson, is to just to elaborate on that.

CHAIRPERSON: Ja.

10 **MR SACKS:** This is really an important point. We will go into the flow of funds. The analysis shows that Swifambo spent more than it ought to have earned as a profit, so their profit, as we have as data, should have been on or around R118 million.

CHAIRPERSON: Ja, that is what I should have been.

MR SACKS: That is what – for the two or three year contract.

CHAIRPERSON: Ja.

20 **MR SACKS:** That they had signed at PRASA and that is it, for whatever work they were going to do which has been established by the SCA was not much, they only get R118 million and the bulk of it being the rest of the Euro contract will go to Vossloh.

The analysis shows that – now we are looking at R700 million and let us just talk without getting into

numbers. Swifambo paid SARS R230-odd million.

We assume that those payments had some sort of legitimacy, maybe for VAT purposes. I have not seen documentation, I do not know what it is, I think the liquidator might be able to talk more because they have the records.

Then we are sitting with R460-odd million and that is really the number that we are looking at, R460 million. We know Sibenza, for example, received R99 million. We have
10 spoken about – there could have been some commercial rationale, so even if we take off Sibenza R99million you're dealing with R330million. That R330million is greatly higher than the profits that they should have made, and as the analysis will show a lot of that money was actually paid out even before Swifambo was paid their first payments.

So in other words in summary Swifambo was taking all its profits, and more than it was entitled to, up front, by taking means it was paying other recipients and those recipients are detailed in the report, and if Counsel will
20 allow me to, Mashaba, Mabunda, Mashebe, Accountant Landgrebe, various firms of attorneys which I understand were conduits, whether they knew or didn't know what the money was from and I what I am just saying is that regardless of who received the money it is a glaring efficiency in this whole contract of R180million profit but so

much over and above that was paid and then at a point in time PRASA go back to the Board and say well we're short of money because we don't have enough to pay but that money should have been paid at the very least to Vossloh, whether Vossloh was making the right trains or not, AFRO3000, AFRO4000, the money should have gone to them as Massara claims that we don't have enough money to pay Swifambo, we are short paying them but we need R400million, that is essentially that was in the affidavits, 10 they could have paid it, but they preferred themselves, they preferred to pay all these other people, direct linked people, not just the directors, Mashabas, Mabundas and so forth, and that is what the analysis showed and that is what I was saying to the police.

The investigation once it had been completed we have confirmed all these allegations, remember these are just allegations and suspicions, we are looking at the money, but the one conclusion you can most certainly draw is that Swifambo spent more money than they were entitled 20 to, they profited significantly more than they were entitled to, so not only R118million. By the time the contract was suspended it was already sitting at R330million over and above the fruitless and wasteful expenditure and I am not an expert on the PFMA, of spending money on locomotives that are not suitable, that is a separate point completely.

Now we are looking at for lack of a better word theft of money, of PRASA's money, but I don't want to – I am not the judge or jury, but that's what I was trying to get across in the report.

CHAIRPERSON: Yes, does it look like in a sense Swifambo may have taken money that contractually between itself and Vossloh should have gone to Vossloh or does it look like Swifambo took the additional money from PRASA that PRASA should not have paid in terms of the
10 contract? I mean we can see what was happening here, but you wonder if they were supposed to make R118million and suddenly they make R300million or whatever who has been robbed, you want to ask that question.

MR SACKS: I think we can conclusively say it was PRASA.

CHAIRPERSON: Yes.

MR SACKS: Because Vossloh would have not have produced those locomotives if they didn't get paid everything it was entitled to.

20 **CHAIRPERSON:** Ja, ja.

MR SACKS: And I guess we never reached that point because we were stopped.

CHAIRPERSON: Ja, ja, okay. Mr Soni?

ADV VAS SONI SC: As you please Chairperson. The first person, I mean the first entity on the list is Vossloh

and if one looks at the table at page 901 we will just – it is there, right. Then the next person and entities is Mashaba with 102 or nearly R103million, is that correct?

MR SACKS: That is correct Chair.

ADV VAS SONI SC: Now you list in table 4 all the specific transactions that were made to Mashaba or its entities?

MR SACKS: That is correct Chairperson.

ADV VAS SONI SC: Alright, then the next main beneficiary was Mabunda.

10 **MR SACKS:** That is correct Chairperson.

ADV VAS SONI SC: And sorry ja, and he benefitted to the tune of R54,6million.

MR SACKS: That is correct Chairperson.

ADV VAS SONI SC: We will come back to any other benefits Mr Mabunda has received because I think later in your report you say he also received R75million directly from Vossloh.

MR SACKS: That is correct Chairperson.

20 **ADV VAS SONI SC:** Then there is the – it is Ms Mashebe?

MR SACKS: Chairperson I assume you pronounce Mashebe.

ADV VAS SONI SC: Yes but I say it is Ms, it is Miss?

MR SACKS: Chairperson I don't, I am not sure, I have met this person, it Makhosini Daniel Mashebe.

ADV VAS SONI SC: Oh so it looks like it is Mister.

MR SACKS: Chairperson I am not sure.

ADV VAS SONI SC: Alright, then Sibenzo Forwarding that is for the shipping costs and so on. They were the recipients of Ninety Nine odd million Rand.

MR SACKS: That is correct Chairperson.

ADV VAS SONI SC: Then there is ...[intervenes]

CHAIRPERSON: I see you have got the spelling for Sifiso wrong there, Buthelezi, it should be S-i-f-i-s-o, you have
10 got Siphiso.

MR SACKS: Chairperson you are 100% correct, in the body of the report it is spelt correctly, on finalisation this would have been picked up.

CHAIRPERSON: Ja, okay, okay.

MR SACKS: Thank you.

ADV VAS SONI SC: Then the next big recipient is Mr Landgrebe.

MR SACKS: That is correct Chairperson.

ADV VAS SONI SC: What services, or what is his link to
20 Mashaba, Mabunda and so on? His name appears quite often, you know just so that we have, keep the ...[indistinct] in place.

MR SACKS: If I may Chairperson refer to my report, just to answer this question.

ADV VAS SONI SC: Obviously you do deal with it.

MR SACKS: Yes, I would like to summarise Chairperson this – W K H Landgrebe it appears to be an auditing firm and W K H Landgrebe were the registered auditors of Swifambo Rail Leasing and so at this stage of the investigation I wasn't 100% sure who W K H Landgrebe but for them being auditors, not only of Swifambo Rail Leasing but other entities who received money as well, which my report deals with, so without convoluting I am not sure which auditing firm receives R27million and that was
10 definitely an area of further investigation.

ADV VAS SONI SC: Yes, yes, and some of them were quite large sums, and if I remember – and you deal with it in your report, I think one was for about R10million in one ...[intervenes]

MR SACKS: One individual payment, that is correct Chairperson.

ADV VAS SONI SC: And then there's Cynthia Parish who receives twenty odd million Rand.

MR SACKS: Yes in Musa Capital Chairperson.

20 **ADV VAS SONI SC:** Right and then there's Inkhosi Sibelo he is an attorney whose name features again later, is that correct?

MR SACKS: That's correct Chairperson.

ADV VAS SONI SC: Then of course SARS is a beneficiary as well or SARS received Two hundred and thirty seven

odd million.

MR SACKS: That is correct Chairperson.

ADV VAS SONI SC: Now those are the main recipients of money as set out in table 4 but before we leave that and I ask you and any other persons may I refer you to just after the SARS VAT refund of R38million there is a foundation which receives money. What foundation was that?

MR SACKS: Chairperson the description in the bank statement said Jacob Zuma Foundation one payment for
10 R150 000.

ADV VAS SONI SC: And then later on towards the end, about four or five entities from the end an entity called SANCO and what is the amount that they received?

MR SACKS: Chairperson there was a description in the bank statement called SANCO one payment for R500 000.

ADV VAS SONI SC: Are you able to confirm that it was received by – that that amount was received by SANCO?

MR SACKS: Not at the stage I did my report Chairperson.

ADV VAS SONI SC: Now there is just one other matter
20 that you may not have information on, but there's an amount of R5million paid to Sterlings Living, do you see that, it is in fact the second last ...[intervenes]

MR SACKS: I see that.

ADV VAS SONI SC: Yes, now the liquidator, and he will give evidence on it, but I am just telling you so you know

what the overall picture looks like, the liquidator says Sterling Livings did renovations or built a kitchen in a house for Mr Mabunda for that amount. That is what was revealed in a consultation held between us and the liquidator, but he will come and talk about it, and it is interestingly how they were able to locate how it happened and so on, but those are not small sums of money.

MR SACKS: I would like a kitchen for R5million Chairperson.

10 **ADV VAS SONI SC:** I would like a house for R5million. But is there anything in regard to table 4 Mr Sacks that you would like to add to – we have dealt with some of these matters?

MR SACKS: Not at this stage Chairperson, I think what's pertinent is as I have discussed the overall picture and then who the key beneficiaries of recipients of money was, which is dealt with subsequent to Table 4.

ADV VAS SONI SC: Yes. We may want to – we may deal with some of these persons because in his notes to his
20 latest CM100 Mr Mashaba challenges some of these payments made by Swifambo obviously, but he challenges the validity of these payments. It would have been an interesting issue Chairperson where a person on oath says that there was no value for money, I don't know what it was for, but he was the CEO of the company that made those

payments.

Incidentally Chairperson I will just point this out, he challenges the payments made to Mr Mabunda in note to his CM100 saying that Mabunda added no value, he doesn't know why Mabunda was paid, but we will deal with those details as he sets them out in his notes to the CM100.

Alright and then can I just ask you ...[intervenes]

CHAIRPERSON: Sorry, I am just thinking Mr Soni that in
10 the light of Mr Mashaba's failure or refusal to comply with the summons and appear before the Commission to explain some of the matters relating to the Swifambo contract it may well be that at some stage, maybe tomorrow, if the situation doesn't permit tomorrow maybe sometime next week, it might be important that you outline here in public the issues that he was supposed to explain.

ADV VAS SONI SC: Yes, yes.

CHAIRPERSON: Let the public know.

ADV VAS SONI SC: Indeed Chairperson.

20 **CHAIRPERSON:** Which is also what Mr Pretorius did when Mr Zuma did not appear on Monday last week, let the public know exactly what the issues are and the questions that – some of the questions that ...[intervenes]

ADV VAS SONI SC: That we would have asked.

CHAIRPERSON: Ja, he would have had to answer, and he

is running away from answering.

ADV VAS SONI SC: Absolutely, as you please Chair.

CHAIRPERSON: Ja, okay.

ADV VAS SONI SC: Mr Chairperson one of the problems I have been having, and I know we have run Mr Sacks' evidence for a whole day, but it just seemed to me that the details contained in Mr Sacks' affidavit or his report, ought to be known to the public, like for example that in respect of a contract or transport R5million is spent on a kitchen, it
10 is so vital for the public to know and hopefully our leaders will start saying but action must be taken now, tonight.

CHAIRPERSON: No, no it is very important because part of the purpose for this Commission is for the public to know what was happening, who did what, and if money was – taxpayers' money was taken what was it taken for.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Who benefitted from it, who took the money and what did they do with it, if we have got that evidence.

20 **ADV VAS SONI SC:** And Chairperson, if I may add because this is what I am going to conclude when I finish with Mr Sacks' evidence, what law enforcement officials knew and the inaction for a period of four years.

CHAIRPERSON: Yes.

ADV VAS SONI SC: Nearly four years as you pointed out

earlier today.

CHAIRPERSON: Actually talking about that I do want the Hawks to tell me what is happening, I have said so before in relation to PRASA matters. At a certain stage I was under the impression that the Commission would get an affidavit from somebody within the Hawks who would explain, but I am not aware that the Commission has received such an affidavit.

ADV VAS SONI SC: No, no.

10 **CHAIRPERSON:** But it is important that there be an account of what's happened because the complaints has been made, the allegations have been made that some law enforcement agencies were weakened or some of the people within those law enforcement agencies aided and abetted state capture and aided and abetted corruption, and when they were supposed to take action did not take action.

Of course it may well be that what appears to be inexplicable to us may be they will come and explain and
20 we can understand, maybe it is issues of capacity I don't know but it cannot be left unexplained, so that will be very important.

I mean the – when Mr Molefe gave evidence here, I don't know whether for the first time whether it was 2020 or 2019 he mentioned ...[intervenes]

ADV VAS SONI SC: Early 2020.

CHAIRPERSON: Ja, he mentioned already that there had been inaction for quite some time while his Board was still in office, that is why they had to bring an application to Court and instead of the Hawks dealing with the substance they took some technical point to oppose. Now if so many years later still nothing has been done the Hawks owe the country an explanation.

ADV VAS SONI SC: Indeed.

10 **CHAIRPERSON:** As to exactly what is going on and so it is very important so I would like that be looked into but it has got to be explained.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Because if this inaction is connected with the weakening of law enforcement agencies or the aiding and abetting of those who were pursuing the agenda of state capture then the Commission wants to know exactly what happened.

ADV VAS SONI SC: Yes.

20 **CHAIRPERSON:** And why it has taken so long.

ADV VAS SONI SC: Indeed.

CHAIRPERSON: Okay, alright. I guess we are at five past five, I think we should stop and then tomorrow we can start at ten because it looks like there will be enough time?

ADV VAS SONI SC: Yes.

CHAIRPERSON: We can start at ten. Thank you very much Mr Sacks for availing yourself also tomorrow.

MR SACKS: Thank you Chair.

CHAIRPERSON: So that we can finish, thank you very much. So I will adjourn the hearing of your evidence and then I will take an adjournment and then I will come back for the evening session which will relate to the Parliamentary Oversight work stream, I should be hearing the evidence of Ms Letsatsi-Duba in relation to that work stream.

10

I will adjourn for about ten minutes. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Good afternoon Mr Freund. Good afternoon everybody.

ADV FREUND SC: Good afternoon Chair.

MS LETSATSI-DUBA: Good afternoon Chair.

CHAIRPERSON: Good afternoon Ms Letsatsi-Duba.

20 **MS LETSATSI-DUBA:** Good afternoon Chair.

CHAIRPERSON: Yes, thank you very much for availing yourself to assist the Commission.

MS LETSATSI-DUBA: Thank you.

CHAIRPERSON: Yes. Mr Freund?

ADV FREUND SC: Chair, there is only one witness whose

evidence we would ask you to hear this afternoon, Ms Letsatsi-Duba. You will recall there was a set of affidavits furnished by the African National Congress in Volume 1.

And from page 77 of Volume 1 through to page 82 of Volume 1, is a reasonable short affidavit by Ms Letsatsi-Duba which has already been provisionally admitted and I am going to ask Ms Letsatsi-Duba, in due course, to confirm that affidavit.

10 And no doubt you would wish to have a sworn-in first?

CHAIRPERSON: Yes, thank you.

MS LETSATSI-DUBA: Chair....

CHAIRPERSON: The registrar will administer the oath or affirmation, depending on which one you prefer Ms Letsatsi-Duba.

MS LETSATSI-DUBA: I will take an oath.

CHAIRPERSON: Okay.

REGISTRAR: Please state your full names for the record.

20 **WITNESS:** My full names are Dipuo Betha Letsatsi-Duba.

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

WITNESS: No objection.

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

WITNESS: Yes.

REGISTRAR: Do you solemnly 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.

DIPUO BETHA LETSATSI-DUBA: (d.s.s.)

CHAIRPERSON: Thank you very much. Mr Freund.

EXAMINATION BY ADV FREUND SC: Thank you Chair.

10 Ms Letsatsi-Duba, is it correct, as I have just described to the Chair, that you deposed to an affidavit at the request of the African National Congress? It runs to some 33 paragraphs and it was signed by you on the 9th of October 2020?

MS LETSATSI-DUBA: Yes.

ADV FREUND SC: And I take it that that is your signature that we see after paragraph 33?

MS LETSATSI-DUBA: Correct. That is my signature.

20 **ADV FREUND SC:** Chair, I ask then to the extent necessary that this affidavit be admitted formally. I am just... It is part ZZ-1. I just want to check the formal description. It is ZZ-1.7.

CHAIRPERSON: Okay the affidavit of Ms Dipuo Beta Letsatsi-Duba which starts at page 77 is admitted... Does it have annexures? It does not have annexures, hey?

ADV FREUND SC: There are not annexures.

CHAIRPERSON: Yes. Is admitted then and will be marked as Exhibit ZZ-1.7.

AFFIDAVIT OF DIPUO BETA LETSATSI-DUBA IS ADMITTED AND MARKED AS EXHIBIT ZZ-1.7

ADV FREUND SC: Thank you Chair. May I then proceed?

CHAIRPERSON: You may proceed.

ADV FREUND SC: Ms Letsatsi-Duba, I am going to be taking you through your affidavit but some of it I think we
10 do not need to spend a lot of time on. Is it correct, as you say in paragraph 3, that you left South Africa in 1983 and joined the African National Congress in exile?

MS LETSATSI-DUBA: That is correct.

ADV FREUND SC: And then after the ANC was unbanned, you returned to South Africa and you became active in political. In particular, you served in the government of the Limpopo Province as you deal with in paragraph 5. Is that correct?

MS LETSATSI-DUBA: That is correct.

20 **ADV FREUND SC:** And then you say, and is this correct, that you were elected as a member of the National Executive Committee of the ANC after the National Conference in Mangaung in December 2012?

MS LETSATSI-DUBA: That is correct.

ADV FREUND SC: And for how long did you remain a

member of the National Executive Committee?

MS LETSATSI-DUBA: I am still a member to date.

ADV FREUND SC: You are still a member to date?

MS LETSATSI-DUBA: Yes.

ADV FREUND SC: And you say in paragraph 7 that you became a member of Parliament in 2014 after the General Elections. I presume that is correct?

MS LETSATSI-DUBA: That is correct.

ADV FREUND SC: And from that time, which is to say
10 from May 2014, which is after the elections and when the new Parliament was elected, from May 2014 until March 2017, you served as the Chairperson of the Portfolio Committee on Public Enterprises. Is that correct?

MS LETSATSI-DUBA: That is correct.

ADV FREUND SC: What then happened in 2017 is that you were appointed as the Deputy Minister of Public Service and Administration and thereafter you served as Minister of State Security. Is that correct?

MS LETSATSI-DUBA: That is correct sir.

20 **ADV FREUND SC:** Now we are particularly focussing for present purposes on the period that you served as Chair of the Portfolio Committee on Public Enterprises. And you say in paragraph 11 of your affidavit there were 8 members and 4 alternates of that committee and that the Minister that you had dealings with at the time was Minister Lynne

Brown. Is that correct?

MS LETSATSI-DUBA: Quite correct.

ADV FREUND SC: Then you say in paragraph 12:

“The fact that the alternate members sometimes did not attend because they had to attend meetings of other portfolio committees, hampered the work of the committee...”

Was that a serious problem of why did you think you should make a reference to that?

10 **MS LETSATSI-DUBA:** I thought I should make reference to that because in some instances there will be serious issues which needs all of us to put our heads together. So when other members are not in attendance, we are weakened as a committee.

ADV FREUND SC: Alright. Thank you. I want to turn now to paragraph 13 of your affidavit. You say:

“I did not experience any pushback from Minister Brown. However, holding Comrade Lynne Brown accountable was a challenge.

20 She did not attend meetings of the Portfolio Committee and instead sent her deputy...”

And then you explain in the rest of that paragraph that what she said was that your meetings overlapped with Cabinet meetings and that is why she did not come.

Perhaps you can just expand on that and also explain whether or not it was not possible to arrange affairs in a way that your meetings did not always overlap with the weekly meeting of Cabinet.

MS LETSATSI-DUBA: The Portfolio Committee meetings are set by a rules committee in Parliament and the date and the weeks and so on are determined by them. So when we realised our meetings coincided with the Parliament, I have managed to spoke to her to say: If you
10 have no issues to present in Cabinet, it will be proper for you for to come and attend the meeting of the Portfolio Committee.

And I do not know if she took the advice properly. Our thing is because once I was in the Executive I used to see other members of the Executive excusing themselves to attend Portfolio Committee meetings but with Ms Brown, she will not do that.

I do not know if she had issues all the time to present in Cabinet or she did not want to attend the
20 Portfolio Committee meetings. I do not know.

ADV FREUND SC: Alright. When you said a moment ago that once you were in the Executive, you made certain - you observed certain things. Are you referring to the period when you were yourself a member of the Cabinet?

MS LETSATSI-DUBA: When I was a member of Cabinet

and even prior to that, before that, I used to see other Ministers attending the Portfolio Committees. That is the reason why I was saying to her if there are no issues pertaining to her department, it will be of assistance to us if she comes to the committee.

ADV FREUND SC: Now you say in paragraph 14 that Minister Brown not only failed to attend the meetings of the Portfolio Committee. You say she did not attend ANC Study Group meetings which compelled the problem of making her accountable. Could you perhaps expand on that why you thought it is appropriate to make that point?

MS LETSATSI-DUBA: In the Study Group, it is where we interrogate issues pertaining to the departments by extension to state-owned enterprises. We – the main aim of the Study Group is to hear from the leadership of the departments to which the leadership and the administrative leadership, what are the issues. So as to enable us to approach the matters in a proper manner when we go to the portfolio meetings.

20 And when I was saying this the problem is, because we will go to the portfolio with information which is known by any other person and general information and yet the Study Group – we can able us to be able to go deep into the specific issues and prepare ourselves for the meetings of the Portfolio Committee.

ADV FREUND SC: Now this Commission has heard quite a bit of evidence to similar effect to what you have just said that Portfolio Committees and Study Groups, that typically members and other senior members of the Executive attend Study Group meetings and that precedes the meetings of Portfolio Committees.

That was also the experience that the manner in which your Portfolio Committee was run for Public Enterprises of a system of Study Groups preceding
10 Portfolio Committee meetings. Am I understanding that correctly?

MS LETSATSI-DUBA: That is correct sir.

ADV FREUND SC: Now given that the purpose of the Portfolio Committee is to exercise oversight over the Executive. Is there not something in your view a little inappropriate about as it were caucusing before the Portfolio Committee meetings with the Minister or other representatives of the Executive where the political administrative, should not that type of oversight really
20 been taking place in the Portfolio Committee itself?

MS LETSATSI-DUBA: Well, at first, myself I was a little bit comfortable with the approach. Rightfully so as you indicated, it might appear like we are trying to caucus before the portfolio but when we arrived there in 2014, it has been the practise all along. So we just followed suit.

ADV FREUND SC: Yes. I suppose what I am really asking you is; it is clear that the practise is, as you described, but I am asking you whether the practise is not perhaps a bit inappropriate that ...[intervenes]

MS LETSATSI-DUBA: It is.

ADV FREUND SC: You think it is?

MS LETSATSI-DUBA: I think it is.

ADV FREUND SC: Alright.

MS LETSATSI-DUBA: I think it is. I will tell you why it is.

10 Sometimes leadership of SOE's will come to the Study Group to present whatever issues and we will be having advantage of having the information more than any other members of the committee.

And I remember at some point, opposition parties were raising issues to say: Yes, yesterday we saw so and so coming to a Study Group meeting and I felt so uncomfortable to say, hey, this things it must be corrected at some point.

ADV FREUND SC: Yes. So the point you make is, it
20 gives the Study Group certain advantages over other members of the Portfolio Committee. Is that the point you are making?

MS LETSATSI-DUBA: Yes, that is the point I am trying to make.

ADV FREUND SC: Alright. Now I want to put to you

...[intervenes]

CHAIRPERSON: I am sorry Mr Freund. But apart from that also, would you not say that it entrenches the fact that members of a Portfolio Committee come from different political parties? I mean, that is a reality. That we know. And there is nothing wrong with that.

But where members of the Portfolio Committee who belonged to a particular party might end up having a certain advantage derived from attending meetings of the
10 Study Group of their party before they come to the meeting of the Portfolio Committee.

Does it not promote the idea that, well, for example, us and the Minister who is being held – who is supposed to be held to account at that meeting? We come from the same party. We were in the Study Group yesterday together discussing the issues that are going to come up here.

Or do you not think that might be another reason why there is a challenge with the practise?

20 **MS LETSATSI-DUBA:** No, if I understand you Chair. The reason why I felt uncomfortable is precisely what you are saying.

CHAIRPERSON: H'm.

MS LETSATSI-DUBA: Because the – one of the reasons why there was Study Group is to make sure we interrogate

the key points ...

CHAIRPERSON: H'm.

MS LETSATSI-DUBA: ...of the party in that meeting.

CHAIRPERSON: H'm.

MS LETSATSI-DUBA: To get facts ourselves before we go to the Study Group.

CHAIRPERSON: H'm, h'm.

MS LETSATSI-DUBA: And if she wish other members who belong to other parties will not have the advantage of
10 interacting in that manner.

So I think maybe at the end of the whole thing, the main thing is to make sure we correct what we have seen happening during our tenure in the National Assembly.

To me personally, I do not think the Study Groups are necessary for the reasons I have just explained now.

CHAIRPERSON: Okay thank you. Mr Freund.

ADV FREUND SC: Yes, thank you. Perhaps I should just
20 place on record and make clear Ms Letsatsi-Duba, that although when you left this committee you became the Deputy Minister in the Ministry, you have since resigned from Parliament and no longer a member of Parliament. Is that correct?

MS LETSATSI-DUBA: Yes, I have resigned.

ADV FREUND SC: So an ex-MP, now looking back on your experience?

MS LETSATSI-DUBA: Yes.

ADV FREUND SC: And I think you said in a note that I saw in some correspondence, I think yesterday, that you come here wishing to participate in a constructive manner to try to assist in helping to improve practises for the future.

MS LETSATSI-DUBA: Yes.

10 **CHAIRPERSON:** H'm.

ADV FREUND SC: And I understand, it is in that context that you as a member of the ANC, as a former Minister, as a former Chair of a Portfolio Committee. You think that this Study Group system is problematic and it needs to be rethought.

MS LETSATSI-DUBA: I think so.

CHAIRPERSON: H'm.

ADV FREUND SC: And can I put to you another problem with the Study Group issue? You yourself said the following a minute or two ago. You said in the Study Group, we interrogate the employees of the ruling party, which I think is correct.

You were referring, I presume, not only for example the Minister or the Deputy Minister but also to Senior Directors, General Deputy Directors, General Senior

Representatives in the SOE's. Would that be correct?

MS LETSATSI-DUBA: The reason why I am saying this Study Group how it is being structured is problematic is precisely that because there in the Study Group, it is supposed to be members of the ruling party only but you more often find officials from the department coming to present in that Study Group.

We do not know whether they are members of the ANC or they are not but they will be part of the Study
10 Group. So we – to really look into – the whole thing of the Study Groups, you know, in relation to how to improve accountability and oversight.

ADV FREUND SC: Now each Study Group, as I understand the evidence we have already heard, has its own Whip. Each...

So for example, you were the Chair of the Portfolio Committee but you would also have within your caucus, your ANC caucus on the Study Committee somebody who served as a Whip at that committee. In
20 fact, I think it was Mr Rantho, was it not?

MS LETSATSI-DUBA: Yes. In fact, the Whip is the one who is the convenor of the Study Group.

ADV FREUND SC: H'm. And my impression, but please correct me if I am wrong, is that it would be not at all unusual for the Study Group to make decisions on what

approach will be adopted in the Portfolio Committee meetings by the members in the Study Group.

In other words, by the ANC members and they, of course, are the people who will ultimately determine the decisions of the Portfolio Committee because they constitute the majority of that.

Do you agree with what I have just said?

MS LETSATSI-DUBA: Yes, I do agree.

ADV FREUND SC: So really, before the Portfolio
10 Committee meeting starts, if you are a participant in the Study Group and as long as you abide by the directives of the Whip of your Study Group, you have already decided what approach to adopt in your Portfolio Committee meeting.

MS LETSATSI-DUBA: That would be the case.

CHAIRPERSON: And would the... Is your understanding
that within the members of the ANC in a particular Portfolio Committee who have been party to a Study Group meeting before the Portfolio Committee, would your understanding
20 be that the general understanding among members of the ANC is that you have to – at the meeting of the Portfolio Committee meeting act in accordance with the decisions taken in the Study Group?

MS LETSATSI-DUBA: Yes.

CHAIRPERSON: That is what is expected and that is what

members of the ANC understand to be the position?

MS LETSATSI-DUBA: Yes.

CHAIRPERSON: And most of the time, would they act in accordance with those decisions of the Study Group?

MS LETSATSI-DUBA: Yes ...[intervenes]

CHAIRPERSON: In your experience.

MS LETSATSI-DUBA: Yes.

CHAIRPERSON: Most of the time, that is what they would do?

10 **MS LETSATSI-DUBA:** Yes.

CHAIRPERSON: But would there be times when they deviate from those decisions in terms of how they deal with issues at the Portfolio Committee? How often would that happen? Obviously, I am not looking for a mathematical number. Just an idea.

MS LETSATSI-DUBA: Idea.

CHAIRPERSON: Ja, just an idea. How rare or usual it is that some members, once they are in the meeting of the Portfolio Committee, decide to approach issues differently?

20 **MS LETSATSI-DUBA:** No, there will not be such.

CHAIRPERSON: They will not do that.

MS LETSATSI-DUBA: No.

CHAIRPERSON: Okay alright. Thank you. Mr Freund.

ADV FREUND SC: Thank you Chair. Ms Letsatsi-Duba, I want to now take you to paragraph 15 of your affidavit.

You say in there:

“The oversight tools available to the committee were not sufficient.

The committee relied mainly on annual reports and oversight visits to state-owned entities to execute their constitutional obligation of oversight...”

So I am interested in and I would ask you please to elaborate what you meant when you said the oversight
10 tools were not sufficient.

MS LETSATSI-DUBA: The oversight tools I am referring to, you will recall in particular in the state-owned enterprises, there was a Presential(?) Review Committee which was formed in 2009.

That committee came up with the recommendation which says there should be an overwriting legislation which must govern all the state-owned enterprises. That is one.

So when I am saying the tools, I am referring to
20 this absence of overall – overwriting legislation because it was supposed to have been done a long time ago and it was not there.

Secondly, there is what we call a Shareholders Compact which is an agreement which is entered between the board and the state-owned enterprises. I mean, the

Board of SOE's and the department itself.

At Portfolio Committees, we do not have access to that because they purely say they cannot give us the shareholders compact because inside that there is what is being called corporate plans of the different business which they say if they hand them over to us in Parliament, we are compromising what they call commercial sensitivity issues. So the tools are weak in that sense.

ADV FREUND SC: Alright. Let me deal with that one by
10 one. The first you mentioned is the absence of overwriting legislation to regulate the governance of SOE's. Is that – am I understanding you correctly?

MS LETSATSI-DUBA: Yes.

ADV FREUND SC: And you say ...[intervenes]

MS LETSATSI-DUBA: That was the recommendation of the Provincial Review Committee of 2009.

ADV FREUND SC: And you say although it was recommended it was never implemented and you think it should have been.

20 **MS LETSATSI-DUBA:** It should have been.

ADV FREUND SC: Alright. Secondly, you refer to the problem of corporate plans. I want to take you to paragraph 18 of your affidavit.

MS LETSATSI-DUBA: Yes?

ADV FREUND SC: There you say:

“One of the state-owned entities, Eskom, did not share its corporate plan with the Portfolio Committee on the grounds that according to the board, Eskom was governed by the Companies Act which precluded such disclosure and second, disclosure to the Portfolio Committee could end up with competitors...”

Now I assume, because you wrote this in your
10 affidavit, this is correct, as far as you are concerned?

MS LETSATSI-DUBA: Yes.

ADV FREUND SC: Now I have a number of queries arising from that.

MS LETSATSI-DUBA: Okay?

ADV FREUND SC: Firstly, did you accept at the time and do you accept now that the Portfolio Committee had both a constitutional right and obligation and also apparent of the rules of the National Assembly, to summons persons to answer questions and to require them to answer questions
20 under oath?

MS LETSATSI-DUBA: Yes, we have those powers.

ADV FREUND SC: So there would be nothing to prevent you and when I say you, I mean you are talking about your Portfolio Committee.

MS LETSATSI-DUBA: Yes.

ADV FREUND SC: Nothing to prevent you from requiring an entity like Eskom to furnish whatever information you thought was necessary in order to exercise proper oversight. Would you agree with that?

MS LETSATSI-DUBA: I will agree with you but remember when we were requesting the corporate plan, all of us, members of the committee including opposition parties, we were there when we were told flat to say we cannot give this to the Portfolio Committee. And then they were saying
10 the Eskom is being governed by the Companies Act. Those are the reasons.

ADV FREUND SC: That is what they said. Now I am... with you, really, what to be the appropriate response of your committee when you are confronted with them, saying things like that. So if I understand what you say. Eskom, through its board, told your committee that it could not disclose information because it could end up with competitors. Is that correct?

MS LETSATSI-DUBA: Yes, that is correct.

20 **ADV FREUND SC:** Perhaps you could tell because I am not aware of this. Which competitors does Eskom have? I thought it had a statutory monopoly?

MS LETSATSI-DUBA: Yes. It is a monopoly.

ADV FREUND SC: So ...[intervenes]

MS LETSATSI-DUBA: So ...[intervenes]

ADV FREUND SC: So the excuse gave carries no water.

MS LETSATSI-DUBA: It carries no water. The same thing as Denel, they refuse to say, no, it will end up with the competitor, forgetting that Eskom is a pure monopoly company.

ADV FREUND SC: So you and I seem to be in agreement that the excuse raised by Eskom and you say a similar excuse was raised by Denel, was an unacceptable excuse?

MS LETSATSI-DUBA: It was an unacceptable excuse.

10 **ADV FREUND SC:** Unacceptable, not acceptable. You agree?

MS LETSATSI-DUBA: Unacceptable excuse.

ADV FREUND SC: Right. Now when you are confronted as a Portfolio Committee with an excuse for not providing information that you thought was necessary, you have the power to compel it to be produced. Did you not?

MS LETSATSI-DUBA: Yes, we have the powers but I do not know if you are familiar with how the Portfolio Committees are run? Time is very limited. They come and
20 present this and say we are not able to...

In the next meeting when we are supposed to follow-up on this issue, we have another entity. By the time we come back to Eskom, we are almost a year – towards end of the year.

So the – how the committees work, they also

need much more of consistency in dealing with the matters because we have so many issues as members of Parliament to give attention to.

So in my own thinking, I think we need to have a small team which will be part of the committee which will be able to assist with the research and also to follow-up on issues which were raised in the committee and we do not have such.

ADV FREUND SC: Alright. And is the consequence of the
10 fact that you did not have that, that really, in your own opinion, the Portfolio Committee did not effectively exercised oversight?

MS LETSATSI-DUBE: I think so. I really think so because we were effective in our oversight with properly trained personnel, administratively and even legally and even technically, would be a situation where we are right now in relation to Eskom challenges and all other SOEs including your SAA.

ADV FREUND SC: Yes, because I take it, Ms Letsatsi-Dube
20 that you, as a citizen, like me as a citizen, had been reading in the newspapers for years from 2011 onwards a series of quite serious allegations about the manner in which the SOEs were being run and the series of allegations that there was improper influence being exercised over the leadership of those SOEs. Am I correct? You were aware of those allegations.

MS LETSATSI-DUBE: We were aware of those allegations.

ADV FREUND SC: And would it be correct to say that in your own opinion the portfolio committee on Public Enterprises did not effectively exercise its oversight powers with a view to trying to probe those allegations and trying to ensure that the appropriate necessary remedial measures were taken?

MS LETSATSI-DUBE: That I fully agree with that statement. We failed to exercise our oversight.

CHAIRPERSON: Well, let me ask me ask this question.

10 Well, one, I appreciate, Ms Letsatsi-Dube, the fact that where you see that there was failure you are prepared to say yes, we failed in that respect because it is going to be difficult to find a solution if people are not prepared to look at how they have done the work and be able where they fell short to say yes, we failed. But if people are prepared to look at issues with a view to accepting responsibility where things did not go the way they should have, it is half the job done because they can help in find a solution but if they are in denial they will not be part of trying to find a solution but I

20 want to ask the question whether when one looks at the failure whether that failure could be attributed only to matters such as not having enough capacity in terms of admin staff, researchers, maybe legal people and so on or whether there might not have been a sufficient commitment from the majority of the members of the committee to really

hold their own comrades who happen to be in the executive to account? Maybe partly because of what would have been said in study groups. I have heard evidence that in some cases it would be said by some people within the ANC to members of committee, portfolio committees or some of them at least that they must remember that the minister that is appearing before a portfolio committee or that will be appearing is an ANC minister, they must not act like they are members of the opposition, but this is an
10 ANC minister. Therefore, in other words, they must not, as I understand, probe too much. In other words, they must be soft on the ministers because they are from the same party.

So my question is whether on your assessment it is not the case that part of the problem might have been an insufficient commitment or willingness to really do this job of oversight properly and effectively because otherwise you might be seen as if you are behaving like an opposition party member or you might be seen as
20 behaving like somebody who is not a disciplined cadre of the party. What do you say about that?

MS LETSATSI-DUBE: Chair, let me begin by saying when you join the parliament you are being brought by the ANC, you are being brought by the party like all other political parties but once you are in there, when you take an oath,

you abide by the constitution of the country and you also indicate that you will serve the people of the Republic. Now the question you are saying, was it because of lack of commitment from other members, that is correct, because you will remember we are not on the same level as part of the consciousness, the political consciousness as members.

Now others will go there to say much as I am here because I am sent here by the party but I must also do the right thing because I have taken an oath as an individual that I am going to serve the Republic and abide by the constitution. So in most cases you will find there is these imbalances in the committees, especially from our side in the ruling party where people have a different understanding and once you speak to that, there will be others who will be saying we are not – how do I put it, we are ill-disciplined, this is the minister of the ruling party, you cannot believe like you are in an opposition. It is like that.

CHAIRPERSON: So on your understanding those things indeed have some influence on how particularly members of the ruling party or some of them would approach their job of oversight?

MS LETSATSI-DUBE: And also hamper, they put obstacles for the work of the committee.

CHAIRPERSON: Ja, that is quite – ja. Thank you for those answers. Mr Freund?

ADV FREUND SC: Thank you, Chair. When you say they would hamper and put obstacles in the way, would you like to elaborate on that a little?

MS LETSATSI-DUBE: For instance I will give an example, that there were issues around the issue of the Chief Executive Officer of Eskom being a member of the ANC himself and when we are supposed to really dig deeper into the issues, there will
10 be some who will be soft on those issues precisely because of the political allegiance they hold.

CHAIRPERSON: The Chief Executive Officer you are talking about, is it Mr Brian Molefe or is it somebody else or you are just making an example?

MS LETSATSI-DUBE: I am just making an example, not necessarily Brian Molefe.

CHAIRPERSON: Oh, okay, okay. Alright. Mr Freund?

ADV FREUND SC: Thank you. So the principle that I think you are trying to explain is that at least some ANC members of
20 study groups and portfolio committees would feel that precisely because the members of the executive being overseen including senior leadership of SOEs were themselves ANC party deployees, that is a reason why the portfolio committee and the study group should go soft, should not be seen to be trying to embarrass or to hold them to account. Am I

understanding you correctly?

MS LETSATSI-DUBE: You are understanding me correct and we often will argue to say you know what, we cannot afford not to hold them accountable, we need to because this is our responsibility but as I indicated, other people – as I indicated to say, we are on different levels in terms of our understanding and our goal in parliament.

CHAIRPERSON: Can I ask this? From what you say and from what other witnesses connected with parliament have
10 said, it appears to me that within the ruling party when it comes to the performance of oversight functions and holding the executives accountable in parliament but by portfolio committees and like as in the National Assembly as well, there would be some ANC members who would believe that, for example, exposing corruption in a minister's department by a member of the ANC in a portfolio committee asking, so to speak difficult questions about that and exposing that would not be good for the party but maybe there would be others who would think it is the right thing to do. Is my
20 understanding correct, that that is what you are saying, part of what you are saying?

MS LETSATSI-DUBE: That is the correct understanding, Chair, because if you are not exposing the weaknesses or the corrupt practices coming from the very same party you are directly destroying the very same party you are

representing. That is my understanding, that we need to hold them accountable so as to enable us to strengthen the ruling party because you keep on brushing, keep on brushing, keep on brushing and at the end of the day there is no service delivery, people start protesting, we experience political instability. So my understanding was that you people, we must just do the right thing irrespective of who is the minister.

CHAIRPERSON: Well, I was going to come to that because
10 I think I would feel ashamed if I was a member of a political party and somebody, a comrade or colleague in the same party does not want to expose corruption because he thinks he protects my party by covering up corruption. How do you protect the image of your party by covering up, protection. Maybe for temporarily you might think it helps but in the end it will come out and is it not better, do you not enhance the image of your party better by being party to exposing corruption and showing that your party is intolerant of corruption rather than your party being seen as tolerant of
20 corruption. So that is the question that I always have to say why do people want – why do people think their party requires the covering up of corruption in order for it to be strong? Is the opposite not what they should be fighting for to say what strengthens our party is an image of it being intolerant of corruption not an image of it being soft on

corruption or being even prepared to cover up corruption if its own members are alleged to be involved in corruption? I suspect that your thinking is very much in line with my thinking based on what you have said before.

MS LETSATSI-DUBE: It is in line with my thinking because I do not want to dwell much on the values and the principles of the organisation. I belong to the African National Congress which now is something else. We cannot go there because everybody who can see but being a member of
 10 parliament in any way is about upholding the constitution and serving the people and if you have members within your own party who think other way, they do not realise they are bleeding the organisation by not exposing the wrongs which are done. I always say you know what, these are our comrades, if there is anything wrong happening, it is us who must tell them, it is us who must assist them to do the right thing.

CHAIRPERSON: Yes. No, thank you. Mr Freund?

ADV FREUND SC: Thank you, Chair. Ms Letsatsi-Dube,
 20 when I listen to you, I get the impression, but you must correct me if I am wrong, that when you were in parliament in the period that we are talking about, there must have been within the ANC caucus two conflicting points of view, some who felt that it was appropriate to effect this oversight in parliament to expose and address allegations of corruption

and wrongdoing and some who felt that it was the wrong thing to do strategically. Am I understanding that correctly, there were two different points of view?

MS LETSATSI-DUBE: Yes, there were two different points in that regard, that there will be some to say we cannot hang the linen in front of the opposition and our argument with others, with the committee, will be saying it is not about hanging dirty linen, it is about correcting the wrong.

ADV FREUND SC: Now you would be aware, I am sure, I
10 mean, for example, from the last witness who testified, Mr Frolick, that in the middle of 2017 Mr Frolick issued a number of letters to chairs of portfolio committees saying in your committees you should investigate allegations which he said were allegations that had appeared in the so-called Gupta Leaks and he said that that had the support of the Speaker and the Chief Whip who was then Mr Jackson Mthembu. Are you familiar with that moment in our history?

MS LETSATSI-DUBE: I am. I am very much familiar.

ADV FREUND SC: Now ...[intervenes]

20 **MS LETSATSI-DUBE:** And we have been pushing this behind the same – to say Chief Whip is only parliament which can make an impact in going deep into what we are seeing in the public space and all of us, like them and the Speaker, we were in agreement to say let us proceed with this.

ADV FREUND SC: Alright. Now let me be clear that I have no criticism for those who pushed for that type of investigation of allegations and remedial action where necessary but what I would like to explore with you is why it took so long because that happened in June of 2017 and even then it was not an unmitigated success, it only happened in part and it continue to meet resistance. Why did it take so long? You say – I got the impression from the answer you gave a moment ago, that you were one of a
10 group of people who were encouraging the Chief Whip to encourage that there should be a change of stance. So why did it take so long?

MS LETSATSI-DUBE: It took long because you will remember we belong to a caucus where issues are being debated and agree upon. Now on this particular issue of having the inquiry, there was some resistance, if I put it in that way, that it should not happen and most of the reasons which were put forward was that already the Public Protector is dealing with the matter but our argument was that well, it
20 is fine, she is also doing – it was Thuli Madonsela then, she is doing her job but us, as parliament, especially us from the ruling party, we cannot ignore such damning allegations.

ADV FREUND SC: Right. Now I want to go back a little earlier to a time that you were still the chair of the portfolio committee and you refer in paragraph 26 of your affidavit to

two letters that you received from Honourable Mazzone of the Democratic Alliance and I hope that you have at your disposal those letters. So I want to take you to her letter of the 14 March 2016 which, Chair, is in bundle 2 at page 192. Do you, Ms Letsatsi-Dube, have Ms Mazzone's letter of the 14 March 2016?

MS LETSATSI-DUBE: I do, sir.

CHAIRPERSON: What is the page, Mr Freund, in volume 2, bundle 2?

10 **ADV FREUND SC:** Page 192.

CHAIRPERSON: Okay, alright, page 192.

ADV FREUND SC: Now – are you with me, Chair?

CHAIRPERSON: Yes, I am, thank you.

ADV FREUND SC: Ms Letsatsi-Dube, that letter can speak for itself but basically it is a request from Ms Mazzone that the portfolio committee on Public Enterprises should conduct a full parliamentary inquiry into the capture of SOEs by the Guptas and then she proposes that the committee immediately summon the Guptas to appear before it to
20 answer these allegations as per her previous letter to you. Her evidence is that this is not the first letter, there was one shortly before this. You should call former Minister of Public Enterprises, Barbara Hogan and Malusi Gigaba to provide full details of their relationship with the Gupta family, Mr Gigaba in particular, should summons the CEOs and

Chairpersons of the largest SOEs to appear before it and she asked for a response. Now you confirm and recall receiving that letter, I presume?

MS LETSATSI-DUBE: Pardon?

ADV FREUND SC: You can confirm that you received that letter and you were aware that that was request.

MS LETSATSI-DUBE: No, on this one I am not aware of receiving the letter. The letter I can confirm is the one where she was a requesting a full parliamentary inquiry into
10 the Guptas allegations.

ADV FREUND SC: Well, if you look at the first paragraph of the letter of the 14 March 2016 – do you have the letter dated the 14 March 2016?

MS LETSATSI-DUBE: Yes, I do have.

ADV FREUND SC: And you will see in the first paragraph, she requests the portfolio committee on Public Enterprise conducts a full parliamentary inquiry.

MS LETSATSI-DUBE: Oh, yes, yes ...[intervenes]

ADV FREUND SC: Into the capture of SOEs by the Guptas.
20 You received this letter, you were aware of this letter.

MS LETSATSI-DUBE: Yes, yes.

ADV FREUND SC: And then if I can refer you to a later letter from her dated the 22 March and Chair, that is at page 200 in volume 2. Do you have that letter, the letter of the 22 March?

MS LETSATSI-DUBE: Yes, I do have.

ADV FREUND SC: And really it is largely repeating what has previously been said but with some more extensive motivation.

MS LETSATSI-DUBE: Yes.

ADV FREUND SC: You agree. And then what happens is that that request was refused and we find the refusal in a letter by yourself at page 219 of the bundle, it is a letter by yourself dated the 6 April 2016. Do you have that letter?

10 **MS LETSATSI-DUBE:** Yes, I do have the letter.

ADV FREUND SC: And what you say, if I can paraphrase it, in that letter, you say that you have received legal advice that that inquiry that she is requesting that the Guptas should be summonsed and minister should be summonsed requires a house resolution and without a house resolution no such inquiry can take place. Now Mr Frolick testified before you and he says but that is just wrong, he said you did not need a house resolution, you had the powers to do this, you could have done this if you had wanted to and in
20 his opinion you should have done so. Now what do you say now with the benefit of hindsight?

MS LETSATSI-DUBE: Well, you would see towards the last paragraph of my letter of the 6 April, I was saying I was seeking a legal services on how to process the request, how to process the request because she mentioned the Guptas, the

former ministers and so on. Unfortunately, the parliamentary legal services, they brought all these other issues to say we need a house resolution, the Public Enterprise has no authority and so on and so on and remember – remember, my initial thought was to say this is not a small matter to deal with in a hurry, we need to get legal processes, not on the merit of the case or not but processes to say if we say we call the Guptas, what are the processes to be followed, please advise the committee as the legal adviser.

10 Unfortunately, like I said in my earlier inputs to say we have – we do not have capacity in terms of legal and all other requirements to deal with the issues in a proper manner. So this answer was not [indistinct] 27.19 to me but unfortunately I was not able to do so because this was towards the end of the – what do we call it, what we call ...[intervenes]

CHAIRPERSON: Financial year?

MS LETSATSI-DUBE: Recess in parliament from time to time. By the time you come back from recess and the constituency work, other issues have come in place already.

20 So I was in agreement with the letter but here I just wanted the legal process to follow. Unfortunately, I was misunderstood by the advisers or maybe they did understand and then decided to answer us in this manner.

ADV FREUND SC: Well ...[intervenes]

MS LETSATSI-DUBE: That is what – and excuse me, sir...

ADV FREUND SC: Yes.

MS LETSATSI-DUBE: That is why at the end of it I was saying I trust that you will find the above of assistance and trust that it will be – it will assist parliament in dealing with the alleged phenomenon of state capture. So I was admitting to say yes, we need to do this. So my last sentences prove to say we needed this but we needed processes to advise us.

ADV FREUND SC: Alright, but do I understand you correctly
10 that whatever the legalities or the legal advice you received, your personal view at the time was it was necessary to hold precisely an inquiry of the type that Ms Mazzone was requesting?

MS LETSATSI-DUBE: Correct.

ADV FREUND SC: And the advice that you had received that it needed a house resolution, did you assume that that advice was correct?

MS LETSATSI-DUBE: Well, I assume it was correct. Where I did not agree, it is on point two where it says the committee
20 on Public Enterprise has no authority by law to initiate such but on one, I did not have a problem.

ADV FREUND SC: Well, I am sorry, but I do not clearly understand what you are saying because it seems to me, if one just reads Rule 138 that you had the authority to conduct an investigation and to summons people and that you did not

need anybody else's approval to do that.

MS LETSATSI-DUBE: Yes.

ADV FREUND SC: Now did you know that at the time and accept that at the time, or were you under impression that you did not have that authority?

MS LETSATSI-DUBA: Well I was aware we have the authority, that is why I am saying on two I agree but remember I said on the first paragraph to say I was looking for legal processes, but not to say you cannot do the
10 inquiry. I was asking for them to assist us to initiate that process.

ADV FREUND SC: But I am saying that you understood that unless there was a House Resolution, it was not permissible for your inquiry, for your committee to commence such an inquiry.

MS LETSATSI-DUBA: That is the impression I had at that time.

ADV FREUND SC: And that is the impression you had, because that was the legal advice you received.

20 **MS LETSATSI-DUBA:** Yes.

CHAIRPERSON: I am sorry, Mr Freund let us talk about your understanding before you received the legal advice. What was your understanding before you received the legal advice on whether or not the Portfolio Committee could initiate such an inquiry or could they summon Ministers

and members of the public to answer certain issues in the private Portfolio Committee?

Did you believe that it had the power to do so or did you believe that it did not have such a power unless there was a resolution of the National Assembly that it could go ahead and do that?

MS LETSATSI-DUBA: Personally, I believed we had the powers. I am trying to look into the section where in empower us, now it is Section 201 of the rules of
10 Parliament, I do not know if you will be able to - but now, we are not legal people, you go and interact with the legal people, they will tell you different interpretations of the rules and the laws, and you take advice from them.

But personally, I knew from Section 201, that the committee have the powers to summon whoever even the members of public, who happened to commit whatever outside then to come and account into the Parliament. So this was my understanding but when the Advisory Committee of Parliament will say, no we cannot - and
20 remember, our work was not only on this, we had other issues to deal with also and we relied on them because they are legal people.

CHAIRPERSON: But after the legal advice had arrived, did it not occur to you to just go and check this Rule 138 they were talking about to see whether it says what they

say it says?

MS LETSATSI-DUBA: I did.

CHAIRPERSON: You did, and when you looked at it, did you agree with their advice or understanding of it or did you not?

MS LETSATSI-DUBA: No, no I did not agree with the legal advice.

CHAIRPERSON: Yes.

MS LETSATSI-DUBA: And remember this is something
10 else.

CHAIRPERSON: Yes, Rule 138, ja I have not looked at it now but I have looked at it, I think in the past at some stage, but what I am thinking is that if you looked at it, and you did not agree with them, one would have expected that you would go back to them and say, you people, this rule that you have cited, does not say what you are saying and then hear what they have to say. Did you do that?

MS LETSATSI-DUBA: No, no their Chair I need to admit I did not.

20 **CHAIRPERSON:** Yes, but you accept that that is what you should have done.

MS LETSATSI-DUBA: Here we could have acted differently but I admit I did not. I did not go back to them to say this is how I think, quoting 201 of the section.

CHAIRPERSON: Yes, but you accept that that is what you

should have done?

MS LETSATSI-DUBA: That is what I should have done.

CHAIRPERSON: Yes. Okay, alright Mr Freund.

ADV FREUND SC: Yes, thank you Chair. Now. Ms Letsatsi-Duba when Ms Mazzone received your letter, setting out your reasons for refusal, which were based on the legal advice that you told her you had received, she responded and she responded in a letter of the 12th of April 2016 and Chair that is at page 221 of bundle 2. Ms
10 Letsatsi-Duba do you have that letter of the 12th of April 2016?

MS LETSATSI-DUBA: The 12th of April?

ADV FREUND SC: Yes.

MS LETSATSI-DUBA: No, I do not have, I have the 14th of March 2015.

ADV FREUND SC: This is this is the annexure NM38. It is one of the documents that was sent to you today. What I - if you struggle to find it, I will read it to you, and you may recall it.

20 **MS LETSATSI-DUBA:** Okay.

ADV FREUND SC: But if you can find it, it would be easier. It is the letter of the 12th of April 2016, Annexure MN38 and the top left, it will have POO2221, it means at page 221 of bundle 2.

MS LETSATSI-DUBA: I do not find it.

ADV FREUND SC: Alright, I see you have a lot of paper there and let me see if we can deal with it by me reading parts of it and see if you remember it.

MS LETSATSI-DUBA: Okay.

ADV FREUND SC: What Ms Mazzone says in the letter is she says:

“Your letter dated the 6th of April 2016 refers.”

She says:

10 “I have read the contents thereof, and would like to respectively disagree with you regarding your interpretation of Rule 138.”

And then she says and I am paraphrasing that Rule 138 gives the committee the power to summon any person to appear, and then she cites Rule 201 that says:

“A Portfolio Committee in 201.1C may monitor investigate inquiry into and make recommendations concerning any executive organ of State and so forth.”

And so she says:

20 “With regard to my request for the inquiry, it is my understanding that the members of the Gupta family would constitute any person and can thus be called to the committee to give guidance and to produce documents. The power derives directly from Section 056 of the Constitution.”

Now, from what you have already told the Chair my understanding is that you accept all of that you agree with all of that, am I right?

MS LETSATSI-DUBA: Yes.

ADV FREUND SC: And then she continues:

“Further, given the specific nature of their business relationship - there of course, is a reference to the Gupta family - their business relationships to a State owned entity Eskom, it is part of the Portfolio Committees functions to investigate and inquire into this issue.”

And I think you also agree with that, am I right?

MS LETSATSI-DUBA: I agree.

ADV FREUND SC: Now, she says that she sent this letter to you on the 12th of April and there was very shortly after that, a meeting of your Portfolio Committee. It happened, let me find the reference to it in her affidavit. So she deals in her affidavit Chair for your references in volume 2 at page 25 paragraph 13.20 she deals with the letter I have just read to you.

CHAIRPERSON: I am sorry, what page?

ADV FREUND SC: It is at page 25 of bungle 2, paragraph 13.20 that is in Ms Mazzone’s affidavit where she refers to the letter that I have just read to Ms Letsatsi-Duba.

CHAIRPERSON: Thank you, I have got it.

ADV FREUND SC: And then she goes on to refer in paragraph 13.22 that is at the next page, page 26, to the fact that there was a meeting of the Portfolio Committee of Public Enterprises. She says that meeting concerned Alexkor 2014/2015 annual report, but she says that in that meeting, you reported to the committee on your exchange of correspondence with her. And then she attaches to her affidavit, a report prepared by the Parliamentary Monitoring Group of that particular meeting of the 20th of April, and
10 then she continues, this is what Ms Mazzone says in her affidavit:

“As appears from that report of the PMG, there was some discussion about inviting Denel to brief the committee about the allegations concerning itself. But no decision was taken to support my request to summon the Gupta’s and others or to inquire into State Capture.”

And she says:

20 “That as the report shows, she said at that meeting, it was the PCPE’s job to exercise oversight by summoning any person before it.”

And then she says:

“Some members, this is in the in the Portfolio Committee meeting of the 20th of April, took the view that the issue was not on the committee's

agenda, and it was premature to make a decision and they thought it was sufficient to invite the Board of Denel to deal with allegations involving Denel.”

And she says:

“She was not surprised by that, because the members of the majority party act in accordance with party decisions and instructions, and they had no appetite at the time to pursue the inquiry she
10 had proposed.”

Now, my first question to you is this, do you recall that there was such a meeting, and do you agree that Ms Mazzone is telling the truth when she describes what happened at that meeting?

MS LETSATSI-DUBA: Well, I might not remember sir but what I can tell you about Ms Mazzone is that she has been very passionate about dealing with issues of corruption in State owned enterprises. Each and every meeting, she will passionately raise the issues very, very strongly. And
20 remember Chair, if you are a Chair of a committee, you do not take decisions on behalf of the committee. You Chair, you make sure you allow members to debate and come to an agreement.

So you do not take sides, unlike if she writes to me straight as a Chairperson to say, I am writing to you, this is

what I required. But in the committee meeting where people debate you direct the meeting, accordingly, not taking any sides. So the meeting she is talking about, I might not remember very well, but I know, for one and a half years, I have been there as the Chairperson, she has been very strong on issues of the Gupta's and the corruption and so on.

ADV FREUND SC: Alright, but I want to put to you this part of what she says for your comment. Really what she
10 says is, she has received your letter about the legal advice you have received. She had responded to your letter saying I think that advice is wrong, and I think we should continue with this, and then she says you tabled that correspondence at the meeting. And I think so far, I think you would probably agree that that is must be, what happened. Do you agree that you would have told the members of the committee about this exchange of correspondence?

MS LETSATSI-DUBA: Yes.

20 **ADV FREUND SC:** That is what the PMG report, and I think you have accepted that, am I correct?

MS LETSATSI-DUBA: Yes.

ADV FREUND SC: Now the real point is this. She says that the committee members, and she is talking about a majority because she, of course, had the support of her

side. The majority simply did not support that there should be this inquiry, and that is why the inquiry did not happen. Do you agree that that is correct, factually?

MS LETSATSI-DUBA: Yes, I agree.

CHAIRPERSON: Well, Mr Freund.

ADV FREUND SC: Chair.

CHAIRPERSON: I think she - the way she puts it that is Ms Mazzone has a certain connotation. She says in effect the majority members of the Portfolio Committee, the
10 majority party members had no appetite for it. That seems to me to even indicate that they had no interest in the proposal. Ms Letsatsi-Duba would you also go along with that, or you are not sure about that part?

MS LETSATSI-DUBA: No, no what I want to correct is that, remember in the committee, we had other members from other political parties, other than the DA, we had a Freedom Front who were consistent in attending meetings. We have EFF, who will come from time to time. We have IFP who have been consistent.

20 So they all form part of the committee members. Now, if you say, a majority, it means majority, including those other parties, not necessarily the African National Congress members.

CHAIRPERSON: No, I think you may be right, because I have not checked whether she specifically says the

majority party members or she is just saying the majority of the members of the Portfolio Committee which would obviously include or which may include, I am saying may because maybe the ruling party had so many members that the majority could only be them.

But basically, I think what she does say is because the decisions of the committee have got to go by majority, whether you say majority is the ruling party or majority includes other opposition parties, but she says that the
10 majority seemed to have no appetite. And I think you want to - you might be saying you do not have a problem that that may have been the position. All you are saying is, maybe that might have gone beyond just the members of the ruling party. It might not have been just the ruling party. Is that right?

MS LETSATSI-DUBA: Yes.

CHAIRPERSON: Ja, okay alright.

MS LETSATSI-DUBA: It went on when the majority party the ANC member, because we had other political types in
20 that meeting whom they did not voice, whether they support or not.

CHAIRPERSON: Yes, but of course, you can only say that, if you remember the meeting, and you know that members of other opposition parties did not support her because it is possible that even with the support of other

members, members of other opposition parties, she might still not have been able to get the committee to accept her proposal because they would still not form the majority.

But if you do recall that no, I recall that meeting she did not even get support from other opposition parties, then of course, then that would be that. Do you recall the meeting as such or do you do not recall it but you think this is what happened?

MS LETSATSI-DUBA: On this particular meeting like I
10 said, I do not recall.

CHAIRPERSON: Yes, yes. Okay, alright Mr Freund.

ADV FREUND SC: Yes, thank you, and I can understand that you attended a lot of meetings, but I think you would accept this, that that particular meeting of that Portfolio Committee had as a majority of its members, the members of the African National Congress, do you agree?

MS LETSATSI-DUBA: On that particular meeting which I do not remember.

ADV FREUND SC: Well, every single meeting of
20 portfolio...[intervene]

MS LETSATSI-DUBA: Every single meeting no, in most cases will be the very same because majority of our members were also serving in other Portfolio Committees, and even the Chief Whip, not the Chief Whip the Whip of the committee she also had other portfolio meetings. So in

most cases, the ANC will be the very same in attendance, other parties will be there with the normal numbers they normally have.

ADV FREUND SC: Alright, Chair since Ms Letsatsi-Duba you do not remember the meeting, I do not blame you for not remembering the meeting. I just want to give the Chair a reference to the PMG report on that meeting, the relevant part of that and Chair, you will find that in bundle 2 at pages 234 to 235, and I will leave this issue at that.

10 **CHAIRPERSON:** Yes. I wanted to put some question arising out of that answer, yes. Ms Letsatsi-Duba, would you agree, or would you not that if the Study Group of the ANC had taken a decision to say this proposal that was going to be tabled at the Portfolio Committee meeting by Ms Mazzone should be supported by members of the ANC who are members of the Portfolio Committee, then it is likely that there would have been support from members of the Portfolio Committee at the Portfolio Committee meeting when Ms Mazzone raised made the proposal.

20 Would you accept that?

MS LETSATSI-DUBA: Definitely, yes, I do accept.

CHAIRPERSON: And therefore that if they did not support the proposal, it may well be because they did not understand that the ANC was in favour of or the Study Group was in favour of that proposal. Would you accept

that?

MS LETSATSI-DUBA: Yes.

CHAIRPERSON: Okay alright thank you, Mr Freund.

ADV FREUND SC: Thank you Chair and in fairness to you Ms Letsatsi-Duba when one reads the PMG report, one does find that certain members said, well look, this issue was not on the agenda, and they were not fully prepared for this issue. So I accept that that must also be recognised in fairness to an assessment of this issue, but
10 even accepting that what I want to put to you is this.

And no subsequent meeting of this Portfolio Committee, right up until the time in June of 2017 which is more than a year later. And there were many, many Portfolio Committee meetings on Public Enterprises in that time. In no subsequent meeting, did the majority party ever expressed support for what they knew Ms Mazzone was asking the committee to do, namely to hold this inquiry. Do you agree?

MS LETSATSI-DUBA: Let me put it in this way, the
20 agenda of meetings they differ from time to time, sometimes we will be hosting the department itself, without the State owned enterprises. Sometimes we will hold meetings with one SOE which has got nothing to do with what Ms Mazzone has raised, so it differ from time to time.

So when you say a subsequent meeting, members

of the ANC or the ANC did not support is because it was not on the agenda for that particular, for those meetings which followed after she proposed.

ADV FREUND SC: Well, I hear you but let us just understand what we are talking about here. You yourself, have told the Chair today that you were aware of serious allegations, and you were aware - serious allegations of alleged State Capture of alleged corruption.

You tabled before your Portfolio Committee on the
10 one hand Ms Mazzone request that your committee pursue an inquiry, and on the other hand your letter refusing which you said is based on the legal advice that you had received. And I have said to you, in fairness to you, that I recognised that some members of that committee on that occasion said, well, this was not on the agenda we were not ready to deal with this issue.

The implication being we need to deal with this, perhaps on some later occasion, are you following me and are you understanding and agreeing with me so far.

20 **MS LETSATSI-DUBA:** Yes.

ADV FREUND SC: Now, what I want to put to you is this, if you were concerned and this is not directed only at you personally, it is really directed at the ANC caucus on this committee. If you were concerned that one needed time to study the correspondence and to take a view, it would have

been the easiest thing in the world to put it on the agenda to have it discussed and to support it, but that never happened, did it?

MS LETSATSI-DUBA: Yes, it did not happen.

CHAIRPERSON: I am sorry, just so that, your answer is recorded. Please just repeat your answer so that it is recorded, I think you may have spoken too softly when you were answering.

MS LETSATSI-DUBA: Before answering the question I
10 wanted to deny when the Evidence Leader says that my letter refused Ms Mazzone's requests towards an inquiry. There is no reference where we say we deny this, and in fact, I was even saying we are looking forward because this investigation will help Parliament to deal with them at the end of the paragraph. But because we have discussed the issue later of the legal opinion from the Parliamentary Legal Services, I will leave it at that. Now his question, I did not get it properly.

ADV FREUND SC: Well, if I can just Chair please place
20 on the record that I heard the answer to the question and the words that the answer was yes, that did not happen, and when you said yes, that did not happen it was in response to a question that I had put along the following lines.

That you could have, you the caucus could have if

you wanted to put that on the agenda for a subsequent meeting and voted in support of it but that did not happen, and I think you said you agreed with me and you said yes, that did not happen.

MS LETSATSI-DUBA: Yes.

ADV FREUND SC: Okay, thank you.

CHAIRPERSON: Thank you.

ADV FREUND SC: Now as you saw it, there was something of a stalemate. You were not against the
10 principle of parliamentary oversight on this issue, some sort of inquiry. But the advice that you had received was that it could not be permitted unless there was a resolution in the National Assembly supporting it. Do I understand that correctly?

MS LETSATSI-DUBA: Yes.

ADV FREUND SC: And that is what Ms Mazzone testified about and she said, well bearing that in mind, the DA in September of 2016, proposed a motion in the National Assembly and the motion was that the National Assembly
20 itself should appoint an *ad hoc* Committee, Chair, this is in bundle 2 at page 357. So I am going to read to you what Mr Manyi read according to Hansard into the record at page 357. He says:

“I move that the House.”

He says I move without notice but this is after the debate

has taken place.

“That the House one, notes the allegations of State Capture by certain individuals and their alleged undue influence over the government. Two, establishes an *ad hoc* Committee in terms of Rule 2531A, the committee 2A investigate the alleged capture of State resources and undue influence over the government.”

And then other things, make recommendations and he
10 explains, you know, how this committee should be
composed, and that was the motion that was put to debate.
And then if I look at page 361 of bundle 2, I see the people
who voted no and amongst them is Letsatsi-Duba DB, I
take it that is yourself?

MS LETSATSI-DUBA: Who voted where in the National
Assembly?

ADV FREUND SC: Voted in the National Assembly to
oppose a resolution that the National Assembly should
appoint an *ad hoc* Committee to investigate these
20 allegations. Not only you of course, all the rest of the ANC
caucus did the same.

MS LETSATSI-DUBA: Well you know, the processes are
so complex and difficult, because if you are not ready to
can enter into that space of inquiry - then I do not
remember what was the agreement, but if you say I voted

yes, it was not because I did not want the inquiry to happen. It might be because the processes and other issues. But I want...[intervene]

ADV FREUND SC: Sorry, sorry to interrupt you. But in fairness to you, I just want to tell you what Mr Frolick said because it may be of some assistance to you.

MS LETSATSI-DUBA: Yes.

ADV FREUND SC: Mr Frolick drew attention to the fact that Mr Jackson Mthembu then the Chief Whip moved an
10 amendment to the motion and the thrust of it was to say this should not be the subject of an *ad hoc* Committee parliamentary inquiry, if anybody has allegations of this type, they should take it either to the Police, or the Chapter Nine Institutions and according to Mr Frolick that was the reason why the ANC members voted against this resolution. Now, I do not know if you have any recollection of this, of this particular proposed resolution.

MS LETSATSI-DUBA: I do not recall.

ADV FREUND SC: You do not recall because it?

20 **MS LETSATSI-DUBA:** No.

ADV FREUND SC: Because what is interesting to me, is that you gave evidence a little earlier, in which you said that you and others contended to Mr Jackson Mthembu and others, that it was not adequate to leave these matters with the Chapter Nine Institutions or the Police, it was

necessary that Parliament itself should play a role in investigating the credibility of these allegations, and if they were found to have merit to see to it that appropriate corrective measures were taken, did I understand that correctly?

MS LETSATSI-DUBA: Yes.

ADV FREUND SC: And that remains your view, that is what should have happened?

MS LETSATSI-DUBA: Yes.

10 **ADV FREUND SC:** And as you know, it did not happen until at the very first, the letter sent by Mr Frolick in June of 2017. There was no such inquiry anywhere in Parliament, do you agree with that?

MS LETSATSI-DUBA: Yes, I agree.

ADV FREUND SC: Alright, and then what happened is that Mr Frolick on the instruction of the Speaker, and this is according to him, on the instruction of the Speaker and the Chief Whip, addressed three Portfolio Committees, and four Portfolio Committee Chairs, to please in their
20 respective committees investigate these allegations, in so far as it pertained to their own portfolios.

And we know that what came out of that, amongst other things, was the committee of the investigation of your own committee, then under the acting Chairperson of Ms Rantho and I presume you were aware of that at the time

that they pursued that inquiry.

MS LETSATSI-DUBA: Yes.

ADV FREUND SC: And I presume that she took over as acting Chair, precisely because your - what you told me, but I am assuming that you were promoted to a position that took you out of this particular Portfolio Committee. Do I understand that correctly?

MS LETSATSI-DUBA: Yes, that is correct.

ADV FREUND SC: But you would have been familiar, you
10 still remained a member of Parliament, and you would have been aware of what was going on, particularly in the Portfolio Committee and that they were having this so called Eskom inquiry.

MS LETSATSI-DUBA: Yes.

ADV FREUND SC: And you would have been aware, I assume, that there was a very limited and belated inquiry by the Home Affairs Portfolio Committee, into the issue of whether there was anything improper in the manner in which the former Minister of Home Affairs had dealt with
20 the question of naturalisation of members of the Gupta family. Do you agree?

MS LETSATSI-DUBA: Yes, I aware.

ADV FREUND SC: And were also aware that the Transport Portfolio Committee failed to investigate the allegations of State Capture, as had been requested by Mr

Frolick and that the Portfolio Committee on Mineral and Energy, like was really never got to grips and never investigated. Were you aware of that as well?

MS LETSATSI-DUBA: I was aware of that.

ADV FREUND SC: Now what I am interested in is what light you can cast, if any, on why those other committees did not proceed, and I want to put to you a hypothesis and see whether my guess is correct.

I want to put to you that there continue to be very
10 considerable resistance by important members of the ANC caucus, who continued to oppose this type of investigation. Would that be a reasonable guess?

MS LETSATSI-DUBA: That would be a reasonable guess, yes.

ADV FREUND SC: Well, perhaps you could just tell us about that a little more, because we were not there, and you were, so what can you tell us about this problem?

MS LETSATSI-DUBA: No, no, I would not have much
20 information but I know that one, every Thursday we will have a broader caucus meeting where these issues are debated, and some of the Portfolio Committees Chair would not agree with what was discussed in a broader caucus.

So it relates to the point I raised earlier on to say We are at a different level. Other people will think by so doing, we are trying to protect the ruling party and yet on

the other hand, they do not know they are inflicting the pain on the ruling party itself. So it is all about that, but I was aware two committees, did not want to do the inquiry.

ADV FREUND SC: Thank you, Ms Letsatsi-Duba I note that it is 7 o'clock I said to the Chair, I would try to finish in two hours. I have no further questions; I imagine the Chair may have some further questions.

CHAIRPERSON: Ja, not many. As a matter of interest, Ms Letsatsi-Duba I see that when the vote was taken in the
10 National Assembly on this proposal or this motion, somebody referred to as it is LM, abstained. Would you know whether that was he or she was a member of the ruling party or not?

MS LETSATSI-DUBA: LM?

CHAIRPERSON: LM Mchaaesa[?], ja Jaeesa[?] or Jaeesa[?] I am just wondering whether this was a situation where all the members of the ruling party voted in one way, or whether there was one who abstained or whether the one who abstained belong to another party?

20 **MS LETSATSI-DUBA:** No, I am not aware of that name belong to...[intervene]

CHAIRPERSON: Yes, okay. I think the question, the other question I have for you relates to the challenges you said you encountered when, as a committee, you wanted to hold Minister Brown accountable. You wanted to question

her on certain issues relating to her department, and she was not responding positively to your request for her to come to the meeting.

I understand that one of the things you could have done, would have been to approach the Chief Whip of the ruling party to in effect report her to say, Chief Whip this comrades, Minister is not behaving properly, can you take necessary steps to make sure she comes to meetings of the Portfolio Committee, am I right to say that is one of the things you could have done and if so, did you do it?

MS LETSATSI-DUBA: Yes, you are so correct.

CHAIRPERSON: Yes.

MS LETSATSI-DUBA: You are so correct, Chair but I just want to bring you this other element, which always happens all the time, because of the personalities, not all the Ministers disrespect, the Chief Whip, not all Ministers disrespect the Chair of their committees. And as a result I was always in their shoes to say, you know, they had a very difficult job, because this person is a Minister you are only the Whip, and you must always talk to her to say attend the meetings and there is norm.

CHAIRPERSON: So, is your answer that, you did not do it that is one you did not so to speak, report her to the Chief Whip and the reason why you did not do that is because you did not want to add to the challenges that the Chief

Whip has because some of the Ministers ignore.

MS LETSATSI-DUBA: No, I did report several times through the Chief Whip to say we have a challenge here and he will be saying you know what it is so difficult to talk to these people because they think being a Minister is above everybody else, so I it was really difficult.

CHAIRPERSON: But you do remember...[intervene]

MS LETSATSI-DUBA: Not all Ministers like I said others **to**w the line they know Chief whip is the Whip of the ruling
10 party, they must abide by the instructions of the ruling party to attend meetings, also to account to the caucus, others they do understand.

CHAIRPERSON: Yes, do you remember whether – who the Chief Whip of the ruling party was at that time or would you not remember?

MS LETSATSI-DUBA: It was the late Mthembu.

CHAIRPERSON: Oh, okay and would it also be correct to say, one of the options also would have been to approach the leader of government business, who would have been
20 the Deputy President at the time, through whatever channels whether you would go directly yourself or you would go via the Speaker or somebody else. But would you agree that that is one of the options you would have used - that were open to you or is it not?

MS LETSATSI-DUBA: No, it was one of the options but I

did not.

CHAIRPERSON: Yes, was there a reason why you did not do that or there was no particular reason?

MS LETSATSI-DUBA: There was no particular reason sometimes you get discouraged by the arrogance, you know, displays.

CHAIRPERSON: Yes, on the part of the particular Minister, or on the part of the person.

MS LETSATSI-DUBA: Yes.

10 **CHAIRPERSON:** Ja, okay alright. Now, for how long were you Chairperson of that committee was it about one and a half years or how long was it?

MS LETSATSI-DUBA: It was one and a half years.

CHAIRPERSON: And during that time when you were Chairperson of that Portfolio Committee, is the position that Minister Brown never came to meetings of the Portfolio Committee when you had asked or is the position that she did come to some but not to others?

20 **MS LETSATSI-DUBA:** She did come to some, if I should think I can count only two or three attendances in the entire time I was there.

CHAIRPERSON: Yes, and what would be your recollection of how many more or less how many times she would have been required or if she had been committed to appearing before the committee each time she was required.

How many times, I am just wanting to have an idea what percentage of attendance it would have been. Would it have been two or three times out of 20 times or out of 15 times or 10 times. Is that something you are able to help me with or not?

MS LETSATSI-DUBA: Ja, I can help you Chair let me say in my own words to say out of 100, she will attend 36 or 25 of the meetings.

CHAIRPERSON: Out of how many meetings?

10 **MS LETSATSI-DUBA:** Out of maybe 100 of them.

CHAIRPERSON: So less than half, far less than half actually.

MS LETSATSI-DUBA: Less than half.

CHAIRPERSON: Yes.

MS LETSATSI-DUBA: Far less than half and that the Deputy Chair will always come in, and as members will be requesting answers from the executive authority, and she will not be there.

CHAIRPERSON: Okay, no that is alright. Thank you very
20 much Ms Letsatsi-Duba.

ADV FREUND SC: Chair.

CHAIRPERSON: Yes, Mr Freund.

ADV FREUND SC: Thank you Chair, I just want on one point of detail.

CHAIRPERSON: Yes.

ADV FREUND SC: Ms Letsatsi-Duba it is correct is it not that you Chaired this committee from May 2014 to March 2017. In other words, almost three years?

MS LETSATSI-DUBA: Almost three years?

ADV FREUND SC: That is what you say in paragraph seven of your affidavit, from May 2014 to March 2017.

MS LETSATSI-DUBA: Yes, to March, it is almost three years.

ADV FREUND SC: Yes, thank you, that is just all I wanted
10 to clear up.

CHAIRPERSON: Okay which is quite a long time. Okay, alright. Thank you very much, Ms Letsatsi-Duba for availing yourself to assist the Commission we appreciate it.

MS LETSATSI-DUBA: Thank you, I hope my inputs will be able to shape our country and the role of oversight in Parliament particularly the ruling party to become better, thank you Chair.

CHAIRPERSON: Yes, no I think you have given us your
20 experiences and your perspectives in terms of what happens in the ruling party and I think the point you make in the remarks we have just made is quite important that we have got to look at these issues in order to see how we can assist our country. That should be the primary concern, what should we do to assist our country?

And what is it that may have been done in the past

that has not assisted our country, because we must not continue with things that do not assist our country, we must always look for ways of doing things that would assist our country. So I think that is in part, part of the point you have made, and I think it is an important point.

MS LETSATSI-DUBA: Thank you, Chair.

CHAIRPERSON: Thank you very much, Mr Freund.

ADV FREUND SC: Chair.

CHAIRPERSON: And so that is all for this evening and
10 your work stream remains with about two or three more witnesses that we will deal with on dates to be arranged.

ADV FREUND SC: That is correct, Chair.

CHAIRPERSON: Okay, alright. No, thank you very much we will adjourn. Thank you to everybody and the staff for staying till so late so that we could continue with the work of the Commission. Thank you very much, we adjourn.

INQUIRY ADJOURNS TO 25 FEBRUARY 2021