

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

19 APRIL 2021

DAY 377



Gauteng Transcribers
Recording & Transcriptions

22 Woodlands Drive
Irene Woods, Centurion
TEL: 012 941 0587 FAX: 086 742 7088
MOBILE: 066 513 1757
info@gautengtranscribers.co.za

CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that, *in as far as it is audible*, the foregoing is a **VERBATIM** transcription from the soundtrack of proceedings, as was ordered to be transcribed by Gauteng Transcribers and which had been recorded by the client

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

CITY OF JOHANNESBURG OLD COUNCIL CHAMBER

158 CIVIC BOULEVARD, BRAAMFONTEIN

DATE OF HEARING:

19 APRIL 2021

TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



Gauteng Transcribers
Recording & Transcriptions

PROCEEDINGS RESUME ON 19 APRIL 2021

CHAIRPERSON: Good morning Mr Freund, good morning everybody.

ADV FREUND SC: Good morning Chair.

CHAIRPERSON: Good morning Ms Modise and good morning Mr Masondo. Thank you.

Before we start I just want to say one or two things relating to the commission. Over the past few days two incidents have happened which are a cause of concern on
10 the part of the commission.

During the week I got a report that somebody apparently had fired a shot through the window of one of the offices of the commission. It must been in the evening and a bullet was found in one of the offices of the commission.

Of course over the weekend there was a break-in at the offices of the commission. The law enforcement agencies are investigating these matters. I don't know whether it is just ordinary criminality or whether it is much
20 more than that.

Of course in the break-in a computer and a monitor were stolen but I just want to say that if anybody if trying to intimidate the commission into not doing its job properly they must know that the commission will not be intimidated.

The men and women who keep this commission

going everyday dedicate a lot of extra hours to its work in the evenings and over weekends including Sundays, Saturdays, Sundays to sacrifice to make sure that we have evening sessions here are very determined that the work of this commission will be completed properly.

Members of the legal team, members of the investigation team are very committed to making sure that the work of the commission is completed properly.

I certainly would not be intimidated by anybody into
10 not finishing this work the way it should be finished.

We are determined to do what we are required to do and to do it properly up to the end. We hope that the law enforcement agencies will do their work and find those who are responsible for this and bring them to book.

I thought that it is important that I should just make it clear and that the nation should know we are not going to be deterred in the work that we are doing.

Thank you. Yes Mr Freund.

ADV FREUND SC: Yes thank you Chair. Chair as you will
20 be aware the primary evidence to be led today and before we come to the evidence this evening of Mr Mantashe to complete his evidence of last week will be evidence from the Executive Authority of Parliament which of course is a joint executive authority comprising of the Speaker of the National Assembly Ms Modise, the Chairperson of the

National Council of Provinces Mr Masondo. They have prepared both a joint submission and they – and a joint supplement submission to deal with both houses.

We propose to start with Ms Modise who presently is the Speaker and later probably only this afternoon we will reach the evidence of Mr Masondo.

So with your leave I would wish to call Ms Modise to testify to be sworn in and then we can do the formalities of placing the evidence on record.

10 **CHAIRPERSON:** Okay alright. Before we do that I just want to say to Ms Modise and Mr Masondo and also to the public when I approached them last year and indicated that I would wish Parliament to make a contribution by way of evidence they had no hesitation in assuring me that they would be very glad to do that.

They are not here because of anything they are here because they believe they should assist the commission so I take this opportunity to thank you Ms Modise and Mr Masondo for your cooperation and for the
20 fact that you – you are here to give support to the commission and to make such contribution as you can to assist the commission to make its contribution to the challenges that it is looking at.

Thank you very much for coming and availing yourselves. Thank you. Please administer the oath or

affirmation.

REGISTRAR: Please state your full names for the record.

MS MODISE: I am Thandi Ruth Modise.

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

MS MODISE: Not at all.

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

MS MODISE: Yes.

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

MS MODISE: So help me God.

CHAIRPERSON: Thank you very much.

ADV FREUND SC: Chair you should have available to you Bundle 6 of the Parliamentary Oversight bundle, is that correct?

CHAIRPERSON: Yes that is correct.

20 **ADV FREUND SC:** And Madam Speaker you should have the same bundle with you?

MS MODISE: Yes I do.

ADV FREUND SC: Can I take you please to page 7.

CHAIRPERSON: Well – well you have helped me Mr Freund because I was about to ask Ms Modise because I

was not sure but I think he has given the indication it is the fact that it is not in Parliament does not mean that we cannot address her as Madam Speaker.

MS MODISE: Mr Modise will do fine.

CHAIRPERSON: Ja okay alright. I just was not sure and I did not want to – okay no – okay.

MS MODISE: Anything

CHAIRPERSON: Okay alright thank you.

ADV FREUND SC: I think in this venue I may have – if I
10 may refer to you as Ms Modise. Ms Modise would you please turn to page 6 – page 7 of Bundle 6.

MS MODISE: Page 7. I have page 7.

ADV FREUND SC: And if you would keep your finger there and go through to page 36. In fact...

MS MODISE: Yes I do have it.

ADV FREUND SC: Yes page 36. Is that the submission that you jointly together with Mr Masondo prepared on the 25th of February of this year to submit to the commission?

MS MODISE: It is.

20 **ADV FREUND SC:** And if I can just take you to...

CHAIRPERSON: Okay alright may I ask you to just raise your voice so that it can be recorded properly or maybe you can bring the microphone closer.

MS MODISE: Yes Chair I will bring the microphone closer.

CHAIRPERSON: Ja okay thank you. Is the lighting fine

there? Can you see?

MS MODISE: So far it is fine.

CHAIRPERSON: Okay alright.

MS MODISE: Chairperson.

CHAIRPERSON: Okay alright.

ADV FREUND SC: And if I can take you to paragraph 3 on page 9.

MS MODISE: Paragraph 3.

ADV FREUND SC: You say there:

10 “The facts set out in this submission are
true and correct. They are within the
personal knowledge of the Executive
Authority unless stated or the context is
otherwise or had been obtained from
documentation under the control of the
Executive Authority where the Executive
Authority relies on information conveyed by
others the Executive Authority states the
source of the information and believe such
20 information to be true and correct.”

Now I take it that is correct?

MS MODISE: That is correct.

ADV FREUND SC: And – and I just draw your attention to the Chair that although that is stated the format of this submission is not an affidavit but nonetheless Ms Modise is

testifying under oath and is confirming the contents and I will address the same with Mr Masondo.

CHAIRPERSON: Yes, yes.

ADV FREUND SC: Now...

CHAIRPERSON: She – by confirming its correctness under oath she gives it the same status as an affidavit.

ADV FREUND SC: Now Ms Modise if you could just now go to page 37 you will see that there is a list of the annexures to your original submission, is that correct?

10 **MS MODISE:** It is 37 –

ADV FREUND SC: It has annexures, you see that?

MS MODISE: I think my bundle might be saying something else because my bundle on page 37 still deals with committee reports.

CHAIRPERSON: Okay I think somebody will assist you.

MS MODISE: I am looking the red one.

ADV FREUND SC: Are you with me Ms Modise.

MS MODISE: Yes, yes that is so.

20 **ADV FREUND SC:** And you will see that there is a list of annexures A through to K.

MS MODISE: From A to J – to K. Yes Sir.

ADV FREUND SC: Now if you keep your finger there at 37 and go all the way through please to 395 or let me stop at maybe 393.

MS MODISE: Yes Chair 393.

ADV FREUND SC: Right and can you confirm that those are some of the annexures that you originally provided to the commission?

MS MODISE: I can confirm that Chairperson.

ADV FREUND SC: And then if I take you to 394 and 395 can you confirm that you have also submitted electronically to the commission many more pages that comprise annexures J and K which have not been printed but which are essentially 00:13:18 extracts of debates of relevance
10 to this commission.

MS MODISE: I can confirm that Sir.

ADV FREUND SC: And then if I take you to page 397 through to 399 is it correct that the commission addressed – in fact through me addressed a further letter to the Executive Authority in response to your original submission asking for certain supplementary information and we find the letter asking for that information at 397 to 399, is that correct?

MS MODISE: That is correct.

20 **ADV FREUND SC:** Then if I take you to 400 is it correct that that is the letter under cover of which you submitted the page that I will call a supplementary submission?

MS MODISE: That is correct.

ADV FREUND SC: And then if we go to 401 through to 407 is that the body of the supplementary submission – 401 to

407?

MS MODISE: Yes.

ADV FREUND SC: And then if we go to 409 all the way through to the end is it correct that those are some but not all of the further documentation that you furnished together with your supplementary submission?

MS MODISE: I can confirm that.

ADV FREUND SC: Chair against that background I move that the submission, annexures, the request for a supplementary submission, supplementary submission the annexures thereto all collectively in Volume 6 of the Parliamentary Oversight Bundle be admitted as Exhibit ZZ15?

CHAIRPERSON: What is the exhibit number?

ADV FREUND SC: ZZ15 – 15.

CHAIRPERSON: Hm. The submission by the Executive Authority of Parliament and the documents indicated by the evidence leader that are attached to it will be admitted as Exhibit ZZ15, is that right?

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

CHAIRPERSON: Thank you. Okay.

ADV FREUND SC: Thank you. Ms Modise can I now ask you to turn back to page 9 please?

MS MODISE: Page 9?

ADV FREUND SC: Page 9.

MS MODISE: I have page 9.

ADV FREUND SC: And you say the following in paragraph 4 at page 9 – you say and this is you speaking collectively with Mr Masondo. You with me page 9?

MS MODISE: I am – I am –

ADV FREUND SC: Paragraph 4.

MS MODISE: Paragraph 4 yes.

ADV FREUND SC: You say this:

10 “This submission provides a high level
summary of the role played by Parliament in
executing its constitutional mandate prior
and during investigations into allegations of
state capture.”

I take it that is a summary of the purpose of this
submission?

MS MODISE: That is true.

ADV FREUND SC: Now before we proceed any further we
have already introduced into the record that you serve as
the Speaker of the National Assembly but could you give
20 the Chair just a very brief as it were biography of your
political career and in particular insofar as it involves
participation in the National Legislature?

MS MODISE: Thank you. Chairperson I was amongst the
first to be in the Democratic Parliament in 1994. I spent
the first ten years of my political life there. The first two

as a member of the Joint Standing Committee and other committees. The eight years that followed I was both Chairperson of the Joint Standing Committee on Defence and the Portfolio Committee on Defence. Here and there serving in other portfolios and ad-hoc committees of Parliament.

I then went from 2004 to 2009 to the North West my Province and served as the Provincial Legislature Speaker.

In 2010 I was then requested by my party to go and
10 become the Premier of the North West that was from the end of 2010 up to 2014 when the elections came.

From 2014 to 2019 I was the Chairperson of the NCOP and in the last elections I was given the opportunity and the honour to become the Speaker of the National Assembly.

ADV FREUND SC: Thank you very much for that. Now I want to take you just crisply through some introductory points. Can I take you to paragraph 9 please – page 10.

MS MODISE: Yes Sir.

20 **ADV FREUND SC:** And while you have your finger at page 9 may I ask you to go to page 38.

MS MODISE: I have page 38.

ADV FREUND SC: Thank you. Now there is no need for us to go through Annexure A in any detail it speaks for itself. You have sought to identify provisions in the

constitution that bear on the constitutional role of both the National Assembly and the NCOP in relation to Oversight and Accountability. But perhaps you might just like to summarise or draw attention to what you think are the most important provisions of relevance when this commission is considering whether Parliament did or did not live up to what it is required by the constitution on the question of Oversight or Accountability. So the question I am asking is just highlight what you think are the most important parts
10 of Annexure A?

MS MODISE: The constitution it gives the people directly elected by the public the responsibility to be their guidance.

When you become a member of the National Assembly you take an oath to abide by the constitution and to as honestly and as honourably as possible to represent the people.

So it is important for us as Parliament to say that for us it is not just a prestige it is about service. It is not
20 just about holding the executive to account and to play oversight over the rest.

It is also to hear on behalf of the people and to speak on behalf of the people. It is about ensuring that both houses ensure that nothing that is in the interest of the people of South Africa is 00:21:40 is diverted.

As the two houses jointly do that work they also joined forces with the provinces and local government to make sure that no corruption, no maladministration happens.

So I would say that on top of that Parliament has the responsibility to also represent the country internationally and that is something that is important.

Parliament also passes the National budget. That is not just a function of oversight it is a power that
10 Parliament can use but so far has not used effectively to say no we will pass those budgets because we agree one hundred percent with it or we will withhold this budget because we think that in fact you need to do that.

Now in the first few years of our democracy we had to find neighbouring mechanisms and that is why the money bills were elected to enable Parliament to be able to express their view on the budget in any other money bill.

Sadly we have not yet exercised that power hopefully we will in future exercise that power.

20 **ADV FREUND SC:** Right thank you. What you then do if I can take you back. I am going to take you backwards and forwards your affidavit and the relevant annexures but if we can now go back to page 10. Keep your finger where it is Annexure A because we are going to be back there very quickly.

MS MODISE: Yes.

ADV FREUND SC: You will see at page 10 paragraph.

MS MODISE: Paragraph 10?

ADV FREUND SC: You say there:

“Annexure B provides a summary of recent committee activities related to corruption.”

Annexure B is to be found at page 40 and following.

Now again I do not think we have the time to go through the entire content of Annexure D that starts at page 40.

10 **MS MODISE:** Yes.

ADV FREUND SC: But on my reading of it it lists a series of examples of recent I stress that word recent instances of Portfolio Committees exercising oversight in relation to corruption allegations particularly.

Perhaps you would like just to talk to this document briefly and in summary.

MS MODISE: It – in dealing with this one has to go back to how Parliament organises itself to deal with oversight. Chair if you look at the powers of committees no committee
20 actually has an excuse for not asking pointed questions, for not investigating, for not calling for witnesses, for not summoning people.

That is important because committees of Parliament, committees in the legislatures have the same powers. So I want to upfront say it is a pity that we had to

wake up when the issues around allegations of state capture were there because these are the powers of the committees.

The House has further powers which enable members to ask questions, to call for snap debates, to call for motions and to actually pointedly put the executive on the spot.

So we pulled this out because after the allegations of state capture it was important for us to begin to refocus
10 the committees and Parliament itself into pointedly being deliberate about following up on issues.

And that is what we intend to intensify before this term of Parliament finishes because we want to say that committees do ask questions but sometimes you need to capacitate members to ask questions which are pointed to be able to produce evidence if the responses and the reaction they get are not there.

So I would say that Parliament is – we pulled that out because when the allegations of state capture were
20 given came out into the public Parliament woke up and then deliberately said to committees you shall now look at these allegations and investigate them.

And that is why you had committees that were mentioned as being related to any untoward behaviour where then pointedly going into those.

ADV FREUND SC: Yes now I am going to take you back.

CHAIRPERSON: Mr Freund, Mr Freund.

ADV FREUND SC: Can I just follow up?

CHAIRPERSON: Ja.

ADV FREUND SC: I am going to take you back in a moment to the period you referred – the period of allegations of state capture that led to the formation of this inquiry but these particular instances which are more recent instances are you saying to the commission that
10 there has in fact in your judgment been a change of
00:27:24 practice in recent times?

MS MODISE: I am saying to the commission that we actually can give a report from 1994 of a mixed bag where there were committees which did not do their work with any fear. Where the – because remember the first ten years
Chair maybe to digress a bit.

CHAIRPERSON: Ja.

MS MODISE: The focus was also on making Parliament for the first time to be more representative. The focus was to
20 ensure that laws were passed, policies and processes were in place and therefore perhaps the focus of Parliament rather than to look at scrutinising was in making laws. Policing the laws that we are making, identifying the laws which were still disadvantaging people.

So once you have made your laws you now must

make sure that you actually have the means and the personnel to execute.

You begin to give your attention to who are these people who are supposed to be at the implementation phase of this which are supposed to be integrating us as South Africa as one country.

And I am saying that perhaps the wake up was that it is no longer so important to run and make more new laws it is more important for us to police what we have already
10 put out there.

It is more important for us to query when an executive members makes an – a commitment, makes a statement to follow through whether or not what they have promised out there in public this person has the resources to executive, this person has followed through, what are the results on the ground?

CHAIRPERSON: Well I wanted to just take you back to the first answer you gave to this question Mr Modise because I do not want to forget what I wanted to raise. You – you
20 referred to the oath of office that members of Parliament take and you referred to the constitution and the constitution and makes it very clear that Parliament, as I understand it, is about the people of South Africa.

MS MODISE: That is so Chairperson.

CHAIRPERSON: The oath of office requires every

member of Parliament, before he or she can do any work as a member of Parliament, to take an oath and swear that they will be faithful to the Republic of South Africa. Now I understand you to be saying and I just want you to tell me if that is not what you intend to say. I understand you to be saying, as Parliament, as members of Parliament in the interest of people of South Africa are paramount in our work as members of Parliament. Is that a good understanding of what you are saying?

10 **MS MODISE**: That is exactly what I meant.

CHAIRPERSON: Yes.

MS MODISE: We would not be public representatives if we do not ...[intervenes]

CHAIRPERSON: Yes.

MS MODISE: ...take and prioritise the interest of the people of South Africa.

CHAIRPERSON: Yes, yes. Okay thank you. Mr Freund.

ADV FREUND SC: Thank you. Can I now refer you to page 11, paragraph 12? You will see there are
20 subparagraphs.

MS MODISE: Sorry, I keep on taking my finger off. Page 11?

ADV FREUND SC: Page 11. You see there a section headed, Function of Oversight?

MS MODISE: Yes.

ADV FREUND SC: And this part of your submission summarises the conception of what oversight really requires. And before we going anywhere else. Can I take you to page 13, paragraphs 18 all the way through to 21. We find the same is being done on the functions of accountability.

MS MODISE: Yes.

ADV FREUND SC: When I read that, I immediately recognised where those paragraphs come from. Those
10 paragraphs, I want to put to you and I want you to confirm if I am correct, those paragraph are taken straight out of the oversights and accountability module adopted by Parliament in or about 2009. Is that correct?

MS MODISE: That is correct.

ADV FREUND SC: And Chair that is in the supplementary bundle, the Reference Bundle which should be on your desk.

CHAIRPERSON: [No audible reply]

ADV FREUND SC: And that is – we do not have the black
20 numbers on the top left. We only have the red numbers on the top right but it is PO-01 is the beginning of the oversight and accountability module and I think, Ms Modise, if I am correct, you have been given a copy of the Reference Bundle in which we find the oversight and accountability module. It is right at the back of that file. It

is not quite at the back, it is second from the back.

MS MODISE: Can you just...

ADV FREUND SC: It is PO Ref 01.

MS MODISE: [No audible reply]

ADV FREUND SC: Now there has been quite a bit of evidence already led before the Commission in respect of this document and therefore there is no need to cover the same all over again but in summary, is it correct, that this document really expresses the considered view of
10 Parliament when it was adopted as to how Parliament should go about its constitutional oversight and accountability responsibilities. Would you agree?

MS MODISE: I would agree and extend it to the considered view of the legislature sector of South Africa because Parliament did not work alone on the oversight module. It worked with the provincial legislatures.

ADV FREUND SC: Right. And we have already heard evidence that there are some important features of this oversight and accountability modules that were proposed
20 but were endorsed in principle by the adoption of this module but were in fact not implemented for example a tracking and monitoring mechanism, just to take one important example. And I suggest that you should be given access to the affidavit of Mr Magashule speaking for the African National Congress.

I am not going to take you to that but I think you would have seen in Mr Magashule's affidavit which is endorsed by Mr Mantashe who will be testifying this evening, says: Well, the ANC, for one, accepts that there are certain cautions of the oversight and accountability module that were not implemented that still should be implemented and that the implementation of what has not yet been implemented has become a priority. You concur with that and I give you a fair summary.

10 **MS MODISE**: I agree and I am happy that the ANC in their affidavit that says that we have actually started with that. In both houses, whenever members of the Executive expresses and commit to doing certain things to or for the public, we take note. Committees take note. When committees report, when ministers make statements on the floor of The House we write to them to remind them you have said this. Please give us the progress report.

20 What we had not finalised, which we are working on, is to then have a kind of a report at the end of each session that says we wrote to you Minister X on your commitment but you have not come back to us to say how far you have gone on that commitment, whether you have done it or not done it and what the reasons are for not doing that. That we agree is what we are in the process of finalising and getting the personnel to do that.

ADV FREUND SC: Right. And that is directly related with another feature that has been much discussed on the evidence that we have already heard on parliamentary oversight. We first, really, heard about it arising from the evidence of Mr Godi, a former Chairperson of the – of SCOPA, and his perspective was the following, that SCOPA for one, in his view, responsible and appropriately grabbed with the problems drawn to their attention particularly by the Auditor General’s report.

10 Conducted hearings, drew reports and in the reports highlighted features that were not regarded as satisfactory and also highlighted what they believe should be done about it. And then according to Mr Godi, those reports of SCOPA would be adopted by the National Assembly and then the relevant portions would be conveyed through the Office of the Speaker to the appropriate representative of the Executive.

 And Mr Godi’s point was this. Although that is done, not only is there no direct follow-up but there is no
20 sanction for a member of the Executive who simply does not do what is requested or directed by Parliament and that some attention needs to be given to this problem of sanction or, we can put it differently, consequence management, what is to be done when Parliament does its job and the response does not come, not only you not get

the report back, as you discussed it, but sometimes you much reach the stage which becomes apparent there is no intention to do what Parliament is directing.

Do you want to comment on that issue, the issue of consequences and non-compliance with the clearly expressed recommendations or proposals of Parliament when adopting Portfolio Committee reports?

MS MODISE: I want to respond in two ways. Mr Godi was right but he also had the powers as the chairperson of that
10 committee to follow up not only at committee level but in the floor of The House to call for the Minister to respond.

The second leg of my response would be that the reason why we are looking at a tracking is precisely to be able to, at the end of the year, at the end of five years, be able to write a report card to the President and say this is what your minister has done, promised and not delivered on. This is how they have failed. This is how they have failed to further.

But in the meantime, in fact, the Leader of
20 Government Business does get whipped by the presiding officers now and then because we as Parliament do not have the power as the presiding officers. The members can do that. They can ask any question. One of the members have on the floor of The House is to ask embarrassing questions. We used to call it the power of

embarrassment where you embarrass the Executive into action.

So what we have done is to, when members complain to us, that we are not getting the joy. We whip the Leader of Government Business so that the Leader of Government Business whips the people he leads in the Executive to take us seriously.

But I want to make an example when I was in the NCOP. We had a Minister who was not taking us seriously, would never come to the NCOP when they had questions there. So at a particular instance, this minister was very enthusiastic because the budget was coming up. And I said to the minister I do not think we have any appetite in dealing with you. You disrespect us and therefore you see to finish how you get recognition and adoption of your budget.

Recently one of the ministers' budget was coming up. He was quite new. He had an engagement at the AU and thought that they could skip the budget and I said if you go to the AU and your budget is on the floor I can guarantee you we will not pass the budget because the priority of our international responsibility cannot be so superior as to the budget of this country in the functioning and the dipping of democracy and empowerment in this country.

So it is not just about having a device, a tracking device. It is also about having members of Parliament experienced enough to push their point at committee level and on the floor of The House. It is about us following through between us, the presiding officers, on those letters we have written three months ago. Minister have you? I do not see your response. You have not recommitted. You have not given us in fact the extent of what you have done. And that is why we are saying we want to do that tracking
10 so that we can do this.

ADV FREUND SC: Yes. And when you ...[intervenes]

CHAIRPERSON: Well ...[intervenes]

ADV FREUND SC: Sorry.

CHAIRPERSON: I think the topic is quite important, Ms Modise. What should be done with regard to a member of Parliament who wants to do his or her job properly in this regard who happens to be a member of the majority party and but feels that if he or she does he or her job in this regard the way she would like to do it she might be
20 viewed by his or her colleagues, members of the same party as behaving like the opposition and therefore she feels or he feels like that, no, I cannot be too robust. I cannot ask an embarrassing question to my comrade who is a Minister. I must remember I am not the opposition. What do we do about that?

MS MODISE: Chair, I think if the member is not too sure that they will not be treated like they are not loyal to the party, they have – in the first instance there is a chief whip that they can go to. And in fact within every portfolio committee there is a week for a party and all parties try to put somebody in there. They can take a stand there. They can approach us the presiding officers.

We have had meetings with the chairpersons and the ministers where the tensions were rising and
10 intervened. But I must make a personal example of myself. In those eight years I had the Minister of Defence and at some point we – the two of us had to be called by the President because I insisted that I understood what my role was and the insisted that we understood and...

Because on two occasions as chair for the support of the committee of the just Standing-in Committee I had actually cancelled the meeting because the minister was ill-prepared and ask the minister to leave.

So sometimes when – especially when you are
20 still new in Parliament and you are not and sometimes if you really are not certain you will not – you will be intimidated but if you know that you are right, you can take this matter up right there in Parliament in your party structures and have your battles there.

Because once you are in Parliament you take the

same oath and the same oath is where the public per spare ten cents you must follow that ten cents unafraid, impartially asked the questions because it is not our resources, it is the resources out there and you will find a good size of MP's who do that.

I do know that some people think it is the electoral system. The electoral system is there but it can intimidate you but I think that the member of Parliament – perhaps our weakness is not in strengthening the resolve
10 of this individual member of Parliament to be unafraid. To say it is in my party but in fact the parties here to represent the interest of the majority that has been brought here and therefore in putting this question.

And in some instances you have heard very stinging questions that have began to come from the floor in, not this budget debate, I think just before we went into Covid. I remember the Portfolio Committee on Human Rights – on Human Settlements and Water pushed me. They said we really are not having the appetite to pass this
20 budget because of this and this and this.

Now this was ANC members telling to their minister. And they said the only reason we are passing this is that we are recognising that you are new in the department. So more and more over time it means that we would be able to have members of Parliament representing

the people and the people's interest.

Now one of the problems of the South African Parliament, Chair, is that every five years parties bleed members.

CHAIRPERSON: Yes.

MS MODISE: You have got new people coming in. Uncertainty. You still have to capacitate. And in those years you do encounter where the Executive has the upper hand. But I must also say that perhaps if we were to be
10 able to move in such a way that the third arm of the state actually unfolds and becomes an arm of the state and can really get the resources that it needs to do its job.

You might not find that members, one, want to become cabinet ministers and therefore do not ask unnecessary questions. Two. They feel comfortable because the arm of state, the legislative sector is strong enough to protect all members irrespective of party affiliations and that is where I think into the future the South African Parliament will be doing.

20 **CHAIRPERSON:** It is interesting you say – you mention that last point because as you are talking, what was going on in my mind is, maybe there ought to be some way of addressing some of the things that might be attracting some members of Parliament to the Executive because maybe some they will – I do not want to do anything that

could be career limiting. [laughs] I want to be considered to be a deputy minister or minister and so on and so on.

Of course, it may be that some who may have that in mind have that in mind irrespective of whatever financial benefit that might come with but just the position but maybe with – if financially it does not make a lot of difference it might do good so that people can just do their job without an eye to, you know, promotion if it is promotion but I – obviously, that cannot be everybody but I
10 think there would be some people.

But I think what is very important is to try and create an environment for members of Parliament which will encourage the robustness that we think should be there in performing oversight functions and holding the Executive accountable. And it may well be the leadership of Parliament might need to think about what things need to be done or what measures need to be put in place to encourage members to do what is right and to know that doing your job the right way does not necessarily mean
20 that it is career limiting.

But certainly if, for example, political parties or the majority party is going to be sending the message that do not behave like your position then people might feel that – well, your position – ask certain questions to members of the Executive in a certain way I must not do

that. I must remember that this is my comrade. This is an ANC minister. So.

But at the same time one asks the question, who said that your party wants corruption to be swept under the covers? Who said that your party wants a minister who might not be doing the right thing to address corruption in their department should not be exposed? Because corruption should be dealt with properly.

So these are all the things that I think we all
10 should look at but certainly I think Parliament is a very important institution but it is important that they do not allow them not to take them seriously and I think that starts with doing its job properly and holding, you know, the Executive to account.

MS MODISE: Chair, I would agree.

CHAIRPERSON: H'm.

MS MODISE: And that is where we start every term of Parliament with induction.

CHAIRPERSON: H'm.

20 **MS MODISE:** A general induction programme for all members, rules and all the housekeeping issues. A more detailed workshop and training for chairpersons. And then we do have an ongoing relationship with the University of Witwatersrand and to try and capacitate members but, in fact, nothing beats creating a capable member than a

member who really reach up on the portfolio that they have, that they are in, that do research.

In my time as chairperson I could subscribe at the expense of Parliament with any international body and magazine and therefore I was up to date. The other thing is that, in fact, good chairpersons and good back benches actually make the best ministers. They understand why questions are put to them. They have no difficulties in coming clean. They know when they are not supposed to
10 be dilly-dally.

So our thrust is, get enough capacity for the individual member to understand their own environment to be able to read and analyse the budget of their portfolio to ask questions because ultimately if I am sitting at home and I am watching Parliament, I want to see this person that is supposed to be representing me.

Asking the minister a question about what affects me. Asking the minister about the quality of water I am drinking. I do not want the ANC member to be praising
20 the minister when I do not have water. I want that matter. And that is why you have got motions, you have got questions, you have got matters in the public interest so that as and when things develop out there, members of Parliament can take the gab and say I want to discuss this.

You have also a balancing act because you also

allow members of the Executive to come to The House and say: Can I make a statement? This has happened. So that information goes out there because one of our responsibilities also is to take the information out into the public. Are not take it and just leave it.

It is also to ensure that the public is properly educated on issues of oversight on the laws that we pass, how they affect them on any policy or any relationship we might form with any outside body. So Parliament has also
10 that responsibility to educate and to inform.

CHAIRPERSON: Thank you.

ADV FREUND SC: Chair, sorry to interrupt but it has been drawn to my attention that sometimes your personal mic is not centred and they are having some difficulty hearing your comments.

CHAIRPERSON: I think it might not be the mic. I think working in this Commission for the past three years has done something to my voice.

ADV FREUND SC: Oh, okay. [laughs]

20 **CHAIRPERSON**: I think in the past nobody would complain of not hearing me. [laughs]

ADV FREUND SC: Yes, but as you say, if I can just take you back ...[intervenes]

CHAIRPERSON: I have adjusted it.

ADV FREUND SC: Okay thank you Chair. If I can just

take you back a bit when I last asked you a question?

MS MODISE: H'm?

ADV FREUND SC: You started to tell the Chair about a practise of putting the Leader of Government Business on the spot and I just want to check as a matter of fact that when you were giving that evidence you were talking about in your present capacity as Speaker with the present Leader of Government Business, that is what you were referring to or were you talking more generally?

10 **MS MODISE:** No, it is practise that has been there. The Deputy President is the Leader of Government Business. The Deputy President and the presiding officers have sessions together. If there is a deadlock on certain issues on Parliament, the chief whip of the majority party, the Speaker and Leader of Government Business are the deadlock breaking and mechanism.

So the Leader of Government Business is the middle person between the Executive and the legislature. So the – even when we deal with programmes of
20 Parliament we have to because we do not want to blind sight them and they – we do not want to bring them when we do not turn up when we actually did not also take into consideration. So there is this ongoing two-way street between the Leader of Government Business and the presiding officers.

ADV FREUND SC: Alright. So I want to refer to some of that more clearly now. Before you were the Speaker of the National Assembly you were in fact the Chair of the NCOP. So you were – you have – although you were new to this job, relatively new to this job, you have actually been part of the Executive Authority and therefore would have participated in these discussions with the leader of government business for at least the last two terms of parliament, am I understanding that correctly?

10 **MS MODISE:** That is correct.

ADV FREUND SC: And of course the leader of government business is traditionally and at the moment and the preceding administration the Deputy President of the country so that it is the current Deputy President and the former Deputy President, now the President Cyril Ramaphosa and are you telling the Commission that in the period when you were the Chair of the NCOP and when Ms Mbete was the Speaker of the National Assembly you would have attended from time to time discussions between the
20 executive authority of parliament and the then Deputy President Cyril Ramaphosa?

MS MODISE: I am saying that, I am also saying as Chairperson of the NCOP I have had a sit-down with the then leader of government business on ministers who did not think it was important to attend to the sittings of the

NCOP on the quality of responses or questions put to them and we saw an improvement after taking that matter up with the leader of government business.

ADV FREUND SC: Thank you. Now you will be aware, I am sure, that there has been quite a lot of evidence before this Commission on the manner in which parliamentary oversight was exercised particularly in the National Assembly more than in the NCOP but over the period particularly 2016, 2017 and there has been a point of view
 10 of some that parliament did not 2016 and up to the middle of 2017 really get to grips with and pursue and exercise proper oversight in relation to allegations that the then widespread in the public domain on questions of alleged state capture, alleged corruption. Can you tell us whether those sorts of issues were raised in the sort of process that you have described, the consultation between the executive authority and the leader of government business.

MS MODISE: I would not specifically respond directly to that one. That would have had to be a discussion between
 20 the Speaker of the National Assembly and then – because remember also that the executive members are not members of the NCOP and therefore the NCOP can only deal with them on the occasions they are in the NCOP and the rules of the NCOP applied for them.

Now when they are members of the National

Assembly it makes better sense of responsibility on the Speaker because these are your members. They will have to come here for vote, they will have to come here for debates, they occasionally go to that house.

So it would, in my own submission – this is one question which I suspect Ma'am Mbete will be better placed to respond.

ADV FREUND SC: That was precisely what I was trying to understand. So if we want to know about that then really
10 the people we have to ask are Ms Mbete and President Ramaphosa because it would have been a personal interaction between the two of them. Is that – am I understanding your evidence on that point?

MS MODISE: Yes, your understanding is correct, through you, Chair, I would say that yes, that matter would have come up but when you also look into what we gave you, you will notice that there was a swing, a change, especially after the judgment at the Constitutional Court where the National Assembly realised that it was their responsibility
20 especially in that instance because I keep on saying that any structure that is under the control of the executive becomes parliament's business.

So parliament would need to understand its role and when it is not clear of its role we do have a legal department and when we are not – they know when I was

not happy – when I am not happy with the legal advice they give me, I force them to get outside help so that I can have a comparison. So when you are presiding, sometimes you pause to look at whether or not the direction you are taking or you are being made to take is right but ultimately it is on the head of the Presiding Officer how matters get deliberated on, how they are concluded.

If you are not careful you will let the thing flow and take the blame because ultimately, whatever it is that happens on the floor, if a decision is taken that [indistinct] is adopted by the house, it is my responsibility, I must make sure that I follow through with that. It becomes my bed, whatever.

So if we do not create enough capacity to enable members to make distinctions, to enable members sometimes to say I would rather be slow on this matter and get more information and empower myself to take the right decision, then it will not – it will not be right with parliament.

If we get put under pressure, especially towards the end of a term, to run because then we have a lot of issues. I think that that is time when shortcuts are taken and which could be very pricy but I think that parliament must almost argue to take a slowly but sure path to insist that it is properly advised so that it can take the decision that do

not just benefit parliament because we do get benefitted if the public is happy. But, in fact, if the public is unhappy, we are the sound box.

ADV FREUND SC: I would just like to take you back ...[intervenes]

CHAIRPERSON: I just wanted to say although he is asking the questions, you are telling me so if you could face this side more often.

MS MODISE: Yes, Chair.

10 **CHAIRPERSON:** More often. You have been doing less of it, sometimes I do not hear well, so ja.

MS MODISE: My apologies, Chair.

CHAIRPERSON: Okay. No, that is alright.

ADV FREUND SC: Ms Modise, in your last answer you referred to a Constitutional Court judgment and I got the impression that what you were conveying was that that judgment had been catalytic in assisting a better understanding of the role of parliament. Was that a reference to the Nkandla judgment or some other
20 judgment?

MS MODISE: I think, yes, it is. Because, Chairperson, before that judgment, if you read into what happened in the National Assembly, I suspect that National Assembly looked at its powers and functions and decided that in fact it is within its own right to review and to take whatever

course of action they want to take but that decision of the court helped us because subsequent to that decision, I myself as Speaker of the National Assembly have not been happy about what has come out. I have rushed to the court to say look, I think there is overreach here or I think I do not understand this, please clarify this.

So that decision of the court has actually empowered parliament to begin to do things properly, to respect the space of the Chapter 9 institutions, to respect
10 the courts but also to insist that it understands its mandate better and must execute.

ADV FREUND SC: Chair, I am about to move onto a different topic, I see it is a convenient time to take a break.

CHAIRPERSON: Okay, let us take a tea adjournment, it is quarter past eleven, we will resume at half past eleven. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

20 **ADV FREUND SC:** Thank you, Chair. Chair and Ms Modise would you turn to page 409 please in bundle 6?

MS MODISE: Thank you very much, I do have it.

ADV FREUND SC: Now this is one of the annexures that you furnished as part of your – I am not sure if it was your initial submission or your supplementary submission but

the point is this. It is dated the 19 June 2017, it says this – it is issued by parliament and it says:

“In the light of the recent accusations of state capture linked to alleged emails involving a number of ministers, parliamentary committees have been directed to urgently probe the allegations and report back to the National Assembly.”

It then gives further details about Mr Frolick having written letters to various chairs of various portfolio committees. I
10 would like to start off by asking whether you had any personal knowledge before this announcement was made that this was coming. Did you play any role or have any insight as to who this came about or are you – let me leave it at that.

MS MODISE: No, I did not, I was in the NCOP but there had been a discussion between the Speaker and I on the – what was spilling out in the public.

ADV FREUND SC: Between the Speaker, that is Ms Baleka Mbete and yourself.

20 **MS MODISE:** Ms Mbete and I, yes. And I ...[intervenes]

ADV FREUND SC: Perhaps you could just share with us what you feel you can about that discussion.

MS MODISE: Your portfolio committees have powers to investigate and naturally we would have expected that immediately there is something like this that committees

without being prompted would investigate but I think that what worried us were that it was not just your usual maladministration and petty thieving, this was – now the new term was creeping in the state and I think that she must subsequently have decided to – I do not know whether she had spoken before or to Mr Frolick or not before we had this – it was not an in-depth thing but we thought that yes, parliament must actually wake up and smell the coffee, we cannot leave this to chance.

10 We could have left it, some committees might have investigated, some might not but that the house chair responsible for committees was actually cracking the whip we thought was a good thing.

ADV FREUND SC: Yes, but do I understand you correctly that even before it was announced, that the house chair was cracking the whip, you had already had a discussion with Ms Mbete in which she indicated that she thought, and you agreed, that there should be some pursuit of these allegations by the structures of parliament.

20 **MS MODISE:** Yes, the presiding officers have meetings from time to time, we can confer on issues that affect both houses and now and whether it is formal or informal we will discuss about things, sometimes even bounce on each other for advice on how to deal with issues. So we did discuss this but I think ultimately it was between Mr Frolick

and Speaker Mbete at that time to take the matter forward.

ADV FREUND SC: Fine. Now of course a fundamental feature of this is the timing of it. This is in the middle of June and this – the very first paragraph of this document refers what are called some alleged emails which had become known in popular parlance as the so-called Gupta Leaks. You would be familiar with that, I assume?

MS MODISE: Yes, yes, I am familiar.

ADV FREUND SC: Now was it the Gupta Leaks that
10 prompted this and if it was the Gupta Leaks that prompted this, why did we have to wait for the Gupta Leaks to prompt this because the allegations that were allegedly substantiated in the Gupta Leaks had been in the public domain for a long, long time by then, I mean, as early as February/March a number of very senior personnel in the National Congress leadership themselves were making serious allegations. So I am trying to understand the delay and the timing questions here insofar as you have any knowledge.

20 **MS MODISE:** Well, Chair, I will speculate. In politics sometimes there are games. I, myself, when I got my farm was accused of having stolen a state farm. So sometimes when allegations come out, until they are investigated you are not sure whether it is politicking or whether there are facts. Clearly, as I say, if the Chairperson should have

followed up or their ministers in their respective portfolios, these allegations are coming out, what do you say?

But, Chair, when the emails were leaked it no longer just became probably propaganda or a game, political games, it became real and therefore I would understand why Mr Frolick would say you definitely now must investigate these matters because we need to get in there.

Now the Home Affairs one was more serious. If
10 your Home Affairs, your population register is contaminated, you have a serious issue of going to the elections and being sure that in fact these people who are sending public representatives indeed should have been the people who sent – so it makes you uneasy and therefore you would need to.

PRASA important because the majority of South Africans use public transport so if you get allegations that there are things that are not going well there, you know that it is going to hit the poorest of the poor so you
20 become even more anxious. So I, as I said, Chair, I am speculating on this one.

ADV FREUND SC: But, you see, take Mcebisi Jonas. In February and March of 2016, fourteen, fifteen months before this, issues a public statement alleging that he has been offered bribes by the Guptas, very substantial bribes,

to do their bidding and in exchange he will become the minister. I mean, I can hardly think of a more serious allegation.

Now this is not an instance of speculation and rumours, this is your own senior member making an allegation like this and he was not speaking alone. Ms Hogan spoke out, Vytjie Mentor out and others. Now the point I am making is they did this by no later than March of 2016 and what mystifies me is why is this kind of action
10 that we are seeing here only being taken in June 2017 and why not back in March 2016?

Now I understand you were not then the Speaker of the National Assembly and you may say to me I do not know, but I just want to know what you do know and to what extent you can assist us.

MS MODISE: Chair, I do not know.

CHAIRPERSON: It is just speculation that you heard.

MS MODISE: Yes.

CHAIRPERSON: Ja.

20 **MS MODISE:** But if I was the Chairperson of a committee I would certainly have made it my business to find out. If I was an ordinary member of the National Assembly I would have put a question to the minister to get clarification on this. If I was the minister involved I would have approach the presiding officer for space to make a statement in the

house to clarify this matter. So I am saying I am speculating because at that time I was in the NCOP and could just – in other instances just look on because remember, the two houses are distinct.

Ntata Masondo cannot tell me how to run the floor, I cannot tell him how to run the floor in the NCOP but as I say, it would have been important for the committee chairpersons unprompted to have run using the powers that they have to investigate this matter and to put reports in
10 the house.

CHAIRPERSON: Of course part of the reason why Mr Freund asked the question and we accept that you are unable to answer it because you were not in the National Assembly, part of the reason why he is asking it is because the Commission is quite concerned about understanding why certain things happened the way they did and why they happened at the time at which they happened because one of the things that it wants to do is to make recommendations that would be aimed at making sure that
20 should a similar situation arise in the future there would be enough measures that would make sure what the country went through is not repeated.

So that is part of the reason to say maybe if parliament had acted a year earlier or even more than that but at the latest a year earlier, as soon as possible after

March 2016, maybe certain things which happened after which are detrimental to the country in terms of what the Commission has heard maybe might not have happened.

So that is the context but we accept that your contribution would be limited because you were not in the National Assembly.

MS MODISE: But perhaps, Chair, I must say that that being the situation, one can just say that awoke. Now we know that we must not allow things to fester. Now we must
10 not allow somebody else to say take the initiative and as we do our annual workshops with Chairpersons, we ask literally do you keep up with the newspaper reports, do you follow – it does not matter whether the minister will say it was a joke or what, but we are now at a point where we want to know everything, we want to cover ourselves and cover the people. As is say, it is regrettable that in fact the impression is that parliament only woke up when things were now really bad and for that we must apologise to the South African people.

20 **CHAIRPERSON:** No, I am very happy to hear that the attitude is different now and that in particular committee chairs and committee members are directed to keep themselves informed of about what is in the public domain that they may have to pursue in order to make sure that they play their role. Mr Freund?

ADV FREUND SC: Thank you, Chair. Now we were at page 409 and you will remember – and I read you the first paragraph – I emphasised the words urgently probed and you are aware, the Chair is aware that there were four committees involved and I want to look at each of those four committees but some in more detail than other and that is not necessarily because it is more important but because we have a lot of evidence in some of the others and some we have very little evidence and I would like to
10 take you please now to page 459.

MS MODISE: 459?

ADV FREUND SC: 459. That should be a document dated the 14 March 2019, announcements tabling some committee reports. If you could maybe just explain to us what that document is so that we understand how it fits in.

MS MODISE: Announcements tabling – these are reports, discussions, matters which have been entertained, discussed and finalised into committees, adopted by the committees which then are referred to the administration.
20 They then get into this kind of document so that they become public, they are now ATC'd, they – anybody can have access to them.

ADV FREUND SC: Right. And by this time, we are into the 6th session, 5th parliament and we are a long way after June of 2017, where maybe 17, 18 months. Now can I take

you – you will see at the foot of page 459 you will see that one of the committee reports that was tabled, the very last one, number 5, is Home Affairs which it says is at page 49. So if we go to that page 49, that is in our bundle at page 507. If you can go to page 507.

MS MODISE: I am there.

ADV FREUND SC: Now would I be correct in understanding that this is now the Home Affairs portfolio committee having finalised its investigation and report, 10 tabling this before the National Assembly for the National Assembly to adopt if so minded? I see you nod. If you can just say yes into the microphone?

MS MODISE: Yes, Chair.

ADV FREUND SC: Thank you. And I am not going to take you through all the details, the final reasons as to what we read here but I just want to take you to a few highlights. You will see in page 507 in the very first paragraph is the reference received from Mr Frolick requesting an investigation into the allegations of state capture involving 20 the then former Minister of Home Affairs and the granting of citizenship to non-South Africans and this all has to do with members of the Gupta family and then you see in the middle of the page within a couple of days, 20 and 21 June, the portfolio committee wrote to the then Minister of Home Affairs and the then Minister of Finance, the

previous Minister of Home Affairs, Mr Gigaba, to attend a meeting on Gupta naturalisation on the 27 June and you will see that on the 22 June certain information is requested and received and then you see that on the 27 June 2017 PCHA, that is Portfolio Committee on Home Affairs meeting:

“Both current and former Minister of Home Affairs apologise for not attending.”

And that is where the problem seems to start because if we
10 read the balance of this document – and I am going to take you through quite a bit of it, this oversight meeting that is meant to investigate as a matter of public urgency, requires and indicates the requirement for the presence of the two ministers and neither of them turn up.

Now do you agree that this certainly became a problem not just in this instance but in other instances? There was a problem of ministers simply failing to turn up at portfolio committees no matter how pressing and urgent?

MS MODISE: I do admit that it would be problematic
20 because if there was any official reason for them not to turn up, arrangements could have been made long before the meeting for a postponement or a change of venue or time. So I do acknowledge that that is problematic.

ADV FREUND SC: So then what we see – and I am just trying to run through this quite quickly. You will see at the

foot of page 508 there is a reference to a report received by the portfolio committee from the Organisation Undoing Tax Abuse, OUTA, which puts a lot of factual material before the committee. Then you will see that on the 8 September the portfolio committee sends a letter to the DA, [indistinct]

“The department of Home Affairs requesting evidence on the Gupta family’s investments and charitable contributions.”

10 Which is one detail that related to this whole greater story. And then you see the response. The request was sent on the 8 September 2017, the response comes on the 7 February 2018. That is about five months later. This is this urgent investigation. The minister has not turned up, the information requested takes months and months to appear and I presume your answer is going to be the same, that this is regrettable, this is not how things should be. Do you agree?

MS MODISE: I agree.

20 **ADV FREUND SC:** Right.

CHAIRPERSON: Well, I just want to go back to something that you dealt with early which I think connects with this. I think you said that what parliament seeks to do now is that when the members of the executive fail to respond to requests for information or fail to give responses or take

action that has been required by portfolio committee, your parliament, the idea is that at the end of the session parliament would compile a report and if I understand you correctly I think that report or part of the report would be made available to the President to say here are your ministers who did not respond or did not submit – or did not act as required or recommended and I accept that there may be situations where you might not as parliament be insisting on a particular action if the minister thinks that

10 different action should be taken but you would want that they say if they are not going along with what parliament says, they should give reasons why they are not going along and indicate what action they think is appropriate. But what I wanted to raise is this, I would think that you should not necessarily wait until the end of the session, I would think that there ought to be a time – maybe you will write to the minister once, there is no action, you write again to remind them. But after that I would think maybe you should not wait until the end of the session. That

20 failure on the part of that minister should be brought to the attention of the President as soon as possible because if you wait until the end of the session maybe the whole thing will be overtaken by other things whereas if you bring this failure by the minister to the attention of the President at the time the President might be able to make sure that he

or she complies. I do not know, do you want to say something about that?

MS MODISE: I agree with you, Chair, and that is why we are writing second letters now and we hope that we would not be forced to write third letters because at the point of the third letter we then think that we would be approaching the leader of government business.

CHAIRPERSON: Yes, ja.

MS MODISE: And then we would be doing the report to
10 the President.

CHAIRPERSON: Ja. Okay, no, that is fine. Thank you.

ADV FREUND SC: Thank you. Now if I can take you to
page 510 we see that item 9 refers to the 27 February
2018:

“A motion to solicit the support of the parliamentary
research and legal services to engage with the
documentation we submitted to the committee.”

And then on the 6 March 2018:

“Reappointed Minister of Home Affairs, Mr M K N
20 Gigaba, presented to the committee on early
naturalisation.”

Now, of course, something important has happened before
this, in this interim.

CHAIRPERSON: I am sorry, I think I have lost you, are
we still at 509?

ADV FREUND SC: 510, the next page, Chair.

CHAIRPERSON: Okay, alright.

ADV FREUND SC: If I can just indicate to you, I looked at item 9 which was that there should be assistance, technical assistance, research and legal services, and then I have moved on to the 6 March 2019 when Minister Gigaba finally arrives. Now this is, I might point out, more than nine months after the date of Mr Frolick's request for an urgent investigation and report back to the National
10 Assembly and I am also pointing out to you not only that there is a delay but there have been important political developments in the interim. In the interim Mr Ramaphosa has been elected as President of the African National Congress in December and as President of the Republic, appointed as President of the Republic in February 2018, as I recall.

So it seems from what we see here, that through the duration of President Zuma's presidency Mr Gigaba does not see fit to attend this inquiry and that is only, it
20 seems – and I am putting it to you for comment because I do not know, I was not there, one gets the suspicion that this is really a new political broom that is sweeping clean but until that new broom is sweeping clean there was in fact not the diligent, urgent investigation of the type that Mr Frolick's letter required. Do you have a comment on all

of that?

MS MODISE: Well, Chair, between that time you have – and I do not want to make excuses for the committees because I do not know what the real circumstances were, why they were delaying, but you would also have breaks, constituency, you would have recess. In this instance you probably also had to break for elections. When you come back, you have a break, when you come back, parliament usually has a mechanism where you go back to old
10 business which may have lapsed and there is a deliberate discussion which is sometimes left at the level of the Chief Whip’s Forum where they come together and they decide this is very important, we do not want this to fall through the cracks, we are bringing it over into this financial year or into this – so I really do not know why the committee would not say by the way, in your absence, when you were there, we had started this investigation, thanks God that you are now, we are continuing. Because that is what they would have done. But also, if you have had a change in
20 the membership and leadership of the particular portfolio committee, you might have people not having the memory of what was there and how to take it further.

So perhaps what we need to do –administratively, is when a new Chairperson of Home Affairs comes in, there is a little bundle that they get, these were the matters before

the committee, these were concluded, these were not concluded, do you and your committee feel that you have the appetite to resuscitate this matter? If we can put in that then we would be able to say to the committee you were delictual, you did not do your work. But if parliament, ourselves as the presiding officers and the administration have not facilitated the change of leadership that then I must say that it is difficult not to take the blame because you do not expect somebody who walks in to understand
10 the focus and the importance of what happened especially if those people are walking in as new members. It would be very difficult for that to happen.

So, as I say, I am not sure what exactly happened there but I think that we can prevent that into the future by putting up that at the end of the parliament – usually committees write what are referred to as legacy reports. Maybe we should then insist that it is important to go back to those reports for the revival of business. That is very important, so that it is not five months, six months down
20 the line that somebody rings a bell and says by the way, that thing was important.

ADV FREUND SC: Now, Ms Modise, it was you who spontaneously volunteered a few minutes ago that the allegations in respect thereof were particularly serious for the reasons you gave and you are aware of Mr Frolick's

letter. Apparently in coordination with Ms Mbethe and there is other evidence to show that the then Chief Whip was also party to that.

To say this urgently needs to be addressed. Would you agree with me that it does not look like this portfolio committee from its own report, did what was required of it, in terms of the speed with which it dealt with the matter. I will come to its ultimate conclusion in due course and its ultimate conclusion in due course is to find that the approval given of certain naturalisation rights, was wrongly given.

That it took years and the question I am asking you is whether you agree that its failure looks at face value to be unacceptable.

MS MODISE: If I was to give any failure, I would have said the head of committees Mr Frolic himself, having written this letter to the committees, bringing these matters to the attention of committees on the importance and urgency, should have kept his tabs on these committees.

In other words, before I hit this committee I would hit the person who has direct responsibility to ensure that work happens there. So I would, I would say that perhaps Mr Frolick should have cracked the whip, should have been if the Chair and the membership of the committees was removed because he was carrying on, should have been

the person who brings that memory back and say but this was important. Carry on here.

Here are the documents that come from where ever so you do not have to start all over. Continue here.

ADV FREUND SC: I hear that, and can I now take you to page 407?

MS MODISE: We go back?

ADV FREUND SC: We go back. We will come back to where we are in a moment. Now just to get your bearings,
10 if you go back to 401, you have already told the Chair right at the outset of your evidence that this is the supplementary submission that was furnished in response to the request from myself and the request from myself is in the preceding couple of pages, and you answer point by point certain of the questions.

At page 407 you deal with the issue we are talking about now and you will see that you refer at page 407, under the heading response, you say that:

20 “In mid-2017 a series of emails and documents commonly referred to as the Gupta leaks were widely circulated in the media. In light of the accusations of State Capture linked to these emails involving a number of ministers, parliamentary committees were directed by the house Chairperson responsible for the

committees, Mr CT Frolick to urgently probe the allegations and report back to the National Assembly.”

You refer to a letter and the letter is before the commission and then you say this, and it is the point of my question:

“This is in line with the role of the house Chairperson to ensure that committees conduct oversight of the executive and report to the National Assembly on their findings.”

I can see that that is what you have said, I just want to check if that is in fact your view and if it is your view, why is it your view that this is the role that the house Chairperson of committees [indistinct].

MS MODISE: It is my view. The house Chair of committees is responsible for committees. Their function, their capacity, their programming, the follow through’s of their reports, and therefore if the house Chair experiences any problems, they go back to the speaker or deputy speaker to say I am hitting a wall here.

This is what I have tried, this is what I have not tried. So the house Chair would be best placed after his interaction in this case with the speaker to take action. It is the house Chair, I even though the Chairpersons are a structure that falls under the speaker, I do not interact

directly with them.

There is an intermediary called Mr Frolick. So when I go direct into a committee, it is because there is an issue that needs to be resolved which he may say I have not been able to resolve, I have an issue here and there. So you always delegate responsibilities and give people space to do what they are supposed to.

ADV FREUND SC: And when you say I, you are talking about yourself in your capacity as speaker ...[intervenes]

10 **MS MODISE:** As speaker.

ADV FREUND SC: Right. So what you are really saying is the responsibility vests in the house Chair, but above him the responsibility vests in the speaker.

MS MODISE: The speaker delegates that responsibility to the house Chair.

ADV FREUND SC: Yes.

MS MODISE: So ultimately the speaker is answerable, because the house Chair derives that responsibilities from the speaker.

20 **CHAIRPERSON:** The house Chairperson is part of the structure of parliament.

MS MODISE: Yes, Chair.

CHAIRPERSON: Is that right?

MS MODISE: Yes.

CHAIRPERSON: And maybe for now, let us just talk about

National Assembly. So you have got the speaker at the top. You have got the deputy speaker. Would the next person on the hierarchy be the house Chairperson or there is somebody else?

MS MODISE: No, the house ...[intervenes]

CHAIRPERSON: Or ...[intervenes]

MS MODISE: The house elects, Chair. The house elects the speaker and the deputy.

CHAIRPERSON: Yes.

10 **MS MODISE:** Then the house Chairs, depending on the weight of responsibilities and as parliament of South Africa was growing, we were taking more and more responsibilities and therefore it was then decided that these two people, the speaker and the deputy speaker, cannot actually do everything and firstly there was a Chair of Chairs, and then that responsibility was then broken down into having three house Chairs in the National Assembly.

20 So the three house Chairs are on par. You have got one, this one who looks into committees. Then you have got one who focuses on the international site and then you have one who looks internally into the affairs and welfare of members.

They are on par. What the speaker does is after you are elected, you then look at what is on your plate and

you then subdivide it and delegate to the deputy and to the house Chairs.

CHAIRPERSON: Or, there would be three house Chairs, it is not just one?

MS MODISE: There are three house Chairs.

CHAIRPERSON: Okay, but do they all report to the speaker?

MS MODISE: They all report to the speaker, in the absence of the speaker to the deputy speaker.

10 **CHAIRPERSON:** Okay, okay. No, thank you.

ADV FREUND SC: There is, is there not, a committee comprised of the Chairpersons of the various portfolio committees? Am I right? And then that committee is itself Chaired by what we call the Chair of Chairs, and that is really where Mr Frolic fits in.

MS MODISE: Mr Frolick becomes the Chair of Chairs.

ADV FREUND SC: The Chair of Chairs.

MS MODISE: In the old time, all he did was coordinate the Chairpersons and their business. So the Chairs
20 Chairperson, are colleagues. They cannot order each other, but they have powers to sit together, inform the house Chair who is now called the, who is now Mr Frolick to say we intend to have these two committees or these three committees coming together, and in the past they would sit together but go and develop their reports

differently.

Now there is a proposal that says you can sit together, confer. You can even report together, because that works much better. So yes, there is that body of Chairpersons which is coordinated by the Chair called Mr Frolick.

He is the Chair of Chairs.

CHAIRPERSON: And now, this reference to Chair of Chairs, that is ... is that a separate position or by virtue of
10 being the house Chairperson responsible for portfolio committees you also perform the role or the functions of a Chair of Chairs?

MS MODISE: Before the notion of house Chairs was introduced and accepted in parliament, below the deputy speaker there would be a member who would, whose work would be to coordinate the other Chairs. That person used to be called the Chair of Chairs.

CHAIRPERSON: Yes.

MS MODISE: So when the institution introduce the house
20 Chairs, that position was now assumed by the house Chairs.

CHAIRPERSON: Oh.

MS MODISE: So Mr Frolick in his capacity as house Chair of committees, is in fact the Chair of Chairs.

CHAIRPERSON: Oh, so that at the moment it would be

inaccurate to refer to a Chair of Chairs, because that term is no longer there.

MS MODISE: The term, the position has now evolved into the position Mr Frolick now holds Chair.

CHAIRPERSON: Okay, alright.

ADV FREUND SC: Yes, but now I am particularly interested in the situation as it was in the middle of 2017 and your evidence was before that Mr Frolick as a delegate of the speaker, had the responsibility then, in his capacity
10 then, to monitor and ensure that the instruction that the portfolio committee should exercise its oversight was carried out.

You stand by that evidence?

MS MODISE: I stand by that. we even when we go, we have a committee of parliament called programming, where matters are brought and it is a multi-party body where we decide where we slot what in. Mr Frolick represents the Chairs there, the business that comes directly from committees.

20 **ADV FREUND SC:** Thank you. Now I am still going to be coming back in a moment to that Home Affairs Committee that we have not finished with, but I am trying to understand this thing chronologically. So what I would like to take you to next, please is page 715.

Seven one five.

MS MODISE: I have it Chair.

ADV FREUND SC: And that document runs through, if you can confirm for me, through to 725. It is a confidential memorandum containing legal advice from Advocate Z Adikhare, chief legal advisor. Am I correct?

MS MODISE: You are correct Chair.

ADV FREUND SC: This Chair is a document that I for one had never seen before. Now you will recall, and if I can just digress, that there was not just the one committee that
10 we are looking at, Home Affairs. There was the Public Enterprises Committee, there was Mineral and Energies, there was Transport and PRASA.

The first to really get going, in fact even before Mr Frolick's letter was public affairs, public enterprises.

MS MODISE: Public enterprise.

ADV FREUND SC: That was the committee then Chaired by Ms Runto, Mr Gordhan was a back stage member, there were a Ms Mathoni from the DA was a member and back in May of 2017 they decided in principle to have an
20 investigation, that was also in due course discussed with Mr Frolic and became part of what we could call the Frolick initiative.

But it actually slightly preceded it and it was the one that got up and going the quickest. What we are looking at here, at page 715, is an opinion dated the 15th

of August 2017 on the proposed process for the Portfolio Committee on Public Enterprises to conduct the inquiry into state owned enterprises.

The Chair of this commission can read this at his leisure in due course, but the just of it am I correct, is to say you are perfectly within your rights as the Portfolio Committee to proceed with the type of investigation that you wish to proceed.

Do you agree with that as a summary?

10 **MS MODISE**: Absolutely. I have been repeating Chair that the powers of the portfolios is to investigate all witnesses. It is within their powers. In fact they could have initiated and simply informed Mr Frolick this is the direction we are taking, because this is what we are finding out and this is what is before us.

ADV FREUND SC: Indeed, and if I can take you to paragraph 28 in the same document at page 723.

MS MODISE: 723.

ADV FREUND SC: Page 723, paragraph 28. If I may say
20 so the point that you have just so forcefully made, is precisely the same point made in the legal advice:

“The process that the Portfolio Committee must undertake, falls squarely within its oversight mandate. The committee is embarking on a fact finding inquiry as

envisaged in Rule 227 of the NA rules. It will only after a proper analysis of the evidence and information presented to it, arrive at conclusions that could result in recommendations for the proposed actions and so forth.”

And it is basically confirming that it has these powers, and it could take that decision as you have just said, at its own initiative. It does not need anybody's
10 permission.

MS MODISE: Yes.

ADV FREUND SC: The problem with that is that when Ms Mantsani according to her evidence, and I do not think that Ms Letsatse Dube disagreed, when she in March of 2016 was urging the Portfolio Committee on Public Enterprises, to do precisely that.

Precisely in relation to the allegations that I have spoken about this morning. For example the allegations of Mr Jonas, Ms Hogan and others. Apparently the legal
20 advice given was you cannot do that. Now if that legal advice was given, firstly you would agree it is clearly wrong.

MS MODISE: It would be clearly wrong.

ADV FREUND SC: And secondly, would you agree with me that any Chairperson of the portfolio committee should

know that. This is squarely within the powers of a committee as clearly stipulated in the rules of the national assembly that they can do precisely that type of inquiry.

MS MODISE: If a member of the committee makes a recommendation that the committee should look into, that committee discusses that. I suspect what might have happened is that in the discussion of that committee, they decided not to go with the recommendation of Honourable Matsoni, but it would be absolutely wrong to say that a
10 member could not make a recommendation for an investigation which is within the powers of that portfolio.

ADV FREUND SC: Yes, now of course you were not there and nobody blames you for not being there at this particular Portfolio Committee meeting, but I just want to fill you in on some of the evidence we have heard. It is correct that the committee did not proceed with the investigation as Ms Zonde requested.

But before that stage was even reached, Ms Letsatsi Dube informed Mr Matsoni, Ms Letsatsi Dube was
20 then the Chairperson of that Portfolio Committee. Informed her that she has been advised by the parliamentary legal advice office that the committee had no power to do such a thing, and that as far as she was concerned the matter was closed, notwithstanding Ms Matsoni's response as to say but that is wrong, look at this rule number.

Now my question to you is not what happened, because you were not there. My question to you is whether you agree that a Portfolio Chairperson ought to have been well aware by March of 2016 that a Portfolio Committee did indeed have the power to pursue this type of inquiry if its members collectively decided to do so.

MS MODISE: Chair, it is a definite yes. When members are sworn in, they do not only get a constitution, they also get a copy of the rules. So even an ordinary member who
10 is not a Chairperson, would have known that it was and it still is within the powers of the committee to investigate.

ADV FREUND SC: Now I want to take you to another similar document at about the same time. When you go to page 727. Just to remind you the last document we looked at was dated the 15th of August 2017 and this document is dated the 23rd of August 2017.

So it is a week later, and it is on much the same issue, subject. Opinion on steps to be taken by a Portfolio Committee in investigating allegations of State Capture in
20 organs of state, and then if I take you to paragraph 2 at page 729, the legal question to be considered is:

- A. In terms of the law and rules of the National Assembly what steps may be taken by a Portfolio Committee of the National Assembly to conduct oversight over organs of state, and

B. What other issue must the committee take into consideration in dealing with the referral and the advice, the Chair will read in due course at his leisure, the advice essentially is you will adopt whatever procedure you think to be most appropriate in your wisdom, as long as you as the committee keep control over the process, that is your rights.

Now that I assume from your earlier evidence Ms
10 Modise, is precisely what any Chairperson and frankly any member of any portfolio should have understood already. I see you nod, if you can just say yes into the record?

MS MODISE: Yes Chair.

ADV FREUND SC: Okay. Now against that background, because what we are now looking at, if we give the ruling party the benefit of the doubt to say well, in June of 2017 they finally woke up through the Chair, through the speaker, through the Chair of Chairs, through this announcement issued in the press, in response of the
20 Gupta league.

They said there does now need to be an urgent investigation in four committees on these allegations in relation to State Capture. Now let us go back and look at how that is implemented. We were at Annexure O. We were at pages 499 to 515.

Let me just see if I completed that. Yes, can I take you perhaps through to 510? I think that is where we digressed.

MS MODISE: I have that page.

ADV FREUND SC: You will recall that I drew your attention at page 510 to the 6th of March 2018 when Mr Gigaba finally appears before the committee, and then the report summarises how things developed and you will see at page 511 that, and this is Roman numerals 14:

10 “In a meeting of the PCHA on the 27th of March 2018, the committee decided to broaden the scope of the investigation into the broader process of naturalisation of the entire Gupta family.”

I will leave it at that, and then you will see if you turn to the next page, page ... I think if we you can go to page 513:

20 “On the 11th of September the committee finalised its preparations for the inquiry, on the 12th of September inquiry day 1.”

So we finally start this inquiry and we see 13 September, inquiry day 2. 9th of October inquiry day 3. 12th of March inquiry day 4, 13th of March discussion and adoption of the final report and that is the very report we are now reading, and if we leave out a lot of the details

which will be familiar to this commission for other reasons and we go through to reading the conclusion of this, or the conclusion parts of it, if we can maybe start at page 555.

MS MODISE: 555?

ADV FREUND SC: 555.

MS MODISE: Have it.

ADV FREUND SC: You will see there is a section, headed observation. This is after summarising what has happened at all the various days of the inquiry. Now we start coming
10 to as it were the conclusions and they make what they call observations, and the very first observation, they say this:

“Based on the evidence provided to the committee, despite the limitations and gaps of information mentioned in Section 1, the observations of the inquiry are the following. One, the committee acknowledged that the initial applications for naturalisation by AJ Gupta and family were dealt with by the department as a family application and were
20 correctly rejected, because that was the nub of the issue. What happened subsequent to that is the Minister overturned that decision and what this committee is finally saying is they were correctly rejected.”

And then point 3 on the next page:

“The application for early naturalisation approved by former Minister Gigaba of AJ Gupta’s family was incorrect.”

That is one of their observations, and then they comment adversely on various senior officials and then they make some recommendations and the recommendations include amending certain legislative provisions and that criminal charges should be laid against Ashu Tjaula and members of the Gupta family relating to
10 false information submitted in the early naturalisation applications.

Now what I want to put to you is this. At the end of the day, what appears at face value to be a credible report that was produced, but that the delay in producing it was completely inconsistent with the mandate which was in the middle of June 2017, urgently to investigate and report back to parliament?

It is quite clear that that did not happen, you agree?

20 **MS MODISE:** I agree.

ADV FREUND SC: Now I am not going to spend any time on the portfolio committee on public enterprises, because we all know what happened and this commission has heard a lot of evidence in that. In short, there was a decision starting in May 2017 to conduct an inquiry.

It broadened and then narrowed down to Eskom. It was a proper inquiry. It produces a report. The report was furnished to this commission. But I would like to look at the other committees. The Transport Committee was mandated to look at allegations in relation to PRASA, is that correct?

MS MODISE: That is correct.

ADV FREUND SC: And I think if we go to your own joint submission, paragraph 46, fairly early in Bundle 6, page
10 19.

MS MODISE: I have that.

ADV FREUND SC: Now I am attributing no personal fault to you Ms Modise, but what I am going to be putting to you as what he stated here, is not entirely accurate. So let us just look at it. Subsequent to the letter from the house Chairperson, the committee issued a report, documenting its past oversight committee, oversight activities over the Department of Transport in PRASA during the period 2014 to 2017.

20 Let us just pause there. This request is made in the middle of 2017. The report detailed engagements regarding the management and operations of the entity, which also included various references to investigations into financial misconduct, alleged within the entity and then the sentence that I take issue with:

“Specifically the committee submitted this report in lieu of the formal inquiry and did not generate any new insights.”

In other words the suggestion that is made in your submission is that the response from the Transport Committee is that we have done all that and there is no need for it. We have investigated adequately thus far. Now let us just leave that there. I will not ask you a question about it because I want to put something else to
10 you.

If I take you now to page 736 of the same bundle.

MS MODISE: 730?

ADV FREUND SC: 736. Perhaps that is not fair. I do not think it is fair. You have it, it is a letter dated the 16th of March 2018.

MS MODISE: 16th of March 2018.

ADV FREUND SC: So the impression created by your joint submission is that where it is the response of the Transport Committee is that there is no need for an investigation
20 because of our prior oversight, but if you read this letter of the 16th of March 2018 I want to put it to you, that it shows that that cannot possibly be correct, not least because if you go to page 738, second paragraph you will see in its meeting of 20 February 2018 the committee resolved to institute on investigation into the matters of concerns

regarded by the various stakeholders etcetera, and then they talk about, in the second last paragraph, the terms of reference having been adopted.

This committee actually did resolve but only resolved in February and March of 2018, to carry out an investigation of precisely the sort that was directed by the Chairperson further. And what is more, I want to just explain to you, we have had evidence from both Mr De Freitas, correct, the DA member Manny De Freitas of
10 attempts that he made in this committee to have these investigations take place and we had Ms Mgazi who has responded and I think she herself accepted in her evidence that the committee had been remiss in failing to investigate as they should have.

So all I want to really put to you is can you accept that when your joint submission says that really there was from the response from the committee, no need for an investigation and a died there. Your evidence is just mistaken, because there is a whole lot of detail, which you
20 were presumably unaware of.

MS MODISE: Chair, I have no option but to accept what you are saying but remember that we also said in our joint submission - and I noticed that this letter that say's now we are investigating comes from the same member, Mgazi.

ADV FREUND SC: Yes, indeed.

MS MODISE: Who you are telling me had earlier on said that they were remiss in not investigating. The Chairperson of the NCOP and I stated upfront that where we have not personally dealt with matters, we have been informed that things are right, and we accepted that they are right and true because we could not have known every little...[intervene]

ADV FREUND SC: Yes, I understand that I want to give you my personal unequivocal assurance that I understand
10 the spirit in which this evidence is given. You were not even then the Speaker, much less personally involved, but you are now the Speaker, you rely on documents that had been presented to you.

You have made clear in your submission, that not everything is in your personal knowledge and you rely on documents which are attached. But nonetheless, it's my duty if I see something that seems to be wrong in the document, to point that out otherwise what you have said might be taken as being clearly correct, when there is
20 reason to suspect that it may not be correct.

MS MODISE: Chairperson I am grateful that the disconnect is pointed out to us, if that means we must be more thorough next time.

CHAIRPERSON: Okay, no that is fine.

ADV FREUND SC: Now, I want to just move on until and

be quite brief with a few other features of your joint submission. So can I take you to paragraph 54, which is at page 21.

MS MODISE: I have it.

ADV FREUND SC: Now, just want to put this in context, quite understandably what your joint submission does after referring to the Frolick letter and the press release to be looked at, you look at the four committees that were identified by him, but then you move on and say that it is
10 also important for the Commission to be aware of things that happened in other committees beyond those four.

And one of those that you draw attention to is the Portfolio Committee on police. and you make the point in paragraph 54:

“During the fifth Parliament, the Portfolio Committee on police in addition to its business held six meetings on State Capture. These meetings considered progress reports by the Directorate of Priority Crime Investigation, DPCI on high profile
20 cases under investigation, including State Capture.”

And you then itemise those in the paragraphs that follow. You refer to what happened on the 28th of February 2018, the 7th of March 2018, and so forth through to March of 2019. I have no reason to doubt that those summaries are reasonable summary.

But the point I want to put to you is, again, this has to be seen in context is it not, because this is commencing once the new President has taken office and it is not showing us what this committee the Police Committee were doing in the heat of the era in which these allegations were being made.

And I want to put you, for example, just to illustrate the point, that there has been a lot of evidence before this Commission in relation to BOSASA. In relation to BOSASA
10 the evidence is that in 2010, or perhaps 2011, the SIU had investigated these allegations, it was publicly made clear that these allegations have been reported, had been reported and given to the National Prosecuting Authority, referred for further investigation.

Eight, nine, ten years later, we are not seeing precisely the sort of response that you are highlighting here as to what happened from February 2018 onwards, we see precisely the opposite, that although this report is in the public - not in the public domain, but although the
20 members of Parliament are fully aware that the SIU believes there is substance in these very serious allegations of extensive corruption. Nobody is saying what is happened to this prosecution, or if they are not with any diligence, or follow through, you want to comment on that at all?

MS MODISE: It is difficult to get into the head of something that happened in 2010 and try and make an intelligence response. I cannot even tell you what I was doing in 2010, whether I had heard of this or not. But I will go back to my response that perhaps we need to make better use of the Legacy Reports from Portfolio Committees to carry on.

Because between 2010, you have an election in 2014, I am not even sure whether the membership of the
10 committee is still the same. But what we do have been posted is the administration, and that is why I went on earlier on to say perhaps, that is where we need to make the link so that as you have the new membership, the new committee Chair, there is orientation, and there is a discussion about the resuscitation of business.

Because if you have a new committee, and nobody brings to their attention, that there by the way, there are issues that were hanging there they will continue and discover new things, and if the executive or the
20 administrative heads are still the same, who says they would be keen to reopen what they perhaps do not want to reopen.

CHAIRPERSON: Yes.

MS MODISE: So we can only charge ourselves as Parliament to say, we need to be more alert to this, we

need to pay more attention to the last reports of committees and the revival of committee work reports.

ADV FREUND SC: Yes, but you know, I accept your point but your point illustrates the problem of all what happened, in fact, rather than what should have happened in theory, because the Legacy Report in 2009 raised this as a matter of extreme concern.

The SIU Report is issued shortly into the period of the next Portfolio Committee when it issues its Legacy
10 Report in 2014, not even mentioned but notwithstanding that it remains reported on in the press and nothing happens. Now, I suppose this is really not a fair question to put to you because you are not directly involved in this.

But the principle we can discuss and the principle is that I am sure you would accept that it is incumbent on responsible members of Parliament within their respective portfolios, when serious allegations of corruption have been made known to them to - and when it's been reported to them, but the SIU thinks there is merits to these
20 allegations to satisfy itself by repeated questioning and follow up, that these allegations have been appropriately disposed of, you would accept that principle?

MS MODISE: I will accept that principle.

CHAIRPERSON: One would obviously not want to dictate to Parliament how we should deal with its internal matters,

but it may well be that the House Chairperson responsible for Portfolio Committees should be, should make it his business or her business if the agenda changes.

Make it his or her business to know the Legacy Reports of the various Portfolio Committees, particularly what was identified as needing further attention by the incoming committee. But that also, once the new committee has identified has looked at the Legacy Report and identified matters that they want to take forward, which
10 came from the previous Parliament that maybe they should share this information with him or her so there would be somebody who has a global picture of what is taking place.

But that might just be something it may be that it's not necessary, but one would think somebody who coordinates some of these things, and maybe if something is later left out and not pursued that seems quite important, and ask questions to say but this is important, why are you not taking it further? I do not know what you – do you think that might help?

20 **MS MODISE:** It, it will help, Chair we have been looking at the capacity of Parliament and that seems to me it falls right there because if you cannot retain - not only that, but also the good practices because as you empower members, you must be able to pull out to the good examples and bad examples. And so for me, it comes back in into how do you

ensure that things do not fall between the cracks.

So in that regard, I would not even say that, leave the blame, with the Chair of Committees, take it right up to us who are responsible. Speaker do something about that, make sure that you track you know, we know where things are, and that is a commitment I can make, Chair.

CHAIRPERSON: Thank you.

ADV FREUND SC: Thank you, if I could now take you to page 16, please.

10 **MS MODISE:** One, six?

ADV FREUND SC: One, six. This is when you - after having introduced the topic of what are the duties, what is oversight, what is accountability, you start dealing with the substance of your submission. And you make the point in paragraph 32. You say:

“The Portfolio Committee on Justice and Correctional Services raised its concern about the delay in establishing the terms of reference for the Commission.”

20 That is this very Commission which for you are now we testifying.

MS MODISE: H'm.

ADV FREUND SC: Now, I just want to pause and consider this, because in October of 2016, the Public Protector released her State of Capture Report. There was some

original - there was some initial controversy about whether it was going to be made public, there was threatened or actual litigation.

But by November of 2016, as your supplementary submission correctly points out, it was in the hands of the Speaker of the National Assembly and if I am not mistaken, I think it may well even have been tabled before the National Assembly. Is that correct so far?

MS MODISE: Yes, it is correct.

10 **ADV FREUND SC:** Now, the recommendation by the Public Protector, that there should be a Judicial Commission of inquiry, whilst it has its advantages, and we are seeing many of the advantages now, it also could perhaps have been used as a pretext by some not to do what they should have done.

So there was a view that was expressed by some that this question, all these allegations should simply be left from the time of the October 2016 State of Capture Report through the whole of 2017 into 2018, it is not
20 Parliament 's business, that the Commission be appointed.

Now, from what I have been hearing, in your evidence this morning, you would not be of that school, you would be of the school that Parliament must do Parliament 's job and if Parliament is aware of allegations of relevance, they had the power and should exercise the

power to investigate, obviously, seeking not necessarily to duplicate in two forums work being done simultaneously in both. But the principle that the existence of the recommendation for judicial inquiry is not a good reason for Parliament not to do its own work. You agree with that principle?

MS MODISE: I agree that within the powers and responsibilities of Parliament, any matter could have been investigated. If the Judicial Commission was then
10 established, then all the committees would have needed to do is, is to hand over the work that they had done so that there is no duplication.

ADV FREUND SC: Yes, and I do not think that anybody here takes any issue with it, but what you then say in paragraph 32 - and I am not saying it is wrong, you say:

“The Portfolio Committee on Justice and Correctional Services raised its concern about the delay in establishing the terms of reference for the Commission.”

20 That that was one of the issues on which, in my request for further information, I said when, you answered that in your supplementary submission, and we find the nub of the answer at page 412. This is one of the additional documents that you furnished.

MS MODISE: I have it.

ADV FREUND SC: And it exactly bears out what you said but of course, as ever, timing is important, and we see that this is a report dated the 24th of January 2018.

It is after the election of a new African National Congress President. This is a whole new political world we in, Parliament's Portfolio Committee on Justice and Correctional Services today expressed its grave concerns about the delay in releasing the terms of reference with regard to the Commission of Inquiry into State Capture.

10 Committee Chairperson, Dr Mathole Motshekga said to the President must issue the terms of reference as a matter of urgency and it must be based on the remedial action of the Public Protectors Report on State Capture, this matter cannot be delayed any further.

Now I do not think anybody would criticise Motshekga for saying that but my question to you is whether you think that the pending possibility of this Commission of inquiry actually served as an excuse that was latched on to by some by not doing what they should
20 have done in Parliament, in relation to the issues, very serious issues that emerged from the Public Protectors State of Capture Report?

MS MODISE: Chair, I am not sure how to answer this question. I have to now creep into people's mind-sets and try and explain, why but remember Chair, that Parliament

does not have the powers to establish the Judicial Commission.

CHAIRPERSON: Yes.

MS MODISE: They can just make noise and urge the President to do that...[intervene]

CHAIRPERSON: Ja, you can put pressure.

MS MODISE: They can put pressure on the President to please hurry up and do this thing. In the meantime, as I said earlier on, nothing would deter a committee to do the
10 little bit that they can.

ADV FREUND SC: Yes, and the only part of your answer I take issue with is the word little bit because those committees have a power of subpoena, they have a power to compel people to come and answer questions, and they have expertise in their own respective domains. So in fact, it is a significant power that they have.

MS MODISE: They have big powers, I use to boast about those powers but the little bit I am talking about is that at that time, most of the information that is now in the public
20 domain, and within the reach of Parliament was not there, that most of the issues which we are now confronting - and sometimes we still get shocked.

There was the hearing on the Intelligence Committee, and we said - and held onto our chairs, because there are things that the rest of committees would

not know and therefore, the little I refer to is what I know, and what is before my committee, I must pursue. So that each and every committee can then - and that is why Mr Frolick was right, in writing to those committees that were identifiable, as being affected by the State being captured, to say, hey hurry up and investigate.

ADV FREUND SC: Yes.

MS MODISE: Because in that way, we thought, he thought we is, as Parliament that perhaps we would be able to get
10 to understand exactly what has happened, what is the extent of this thing. Up to that time, we had never heard of a member of Parliament who had received any money relating to doing or not doing their job.

ADV FREUND SC: But what you had heard long before that time - this is what I explored with Mr Mantashe last week, as early as February of 2011 reports in the press, alleging undue influence by the Gupta family, not only over the President, but of the appointment of Cabinet Ministers, over the appointment of SOE Boards and Chairs.

20 And Mr Mantashe's response was well, we had no evidence to confirm that but then in an NEC meeting, in that very year, a Minister says, well, I can confirm it, I was one of the people who was told by the Gupta's and nothing happens.

Now with the benefit of hindsight and this is

obviously not a matter for your personal accountability we are looking at the system. With the benefit of hindsight, would you accept that Parliament could and should have investigated a lot more vigorously, a lot earlier?

MS MODISE: Chairs got the same Parliament must investigate any matter related to their portfolio's as portfolio's. It is difficult sometimes when you investigate everything that you read about in the newspapers because I have read stories about myself starting to – and only
10 when I saw my name and I became aware oh, they talking about me - information that, you know, things I am supposed to know or have done that I do not know.

So when you get into that space, you realise that Parliament - and that is why when a member stands out up in the house and makes an allegation that is serious, that can affect the standing, the conduct of the member, we immediately say, substantiate so that we actually deal with facts.

Now, if a member of the ANC sits in the NEC of the
20 ANC and says yes the Gupta's - how does Parliament transport that into a Portfolio Committee?

ADV FREUND SC: Well, that was going to be my question to you, because either it can or it cannot, but I think the answer must be a can. So if the allegation is that there is undue influence, affecting ultimately the control of State

owned entities, then that seems at face value to fall within the remit of the Portfolio Committee on Public Enterprises. And how can they deal with it? They can summon that very Minister and I they can summon the persons whom he accuses, and they can examine whether there is any truth or not in it. Do you agree with that?

MS MODISE: I have to agree but if they know...[intervene]

CHAIRPERSON: I guess that is Mr Freund if they get to know what happened in the NEC

10 **ADV FREUND SC:** Oh, absolutely.

CHAIRPERSON: Ja.

ADV FREUND SC: Absolutely, but what was alleged to have happened in the NEC was also reported in the press in that year, but I would not know if those press reports are true. But at least it gives you the basis to ask the people about the press reports that have been made. Did you say that, if so, please tell us the details? If somebody else denies it, come and tell us your story, and we investigate.

20 That is really the problem, that for year after year, after year these allegations that I as a citizen had nothing to do with Parliament or politics, I was fully aware of, it seems to me, Parliament turned a blind eye to it and just did not investigate. Now, I do not know if you wish to comment on that?

MS MODISE: Chair, it is difficult to comment on this

because the question I put is, how do you take a discussion which happens in a political party into Parliament? You – supposing they had done it Chairperson, would that committee particular committee not have been accused of taking factional issues of the ANC into Parliament, and therefore.

So sometimes you need to put yourself into the political space and try and understand where were they coming from. If the Minister made that statement. In a
10 Portfolio Committee in the house, definitely we would have had to say but this. It is difficult with hindsight to say, but they were wrong here.

Is it a matter they could have investigated, yes, they can investigate anything, anytime? Why did they not do it at that time, I really do not know.

ADV FREUND SC: No, I understand that you were not party to that, you were not in that committee, it was not a decision that you personally had to deal with but I am trying to explore the question of principle here, and the
20 question of principle really, is this.

If there are allegations in the public domain, not only in the press – well they have been made in the press, but they are reporting matters, which if true, are a very considerable concern that I am sure you would agree those should be investigated.

So the question then becomes, well was there sufficient material in the public domain to justify an investigation? And Mr Mantashe had told us last week that by 2013, the Integrity Committee of the African National Congress was urging the President to stand down in relation to these very sorts of issues.

If it was known to them, surely, it was known to enough people in the ANC that if the President did not step down, if the President disputed these allegations, which
10 was absolutely his right, there was a duty to inquire through Parliament, I emphasise it, through Parliament, not merely through the structures of the ANC whether these allegations of State Capture are true.

MS MODISE: My think would be that the ANC knowing getting evidence and perhaps even proof should have dealt with their internal problem, should have acted rather than to say, we will sit back and see if Parliament can take this matter because that for me is not really shouldering what is your responsibility.

20 If Mr Mantashe said that they knew as early as 2013, then they should have done something about it in their collective leadership. So that today, we do not hammer members of Parliament who do not sit in that NEC, who may not have had a first-hand what the Minister Mbalula had said at the time.

When - you will remember Chair, that there was a time when I was accused of having written a document and given it to Patricia de Lille, on the arms deal.

CHAIRPERSON: I do not remember.

MS MODISE: It was not investigated by Parliament, it really wreaked havoc with my personal life, when the Mayor de Lille came out in the open and said, it is not that one but I have given my undertaking not to reveal the names of this people. There was no investigation, I asked
10 for it. So I can understand that the frustration is something is being said there and sometimes somebody is being wrongly accused there why are you not investigating? At the end of it I was told no we understand you did not say it. But the damaged out there in the street was something else and I had to wait until that man who had given the document whatever it is to Madelene died for Madelene to feel free to say in fact so and so had given me this document and it was years later.

So sometimes not getting – and I could not get
20 anything of substance that I could go to the police and say investigate this other than to start a fight with my own party because the accusations were not coming from Parliament they were coming from the party.

So sometimes you – you look at circumstances and you know that if the committee perhaps has even tried to –

to probe quietly and they do not get substance they are going to be unable to run with this.

CHAIRPERSON: I – I think that you and Mr Freund might not be on the same page or it might look like that but maybe you are on the same page. Let me ask one or two questions to see if we can clarify this.

My understanding of your evidence includes that you have no problem with the proposition that members of Parliament obviously Chairs of Portfolio Committees and
10 members of Portfolio Committees, different Portfolio Committees ought to keep themselves informed of what is in the public domain in case part of what is – what is in the public domain relates to their work in the various committees and may well require them to do something in order to carry out their function.

Am I correct so far?

MS MODISE: You are correct Chair.

CHAIRPERSON: Yes. Another point that I think you may be making is that obviously you cannot expect members of
20 Parliament and members of various committees to investigate everything that they see in the media, is that correct so far?

MS MODISE: You are correct Chair.

CHAIRPERSON: What I think you then say – suggest is that when members of various committees or members of

Parliament see certain things or become aware of certain things that are in the media that fall within their Portfolio Committees they need to weigh them and if they are serious enough they need to take steps using their powers and the rules of Parliament and the mechanisms of Parliament to do what they need to do.

Is that correct?

MS MODISE: That is correct Chair.

CHAIRPERSON: Yes. Therefore I would say that I would
10 understand you to say the mere fact that Mr Mbalula may have said what he said at an NEC meeting does not on its own prevent members of Parliament if they be – if they become aware of it from where you get and see whether they should do – take certain steps, is that correct?

MS MODISE: That is correct Chair.

CHAIRPERSON: Yes. So it just depends whether it has come to their attention and whether when they assess it they think it deserves further attention.

MS MODISE: It does Chair.

20 **CHAIRPERSON**: Yes.

MS MODISE: Alternatively if they take what is unproven into a committee.

CHAIRPERSON: Ja.

MS MODISE: They are within their right.

CHAIRPERSON: Yes.

MS MODISE: To approach any of the state agencies.

CHAIRPERSON: Yes.

MS MODISE: That are responsible to – they could have approached the police to say look there is this thing we cannot handle it we do not have evidence can you look into this matter? That would have been the way to go.

CHAIRPERSON: Some action ja. But also – but also my thinking is that there will be nothing wrong in a member of the Portfolio Committee or a member of Parliament in the
10 National Assembly but a member of the Portfolio Committee who has become aware of what was said in the NEC to actually put a question to Mr Mbalula who was a member of Parliament – was a Minister put a question intended to see whether he will tell the committee the same information that he told the NEC and if he tells the same information then you take it from there.

MS MODISE: I would agree.

CHAIRPERSON: Ja.

MS MODISE: Alternatively to even put such a question to
20 the President himself.

CHAIRPERSON: Yes, yes to the President himself ja.

MS MODISE: Yes.

CHAIRPERSON: Ja thank you. I hope that has clarified Mr Freund.

ADV FREUND SC: Yes thank you. And – and Ms Modise I

do not disagree with you but there have been situations in which would be the sensible course of conduct to ask for example the police to investigate. But there are also situations in which the powers of the Portfolio Committee not limited to asking somebody else to investigate and they are not restrained in only calling before them the executive. They can call before them anybody can they not? They can all before them for example the Gupta brothers.

MS MODISE: They can. They can call for documents.

10 **ADV FREUND SC:** And it is a question of judgment as to whether there is allegations or information available that make it responsible and appropriate to ask – to ask those questions. It all depends on the prevailing circumstances. You agree?

MS MODISE: Not fully. The Portfolio Committees are multiparty bodies. Would a member of Party A without proof take that matter into the committee and investigate and ultimately find out that in fact there is nothing and if such a member especially if they are not senior enough in the party
20 not risking alienating and that is precisely if you go back to the submission – ag I –

CHAIRPERSON: Makwassi.

MS MODISE: Makwassi – centres around the inability of what is right for me to take a stand on and what might be interpreted as being not doing well by the party.

And so a party member of any party by the way will sometimes want to have at least substance before they open their mouth. That is quite an 00:07:58. And that is why we are saying in Parliament you need to increase capacity for this private member. This member must be able to investigate properly, must be able to analyse and be able to say no, no, no I am sure there is a case here.

And I am saying alternatively with all these powers that vest in the committee this member might actually decide
10 ay (speaking in vernacular) I am taking it further.

Portfolio Committee do you have 00:08:31 they do not. Okay in my capacity as a public representative I can approach the authorities, investigate this thing further because it makes her uneasy.

So for me that would be that I am in no way wanting to suggest that a citizen, a public representatives fall under the constitution and to obey all law has the right to suppress information that I would not agree.

But I – I want to look at how you transport things that
20 happen out there into the committee.

CHAIRPERSON: I see we are at twelve minutes past one.

ADV FREUND SC: Ja I am not quite done with this witness.

CHAIRPERSON: Ja.

ADV FREUND SC: My suggestion is we take the lunch adjournment I will not be a great deal of time after that

actually.

CHAIRPERSON: Ja okay let us take the lunch adjournment and we will resume at quarter past two. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue.

ADV FREUND SC: Thank you Chair. Ms Modise can I take you to paragraph 71 of your affidavit it is at page 25.

MS MODISE: I have got that page.

10 **ADV FREUND SC:** Now what you deal with in that paragraph and the paragraphs – next four paragraphs is the plenary and perhaps in this commission’s examination of oversight by Parliament you have overstressed Portfolio Committees and perhaps under stressed the plenary.

So I would just like to explore a little bit about what you can tell us about the role of the plenary in respect of the issue of particular interest to this commission which is in respect of addressing allegations of state capture and allegations of corruption in the public sector.

20 And let me say this that you have through your office kindly made available to the commission an enormous volume of 00:01:43 transcripts of various debates and I see no point in us trying to go through all of those.

What I am really more interested in is as it were an overview with the benefit of your experience and wisdom

about what role in fact was played to the extent that you have known this in plenary sessions of the National Assembly in relation to these allegations and what role in theory you think they should be played and how could that be made better?

Now I understand those are three different and very big questions but let us just deal with your understanding of the extent to which as a matter of fact the plenary sessions of the National Assembly particularly shall we say in the Fifth
10 Parliament which is the particular period of focus of this commission. What role did the plenary play in fact in relation to oversight and accountability regarding allegations of state capture and corruption?

MS MODISE: Again Chair I must make a preface I was in the NCOP so to talk about the beginning of the investigations in the NA I will give you second hand information.

But in fact Chair it is not – for me it is good that we spend a lot of time on committees because that is actually
20 where the bulk of the work gets done. That because they are smaller than the House there is better space for each and every member of the committee to express themselves to speak to whatever at committee level.

Now plenary then gets reports from these committees after they have adopted them, they bring them to the House.

You have got to look at then plenary in this way when it deals to the business of committees.

That forum that I referred to earlier the 00:04:11 forum can sit sometimes and say this is what we want go and recommend to the Programming Committee what must go into the program which means these will be the matters that would see a debate unfolding on the floor of the House or these reports are fine they have been adopted by committees less – then they can go straight to ATC.

10 So the business of the House is actually determined there. Put aside the budgets and the mini plenaries that we set up where different things will come in. So committee reports can be brought to be discussed by the whole of the House. Because the House that divides up its space all parties then participate even the parties that do not have the chance to sit in the Portfolio Committees. So in a way for the very important matters all political parties then gets to participate there.

20 But also you use plenaries' questions – questions matters of public interest, motions with and without notice and as I said earlier on you deal with issues that – that like adoption of 00:05:48 things that sometimes are of outside looking issues.

Sometimes you use plenary to – to bring up issues which do not necessarily have space within committee work.

You will remember is it last year that the President asked us to convene a joint sitting. So you would have a joint plenary of the two houses to discuss a specific issue of gender based violence and what we can do about this.

But the plenaries also are interesting because you can also have sectoral Parliaments which happen on the floor of the House which means that those issues which do not necessarily have an executive member responsible or a Portfolio Committee that schedules that member it can be
10 taken straight into the floor of the House.

And then of course you have got things like the difficult ones motions of no confidence. They must go to the plenary. You cannot have a sub-committee deciding what you can have is ensuring that the process leading to that plenary is okay.

ADV FREUND SC: Now if I can just follow factually on that. My impression is that the Portfolio Committees follow essentially the Ministries. One Minister, one Portfolio Committee or maybe – maybe sometimes they have more
20 than one Minister but the point is this there does not seem to me to a Portfolio Committee that has as its mandate oversight over the President. Would that be correct factually?

MS MODISE: The – the President is responsible for all the posts. He delegates some of those posts to the leader of

government business. So the President entertains those questions who directly he must respond to the questions to the President.

But since he has delegated his powers to the Ministers of Cabinet when Portfolio Committees deal with those issues they actually deal with issues which are reported directly to the President and if the Minister fails then the President can face questions from the floor the House.

10 And yes we do not have a specific committee that is the Portfolio Committee on the Minister – on the President.

ADV FREUND SC: On the Presidency.

MS MODISE: Yes.

ADV FREUND SC: Now what I want to put to you for your comment is whether that is a lacuna that perhaps should – there should be consideration as to whether it is necessary and let me put it in this context.

20 A lot of the state capture allegations and I underline the word allegations actually related ultimately to the Presidency and as it were I wonder whether those problems do not fall through the cracks of the Portfolio Committees because if the question is, is the President captured or is the President subject to an inappropriate relationship or should we investigate that is there in fact a structure within Parliament whose task is to do that?

My impression is that there is not and my impression is that when you tell us about things like votes of no confidence questions to those Presidents – to the President in the National Assembly or in a plenary there there is a – there are – there are tools for oversight over the President.

But I want to your – I would be interested in your comments as to whether just as we now have a Ministry in the Presidency whether there should not in fact be some structure within Parliament whose mandate includes
10 oversight over the Presidency.

MS MODISE: This question has been entertained over the years. The problems with some provinces have a Portfolio Committee on the office of the Premier and on the office of the Speaker.

The difficulty is that when you look at the office of the President and the office of the Premier they actually are coordinating the work of the whole executive.

And the burden of the work of Portfolio Committees is to ensure that resolutions, laws, undertakings, the monies
20 identified I used to do that which people say it that way.

Now President – what does the President do? He signs off laws, he is delegated most of his responsibilities to cabinet Ministers, he whips even Premiers into place, Premiers are also having their legislatures which have question times on them so I am not sure if in actual fact it

would serve any purpose and I know that some people when we over the years have tried to understand why did – would want to have a Portfolio Committee on the Presidency. They would say well diplomat of truths that is the business of the Joint Standing Committee of 00:11:38.

The crimes stats what you have got police, you have got correctional service, you have got justice so most of the work that the President does is actually already covered there.

10 And – remember the President is strictly speaking not a member of the House he is this coordinator who must have enough space to coordinate the three arms because he had the executive but in fact I would argue that he sees most of this heading of the executive responsibility to the leader of government business.

 And that is why when we have issues at the legislature we go to leader of government business because he has to make sure that these Ministers perform their day to day, that the coordination between themselves and ourselves
20 is in place.

 So yes it is something that has been brought to our attention. I am not sure that it is – it is – it will really do – the – what will it do otherwise pass the budget for the Presidency that is done by the President himself but any committee especially the finance committees actually look at

– at that budget with the legislature, with us it is because at some point in an endeavour to come out as an arm of state working with the provinces we came out with the financial management of Parliament and the Provincial Legislature. And in that legis – in that legislation we then created a committee which would then – because we also created this thing of having the speakerage and the Chairpersonship as the executive authority.

So because you are the executive authority you have
10 got that committee that – that looks into that. I am not sure it is the head of state – the head of the three arms the Portfolio Committee, it would do what – if it calls in the Chief Justice what – what reach do they have? Because if you are going to form this thing for the President it means that this committee must also be able to reach the immediate structures that he is overseeing.

So I – I am not sure.

ADV FREUND SC: Well ...

MS MODISE: But if Parliament at – one day wakes up and
20 says ja now we want this committee we would have to follow.

ADV FREUND SC: Obviously. But can I just take you just to facilitate this debate to page 38.

MS MODISE: Page 38.

ADV FREUND SC: You remember those are the provisions it is the summary of the provisions of the Constitution of

Relevance. I want to take you to Section 55.2 in particular.

MS MODISE: (Inaudible).

ADV FREUND SC: So the constitution says:

“That the National Assembly must provide mechanisms to ensure that all executive organs of state in the National sphere of government are accountable to it and to maintain oversight over the exercise of National Executive Authority.”

10 Now the President is the head of the National Executive Authority and what you are really saying to me is that there is quite deliberately no mechanism whose focus is to maintain oversight over the head of the National Executive.

 Now I want to put to you that whilst it is true that a President delegates to Ministers responsibilities for all sorts of spheres there must be as the facts of the old state capture story illustrate instances where what is really required is oversight over the head of the National Executive
20 and I just ask you whether you want to reconsider it or whether you stand by what you have just said that you think there is really no – there is no purpose served by a Portfolio Committee whose primary business is to consider oversight over the President.

CHAIRPERSON: And maybe before you respond I could add

this so you can deal with all of them. It may well be that you might not need a stand-alone Portfolio Committee responsible for the Presidency. It may well be that the responsibility would be given to one of the existing Portfolio Committees so that to the extent that you may have concern to say but they will not have much work to do, what will they be doing most of the time if you give it to – give the responsibility to one of the existing committees then that committee has got its normal job and then you just add this.

10 And it may well be that apart from the issue of the budget there might not be lots of times when they have got to do something about the Presidency but if and when the need arises everyone – everyone knows which committee has the responsibility to take up those issues. So I just put that as maybe something that you might think about as you respond.

MS MODISE: Chair may I just say...

CHAIRPERSON: And I just say also maybe just something to look at given what you said earlier on that Portfolio Committees are – are – that is where the real work gets
20 done. You know. So it may well be that a President comes just answers questions in the National Assembly maybe is – maybe would not be as effective as how issues would be dealt with by – at the Portfolio Committees I am not sure oh but I thought you could just address Mr Freund's question together with all of those subsidiary questions.

MS MODISE: Chair with respect Chair Mr Freund seems to suggest that I am throwing it out – I am dismissing. I am not dismissing.

CHAIRPERSON: Ja, no, no you are not dismissing any of that.

MS MODISE: I am dismissing it.

CHAIRPERSON: Yes you just have reservations.

MS MODISE: But I am saying that ...

CHAIRPERSON: You are not sure.

10 **MS MODISE:** We – I am not sure – I am not sure whether this Portfolio Committee on the Presidency has worked anyway and I am not saying if it has worked anywhere we cannot go and look at it.

All I am saying is that the work of the President is divided into this, this, this and this which – so I would look at Chair making sure that you actually enable Parliament in its structures without multiplying because the more you multiply the Portfolio Committees the more you disadvantage those small parties that have wanted because they cannot sit in all
20 the parties on all these Portfolio Committees and therefore the more you disadvantage the people who are behind this one seat or two seats.

So when you create structures in Parliament you must also be looking at to what purpose – how representative are going to be the views here. Do you allow

the House when – because when you bring matters to the House then you are forced to give every party speaking space.

And of course the – the other thing might be that yes in Parliament any member of Parliament can go into any Portfolio Committee and that is bad. The only qualification would be that they would not vote if the vote is taken because it would only be the registered members.

So you could look at that. But I would say that it
10 would – it would – it would seem to me that because we think we felt pain at some point we therefore must create structures because the pain that we have felt we think we will cure with structures.

I think what we need to do is to create consciousness within the general society and I think we should be speaking as all parties that the people that we send to Parliament honestly are honourable members.

00:21;09 if I believe that the House I lead is filled with honourable members then I know that whatever it is that
20 is wrong, that is not in accordance with the law with ethical behaviour they will stand up to fight against whether this is their party member or not their party member.

And I always say when you accept to be called an honourable member you must not allow anybody else to correct your behaviour. You must be able to be that person

that the public sees says I – whether I voted for her party or not that is my leader.

And if we can get to where we can get honour, allegiance we will then see that in fact issues of corruption will be dismissed as they start. Might not see the day because who enables corruption? I think the politician maybe part of it they do it yes but who signs off? Why are the people who are accounting officers agreeing to do that which in anybody worth its soul says to its members you will
10 not do anything illegal.

So I think we – we – I am not throwing it out Chair but I am saying let us look at – at what – let us address our societal issues. We do have corruption. We used to be very proud that we were the least corrupt but we have now been exposed to possibilities of putting our hands in the cookie. Let us deal with this. Let us sharpen the – the police. The courts must do their work. Let people who do wrong face the might of justice so that even when I lead a structure I am not tempted to take a cookie.

20 But as I said Chair if tomorrow there is consensus that we set up a committee we understand in SA.

CHAIRPERSON: Maybe I can just say I do not know whether you share this view but I would imagine that just as there would be Ministers above whom there would be concerns that they are not really doing their job properly in terms of

various things which are in the public interests you could have a situation where you have a President who does nothing about Ministers who – who are not doing their job and to the detriment of the public and one would imagine that for that kind of situation it would be good that in the forum which is – which represents the people to be able to say – to say Mr President let us deal with this. Do you see that Ministers – we as Parliament do our part?

10 He expects the Ministers to do their part but the people are complaining. They are not getting – you know services and so on and so on but Ministers seem to just get away with things you know and – and basically have that interaction which in respect of a Minister would be done by a Portfolio Committee.

20 So it – it may well be that it is something to look at. I understand you that you are saying look you not throwing it out you saying that you might have reservations but you know if more people think it is something worthwhile looking at let that be a discussion and let us see where that discussion takes us.

But I – it may well be I do not know whether if you do not give that responsibility to a Portfolio Committee – an existing Portfolio Committee or a new Portfolio Committee whether there is a way of handling it at National Assembly level.

Now I do know obviously that the President does get called from time to time to come and answer questions in Parliament and that is part of accounting and so on and so on and the National Assembly can be asked about whatever in terms of government.

But I do not know to what extent it is possible in that kind of situation to be focussed you know. The kind of focus that you can get in a committee or maybe move be a question of making more time and then – but with a specific
10 focus that there could be more discussion.

Because I get the impression sometimes when I watch the – when the President answers questions that there seems to very little room for follow ups – for follow ups and so on. But I do not know and I am speaking about something that I know little about you – you know better.

But I think that what would be important is that there should be room for a situation where you have a President who is allowing things to just go on when they are going in the wrong direction. Ministers are not doing their work and
20 there is no accountability and so on. You ought to be able to say – Parliament ought to be able to say we elected because they are elected by Parliament and now let us deal with this.

Now of course Parliament does that normally with but now without a Portfolio Committee because they call upon the President to deal with certain question, answer questions

and put questions but I just do not know if the environment in which it is done allows for focus.

But maybe it does but I just mention that I – if you want to say something you can but I understand your position if you say I have said all I wish to say, I will accept that.

MS MODISE: No Chair I am laughing because I – I know of a particular President who would have almost all the parties in the House reflecting on him and – and if it was – the
10 House I think carries a harsher sanction because it is bigger when it is sitting.

It has more voices. It accommodates the leaders of parties who do not necessarily sit in all this. So when there are issues of the Presidency not only when it is a motion of no confidence.

When they raise issues sometimes on the Presidency the attacks can be very, very, very severe and therefore in my own thinking you would have to think very hard of going for a fewer or else if there is the subject that needs to reflect
20 on the Presidency that you do not actually find a mechanism other than that of a motion of no confidence because so far the debates and the 00:29:36 comes during the question time to the Presidency – they reflect on the performance, they give ultimatums there as parties but also motions of no confidence is when they say I – we have been talking we are

tired.

So I am saying let us ...

CHAIRPERSON: Ja.

MS MODISE: Maybe one needs to apply, look at...

CHAIRPERSON: Yes.

MS MODISE: What other people are doing and if it is doable I do not think Parliament would say no.

CHAIRPERSON: No that is fine. That is fine.

ADV FREUND SC: ...[Indistinct] with the evidence that
10 we have heard from Mr Mantashe in just a couple of days ago. His position, as I understood it, was under no circumstances would it ever be tolerable for the majority party to support a vote of no confidence introduced by an opposition party. Now if that is the view being expressed by a senior leadership when he was the Secretary General.

I understood that was the advice he gave to the Parliamentary caucus. It seems to suggest that a vote of no confidence is not likely to be a productive problem solving exercise. And so one is left wondering, well, what
20 would be a productive exercise given, of course, the partisan nature of our politics as well.

How do we deal with the problems or alleged problems when those problems are located right in the heart of our state, the Chief of the Executive?

MS MODISE: Chair, I think you capacitate. You create a

system which enables a member of Parliament to be able to express themselves without fear on issues that can be your own personal believe in the believe of their constituency because if you do that, then sanctuary is not just allowed to come from the opposition benches.

Then all of us know that it does not matter if you do something wrong, it does not matter what colours you wear, we will be on top of you. And that is why I earlier on said let honourable members be honourable members and
10 that honourable members not feel scared to express themselves because the power of the MP lies in the constituency. That our electoral system is party based still forces us to rely on the majority.

Now as if tomorrow we go back to Parliament and say we are going to have a joint committee on the presidency. The rules of Parliament is going to – are going to force us to look at the strength of the parties and then allocate membership on that. As things stand now, the ANC would be in the majority in that party. Had you solve
20 anything? No.

But if you empower the individual member to be able to stand up, actually you do not. You need only one member in the South African system to propose a motion of no confidence in the Head of State as long as it is substantiated. In other parliaments I know of, if you

cannot have the numbers to take the decision, they do not even look at the motion you are putting.

So in many ways, even though we do look weak, South Africa is very forward but as I say, it is something that we will look at but for me the first choice would be produce members who can stand their ground.

CHAIRPERSON: Ja, it is... Well, Mr Mantashe is coming this evening. I think we will still revisit that subject with him. I certainly would like to revisit it because I am not
10 sure and you might not be able to say anything about this, it might be Mr Mantashe.

I am not sure of the constitutionality of an approach that says even though the Constitution does provide for members of Parliament to vote, whether they support or not support your motion of no confidence in the President, members of the majority party shall never vote in support of such a motion no matter what.

I mean, I – if you have a president that you as a member of the majority party – if you have a motion of no
20 confidence in front of you and the president is from your party that is alright. And it is quite clear to you that if this president is not removed this country is going down and your party says you dare. I am not sure if the constitutionality of that approach.

But also the – as I understand it the Oath of

Office that members of Parliament take, you as a member of Parliament are required to be faithful to the republic and that seems to me to suggest that if there are conflicting interest – as long as you are now performing your functions as a member of Parliament you must be faithful to the public.

Now if you know that I am not – if I say do not support this motion, I am not going to be faithful to the republic, what are you suppose to do? But that it is
10 something that you might not wish to say anything about that but I am sure ...[intervenes]

MS MODISE: It is something you do not level. I must keep my mouth shut.

CHAIRPERSON: [laughs]

MS MODISE: [laughs]

CHAIRPERSON: But these things, we need to be frank about them because we are not going to identify the right solutions to the challenges that we are seeking to address if we are not honest and frank about what are the problems
20 that have contributed to putting us where we are.

But when I say that I am not saying that the solutions are simple. I am not saying the problems are simple. Indeed. Some of them are complexed and so on and so but it is important that we are frank about what the challenges are and take it from there. Okay.

MS MODISE: I think when you lead, there comes a time when you need to solve it one way and make the decision of whether you actually think you are still or whatever.

CHAIRPERSON: Yes.

MS MODISE: Make the decision the best interest.

CHAIRPERSON: Yes, yes.

MS MODISE: And for me, leadership, if you cannot self-introspect you are in trouble. And sometimes there comes a time when you must be whether you are the president or
10 not and if your own people say: Look, we think it is time. That you should not, actually, wish people to even start pushing him. But – I do not know. Mr Mantashe is the Chairperson of the ANC. I do not know that – I think he must ...[intervenes]

CHAIRPERSON: Ja.

MS MODISE: He must be able to push this point and convince the Commission that he is right.

CHAIRPERSON: Ja.

MS MODISE: Chair, it might interest you that Covid has
20 led to a new improvement in our systems. Of course, members when they vote they can vote whichever way.

CHAIRPERSON: Yes.

MS MODISE: With the virtual platform we have had to not only take a chance that they will vote. That we deliberately after the party voters come in called out for

members who wish to vote against their party vote to come through.

And therefore from the point where we are it is another leap forward which we do not know how far it will go into the future but as we take vote we allow for – we do deliberately ask members: Members, your vote has come in as a party. Do you wish to vote against what your chief whip says is your vote? Then it is up to the members.

CHAIRPERSON: I would guess that in a way it is a good –
10 it might be a good thing. It is just always going to depend on what the party is saying because on the one hand wishes members of Parliament to stand their ground and what they believe is right.

And I accept that in regard to certain matters, you know, in all the policy matters they might have to bear in mind what the party policy says but there are certain matters and corruption is maybe one of them and you know there are other things.

Somebody concerned to say: Well, the Speaker
20 say – is asking whether I wish to vote against my party. Well, what will the Speaker do when tomorrow I am told ...[intervenes]

MS MODISE: To go.

CHAIRPERSON: [laughs] I must go. [laughs] The Speaker will not be able to protect me, you know. So. But

it may be that it is an attempt to try and move forward and then one can take it from there to say: Okay still there are certain challenges and let us see. Okay. Mr Freund.

ADV FREUND SC: Yes, I want to try and wrap up as quickly as I can. I have got one small issue and one big issue.

CHAIRPERSON: Yes.

ADV FREUND SC: The small issue is study groups. You deal with study groups in your submission and if I
10 understand it correctly, you expressed the view that there is nothing wrong for study groups inviting whoever they like which might include the minister, often would include the minister, might include director generals and other senior officials.

And you say that function must be distinguished from the function performed by the Portfolio Committee or its meeting as the Portfolio Committee exercising oversight over the Executive.

Now I want to put to you my difficulty with that.
20 It sounds fine in theory but the evidence seems to suggest from what we have heard in this Commission that routinely study groups meetings immediately precede Portfolio Committee meetings. That in the study group meetings and that is not only the, in this case, the ANC caucus for that study group but also the very persons over whom

oversight is to be exercised by it primarily the minister and subsidiary the minister's senior officials.

They are all from the same party, they take a decision in caucus and they go into the oversight – into the Portfolio Committee having decided in the study group what position to adopt. Now if that is factually correct then does it not – so it is quite problematic this practise of study groups including ministers, DG's and other ruling party deployees as if this is innocuous and does it not
10 subvert the proper exercise of oversight?

MS MODISE: Chairperson, it does not. There is not a political party in any part of the world that does not have a study group on any issue, on any portfolios. When you look at the opposition parties in South Africa – look at the UK – you – a system they called shadow ministers, who shadow minister within his and her party, has a group of people, whether they are members or members of his or her party, who are the go-to, who research and try to create expertise around particular issues. That is what a
20 study group is.

And therefore in themselves there is nothing wrong with any study group existing. It would be wrong to leave this Commission with the impression that DG's are members of study groups. That is wrong. It would also be funny that a study group, say on education cannot openly

invite the DG of Education and say we are formulating a position on this but we need you to give us information.

It would also not be right to say that any political party cannot write to the department say please explain this thing and give us information on this one. If they are not doing that, they are doing themselves a disservice. You will remember the former Public Protector beating to a pulp by people who really should not have Madonsela because she was invited to address a gathering of the
10 Democratic Alliance.

Her capacity as Public Protector will give her a right, a constitutional right, because she cannot be expected to go to one party and not to the other. And that is the point we are trying to make. The same thing with Mjawa(?). If the study group on the Financial Management of Parliament calls her, she can go.

If the DA has a similar study group, she cannot turn and come to me and say I am not going to go because the DA is calling. When the Chief Whip Forum which is
20 made up of the chief whips of all parties, ...[indistinct] they go.

So in that way you demystify this thing of here it is only the majority party. It would be absolutely wrong. I will say that caucus is a different thing also because caucus is the wider group of a political party. They discuss

the party line. But also, let us go back to the elections. All parties come out with their manifestos and the manifesto that gets a popular vote becomes the majority.

Now we were saying as presiding officers at the beginning of this – to the chairpersons, it is important for you to have had sight and to understand all the parties that are here in the National Assembly what they are saying on each and every party because in that way you can understand when you chair that all political parties who
10 want to say to their electorate we have not forgotten the manifesto that sent us here.

And therefore sometimes you allow that and that is why I say it quite openly, in Parliament there can never be a right or wrong question. Members – it does not matter how simple the question might be, they are owed space to express themselves. Information must flow.

No member, for instance of this administration of Parliament can be called to a caucus and say I am not going, I am only going to the ANC. I will find a problem
20 with that. And I think that if Statistician General is another example, just invited by all the caucuses. If he gets invited into a study group it would be wrong for the Stats General to say I am not going ...[intervenes]

ADV FREUND SC: But ...[intervenes]

MS MODISE: Because they are not party political

animals.

ADV FREUND SC: Yes.

MS MODISE: So you become a DG, it does not matter what or how you vote privately then, there you must do, you must respect all the voices. That is where I come from Chairperson.

ADV FREUND SC: Now I understand completely the point of view that says party structure, whether it is – we are focussing for the moment on study groups that specialise
10 on portfolio basis, it is entirely proper for them to educate and inform themselves and try to understand what is going on and to ask people who could help them to understand what is going on. I cannot see any difficult with that.

The difficulty I want to put to you is when that same meeting and in particular when there is a scheduled meeting of the Portfolio Committee to follow the study group meeting, the purpose of which is to decide how to exercise oversight over that minister and that minister is part of that caucus that is making that decision.

20 Now I do not know whether that is factually right or wrong but that happens. We have been told it happens. But if it does happen, do you think there is something wrong in principle with that or do you think that is fine?

MS MODISE: It depends what is on the agenda of that study group. And Chair, when we went to Parliament in

1994 we knew nothing about the navy(?). I think Ronnie Kasrils was the Deputy Minister. To understand, we would invite him, not to lobby him or not to – to say we need this. What is your understanding? How is this thing structured.

We invited generals. I criss-crossed this Africa with some of the former South African generals because we did not know and we became South Africans and that is why we could.. So sometimes these interactions they create bridges between us. But if the study group is called
 10 to say: Here, Minister. I am here. This is the question we are going to ask you. We have prepared for it. That would be, obviously, out of order. That would actually be defeating the oversight purpose. So on that one I would say...

But if you call in, for instance a study group on health because Zweli Mkhize says there is a debate out there. Explain to us why you want to choose that and you are not choosing that. He can go and give exactly the same information to any other study group.

20 **ADV FREUND SC**: Ja, I understand ...[intervenes]

CHAIRPERSON: Would it be correct to summarise your response in this way in regard to this question that you are saying in principle there is nothing wrong with different people attending a study group depending on what the issues are to be looked at but you would say nothing

should be done or decided there which means that a member of Portfolio Committee who was in that meeting cannot do his or her job in the Portfolio Committee properly the way she or he is expected to do? Would that be a fair summary of what your position is?

MS MODISE: Chair, it would be a fair summary.

CHAIRPERSON: Ja.

MS MODISE: Remember that Mr Mantashe's party also has what we call a party democratic processes where you
10 are allowed 40-days(?) and that is exactly what happens in the study group where different angles from a party, a direction and a position on a particular issue.

Now I am saying that it would be wrong if that decision of these MP's is then pushed and directed by the same Executive Authority that sits – that comes to that. If the intention of inviting is to get advice and understanding there is nothing wrong.

So for me it is just what drives the agenda of this caucus and this thing because whatever it is, South
20 Africans must always work towards building and progressing together. So Parliament cannot lend itself to motivations and things that really do not matter to the electorate. The electorate... water, safe houses, transport and so on.

So if they call the executives or the DG's to say

explain. I have no issues. If it is ...[indistinct] and this the direction, then of course, there would be something very wrong then. So what we do need to say is all around the world there study groups, there are caucuses. Maybe we should interrogate what happens in there.

Can you outlaw them? You cannot outlaw them because if you say in Parliament you will not, you will not. In the first – in speaker – previous time, we scheduled the days for study groups. Mondays, we knew that all parties
10 would have. Right now we schedule Thursdays, it is party caucuses.

All the parties go into caucuses. They develop and they sharpen their debates there and whatever and their strategies. So I think what would not be on is if it is to go and scheme because there is no better word I can use.

CHAIRPERSON: Well, I ...[intervenes]

MS MODISE: Because if you are going to go and scheme, then you defeat the ...[intervenes]

20 **CHAIRPERSON**: The purpose.

MS MODISE: But also remember, Chair. Across – there is a lot of lobbying in Parliament.

CHAIRPERSON: H'm, h'm.

MS MODISE: There is nothing this party standing there. Parties talk amongst one another. This is my position.

What do you think? They [speaking vernacular] So you – when you get into that, you need to be careful that you do not kill that because as simple as it seems, we have built friendships, we have been able to integrate communities because we can talk.

CHAIRPERSON: Well, I was going to ask you to say in English what [speaking vernacular] means but you ...[intervenes]

MS MODISE: Yes. [laughs]

10 **CHAIRPERSON**: I think when you said they should not scheme, I think you effectively translated.

MS MODISE: Yes.

CHAIRPERSON: It... Ja, okay.

ADV FREUND SC: Can I turn to one last one point which has really got two sides to it? The one is to summarise your own view of the role of the Speaker when it comes to the question we are talking about which is the question of Parliament having a duty to ensure that there is proper oversight and accountability of the Executive What is the
20 role of the Speaker?

And linked to that, the second question is. Do you agree with the view that some express that it is problematic for the Speaker not to be non-partisan? Or put it this way. For the Speaker to be an active participating member in the majority party? Does that

actually conflict at all with the proper execution of the role of the Speaker?

MS MODISE: Chair, I am a member of the majority party. That has never deterred me from the time I was a Provincial Speaker to take a decision which I think is the proper one. If it means sometimes I get into trouble with my party for saying what I believe at a particular moment is a right decision for The House Honourable, then so be it.

But also, studies have not shown us that being a
10 member of the party and being a speaker automatically makes you biased towards. I do attend some caucuses of my party. When I am presiding – I do not want to speak for other presiding officers – I am very clear that each member is given exactly the same beating as the next one and the same rights as the next one because when I was sworn in, I undertook to try and be impartial.

And it is important for a presiding officer not to be seen to be biased because if you are seen to be biased then you lose respect of your house, you will lose the
20 constituencies out there. So it is important for us to as much as possible, and we fail sometimes because we are just human, but it is important, Chair, for us to apply the rules very blindly.

It is important for us not to favour the Executive over the non-executive members, nor should we suppress

the Executive in favour of those who are not known. Personally, the people who I think I should protect more are not the Executive. It is the person in the street. That one who cannot talk here.

This Executive of Parliament can tell you I have been at their back since 2011/4, forcing them to even take up – what do you call it – Pro bono work to help communities because I was saying, when communities approach us, sometimes it is because they do not know
10 where to go.

So sitting there in the air-conditioned offices in Parliament when you have done all your work and doodling, it does not work for me. If you can go out in the community and go and help, go and help so that honestly we can build a country we can be proud of.

So, for me, impartiality is not difficult, at the height of violence here, I was talking to the Inkatha Freedom Party women, we did our thing and we got to where we are today because I have always been able to struggle but not
20 lose what I believe in inside myself and I believe that South Africa can be better if we talk, if we listen to one another and being the Speaker is just that, to allow people to talk. If it is tough, you mediate.

ADV FREUND SC: Just on a point of fact, is it the practice for the Speaker of the National Assembly, when a

division is called, to vote?

MS MODISE: Nothing precludes the Speaker of the National Assembly to vote. It is also practice that opposition parties do not vote at all for the budget. It is also practice that if you do not get a certain number of votes that budget will not go. So when a Speaker sometimes votes it is because we are not focusing on the [indistinct] on the floor, you are focusing on the need for this budget to go and do good somewhere there and that is
10 why when you are a Speaker you also want to fight corruption because it disturbs this train, this route where the money should go. So, for me, I have voted if I am not on the chair.

ADV FREUND SC: If you are not on the chair?

MS MODISE: If I am not on the – when I am on the chair I do not vote.

ADV FREUND SC: And would that be the practice, so far as you know, the tradition of the South African legislature?

MS MODISE: The rules would allow, Chair for the
20 Speaker – sometimes you have the casting vote and we read the exercise that because you allow the members of the house to decide on the matter. I do not remember ever doing the casting vote but I do know that all of us will vote for the budgets to go because people are waiting for it.

ADV FREUND SC: Alright, thank you, I have no further

questions.

CHAIRPERSON: I think the one thing I would like to ask you is whether having regard to the submissions and whatever else, whether you are able to just summarise and give me maybe three, maybe four, maybe five – maybe five is too much, give me some things that you say if you look at how parliament has been handling the issue of oversight, holding the executives accountable in the past - and of course you have the advantage that you have been
10 in the NCOP, you are in the National Assembly now – here are the things that you think may have contributed significantly in certain things not being done the way they should have been done in terms of oversight and holding the executives accountable and going forward, if these things could be fixed there is a good chance that if the same things that happened were to happen again they would find parliament in a better position, make sure that the damage has been done to the country does not repeat itself and in the process maybe say if parliament would get
20 this, that and that or if this and that and that can be recommended, I think it would go a long way. If you are able to, just in summary.

Even if – you can draw your experience in other jurisdictions if you want to say well, Commission must consider this, consider that and so on.

MS MODISE: Chair, if I could, I would really get resources to enable a member of parliament to really understanding the portfolios they are overseeing. In other words, if it means because of our history, in other countries they do not have the disadvantage of education that we have.

So with us we have a responsibility to enable this elected person to do the job. So if I could, I would increase capacity around the member, enable this member
10 to have at their fingertips the things that would enable them to understand and to apply their mind.

I would actually in that process try to make sure that the legislative arms actually gets its fair deal. We are unable to do this because we oversee and it is not argument that we want parliament to be given the same budget, for instance, as that of a particular department but everywhere else, except for a few countries, the process of parliament getting its budget is very different from here. They treat us like a sub-department and that has bearings
20 because you cannot plan. Then I would say that if you could ensure that all political parties in South Africa try to retain as much as possible members when election time comes because what parliament does is that every five years you have to bring up at least 60% of these people to just an understanding and that is why the first two, three

years are difficult.

Then I would look at what system brings us to parliament and that is now water under the bridge because we are now looking at an electoral Act which we do not know how it is going to – it is going to give us more complications actually because the current one, with all its weaknesses has enabled us to bring a sensible quota of women into parliament and to try and even out the gender things. If we go any other way we might end up actually
10 losing the critical mass that we had built on public representatives.

So it is a mixed bag. What do we do to ensure that you actually retain skills in parliament both in the administration and amongst the members themselves? We are doing very well right now as the South African Development Parliamentary Forum, we are [indistinct] together but do my members carry the authority to take that which we have agreed to at a SADC level into their constituency without fearing that they will be accused of
20 harassing or something. So you do need to build up the member.

So, for me, any Speaker must worry about maintaining this person, growing this person so that even if this person does not come back, this person in the five, ten, fifteen they have been in parliament are employable

somewhere and this usually happens with the black – the African members because they come in, in a popular electoral vote, they sit there, they go back, it goes bad.

So I do not know, Chair, I would go that route. I would looked at – we did some interesting this in the '90's, for instance we looked at something like when the defence force is deployed, it was parliament that insisted that you will report [indistinct]. When we looked at the register of arms, it was parliament that created the guideline, it was
10 not the executive.

So when you have retained enough of your members and they are confident enough they will be able to carry their own and they will be able to hold the executive to account but we do want to say that as matters are, it is always a matter of balancing resources. What can parliament afford, what can parliament afford and therefore sometimes when things fall between the cracks it is because your resources do not cover what you need and you are too ashamed, as the people's representative, to be
20 fighting too much because you understand that we need to build clinics. You understand that there is that need there. But I think there must come a time where there is a real serious discussion on these issues.

CHAIRPERSON: No, thank you. In terms of capacity, there are thinking about, among other things, obviously

financial resources plus researchers...

MS MODISE: Researchers.

CHAIRPERSON: And lawyers or certain professionals that may be needed in order to capacitate members of parliament.

MS MODISE: Enable members – sorry to interject, Chair.

CHAIRPERSON: Yes.

MS MODISE: To be able to draft.

CHAIRPERSON: Yes, yes.

10 **MS MODISE:** This parliament of ours is one of the few that you depend on somebody else when you are dealing with legislation to draft for you. Give them those skills so that in fact they can get by and be able to argue their ways out because sometimes the legal fundis come, they sway your attention this way, no, that is unconstitutional, you need to be able to create this person to be able to stand with or without legal advice. They must be able to say that.

CHAIRPERSON: No, thank you. Nothing arising?

20 **ADV FREUND SC:** May I just say this, Ms Modise, it was indicated to me before you started testifying that you wanted to make an opening statement. We overlooked that at the outset and then I said to you over the lunch break that if there is anything we have not covered that you wanted to deal with at the end you would be free to do so.

So if there is something that you feel you had wanted to raise, I do not want you to leave here feeling that you were deprived of the opportunity.

MS MODISE: Chairperson, it is perhaps two sentences. It is that we also wanted to reaffirm our commitment to the Republic but also to say to you as parliament we will do everything in our power to follow up not only on corruption but on all issues, maladministration, make sure that we really do our job and that we will support this Commission
10 to the best of our ability.

CHAIRPERSON: Thank you very much. Thank you very much.

ADV FREUND SC: Thank you.

CHAIRPERSON: Okay, alright, I will excuse you Ms Modise now and I think we will just need to take a short break and then Mr Masondo will then take the witness stand. You are excused. Let us take a ten minutes break and then we will not take it at four o'clock.

ADV FREUND SC: No, we will not.

20 **CHAIRPERSON:** Then we just move straight, ja.

ADV FREUND SC: We will move through.

CHAIRPERSON: Ja.

ADV FREUND SC: Clearly we need to finish sometime well before five o'clock.

CHAIRPERSON: Ja. Okay, no, that is fine.

ADV FREUND SC: But I do not think we should have difficulty in doing that.

CHAIRPERSON: Ja, okay, we adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES:

CHAIRPERSON: Okay. Mr Freund, are you ready?

ADV FREUND SC: Yes, I am Chair. Chair, you know that we have now Mr Masondo, the Chairperson of the National Council of Provinces. I think perhaps if he could be sworn
10 in?

CHAIRPERSON: Yes, okay. Administer the oath or affirmation. Okay, ja you may stand up. Ja, thank you.

REGISTRAR: Please state your full names for the record?

MR MASONDO: My name is Amos, surname is Masondo.

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

MR MASONDO: No.

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

MR MASONDO: Yes.

REGISTRAR: Do you solemnly swear that the evidence you will get, 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 MASONDO: So help me God.

AMOS MASONDO: (d.s.s)

CHAIRPERSON: Okay, thank you. Just in case Mr Masondo also wish to redact an opening statement, I am just making sure that you do not forget this time.

ADV FREUND SC: Mr Masondo, is there anything you would want to say by way of an opening statement or can I move on with my questions?

MR MASONDO: [indistinct]

10 **ADV FREUND SC:** Would you like to make some type of opening statement or are you happy that I just ask you some questions?

MR MASONDO: No, just to very briefly say who I am and the background. Without spending too much time on that and then we will move on to questions. Just very briefly to say [indistinct] good afternoon to everybody.

CHAIRPERSON: Good afternoon, good afternoon Mr Masondo.

20 **MR MASONDO:** My name is Amos Nkosi Maseko. I am the current Chairperson of the National Council of Provinces, the NCOP and in terms of my previous related experience I was a member of the National Assembly, NA from 2015 to 2019. That I was also Chairperson of the Joint Committee on Members Interest and Ethics in parliament.

Later on, that was in ... until 2015 to 2018, 2018 to 2019 I was the Chairperson of the Joint Committee on Intelligence. I was also whilst at the National Assembly, a member of COCTA, that is corporative governance and traditional affairs. Ja. I was in Johannesburg from 2001 to 2011.

I also became Chairperson of SALGA, and earlier on I was a member of the Gauteng Provincial Legislature and MSFL in Gauteng in 1994. I have lost a bit of my
10 voice, so please bear with me.

CHAIRPERSON: Yes, no that is fine.

MR MASONDO: Just a word or two without possible in too much detail. To say that in the NCOP we have fewer committees. There is committees and all in all they are 11 in their cluster. So instead of having a committee just dealing with one aspect, say for instance justice.

Justice is linked to security as well and just to again say that the MP's, sorry ministers are not members of the NCOE, and although they are also held accountable
20 through questions, boards and so on, ja very very briefly NCOP is somewhat different from NA.

Although NA and NCOP constitute what is referred to as parliament in South Africa.

ADV FREUND SC: Right. May I then proceed?

CHAIRPERSON: Yes, you may proceed.

ADV FREUND SC: Just for the record Mr Masondo, if you look at pages 7 to pages 36, can you confirm that you are a joint author together with Ms Modise of this submission to this commission?

MR MASONDO: I confirm.

ADV FREUND SC: And also just for the record you have in fact been present throughout the evidence of Ms Modise today.

MR MASONDO: Yes.

10 **ADV FREUND SC:** So I want you to understand that at any time you wish to qualify something she said or disagree or react to something that she said you are free to do so, but I am not necessarily going to take you over all that same material.

So if it occurs to you that you feel it is necessary for you to comment on something that you have heard today or that is even the submission, even if it is not specifically on the NCOP, even if it is not specifically in direct answer to a question I asked, you must feel free to
20 do so, because really this is going to be the one and only opportunity for this commission to get insight into the role of the NCOP on oversight.

But perhaps let me start off by asking a few questions just to get the process going. Now if I take you to page 38.

MR MASONDO: Ja.

ADV FREUND SC: Page 38 and 39.

MR MASONDO: Yes.

ADV FREUND SC: You will remember that this is the first annexure. It is Annexure A to the joint report and in this you have highlighted some of the main provisions that are relevant to the question of oversight and accountability.

MR MASONDO: Just give me some hot water, hoping that my voice may be better.

10 **CHAIRPERSON:** Okay, no that is fine.

ADV FREUND SC: And if at any time you need a break you just let me know. Mr Masondo, at pages 38 and 39, there is a summary of the provisions and it seems to me on a reading of the constitution, that the primary arm of parliament which is passed with oversight over the executive, and holding the executive accountable is the National Assembly, but it is also obviously true that the NCOP has a role to play.

20 So what I would like to try to understand and I think these provisions might help you is how you see the role of the NCOP in so far as it relates to oversight over the executive and holding the executive accountable because that is really the focus of this session.

MR MASONDO: Let me confirm that it is indeed true that one of the most important roles of the NCOP is to ensure

oversight and accountability. But what distinguishes the NCOP from the NA, is the fact that in the NCOP we put a lot of emphasis on linking up and building and deepening relations with communities in provinces and as well as in [indistinct].

So what goes with the provinces and we look after provincial interest. We work very closely with the South African Local Gambling Association. SALGA, and we really seek to ensure that parliament is brought as close to the
10 people as is possible.

One of those aspects is to put a lot of emphasis on the work that we do in relation to parliamentary responsibility offices.

ADV FREUND SC: Right. Now if I can take you to page 11.

MR MASONDO: Yes.

ADV FREUND SC: You will find from paragraph 13 to paragraph 16, some of what you have just been saying to the chief justice, but perhaps you would like to elaborate
20 on these paragraphs and explain in more detail so that we have a fuller understanding of the NCOP's specific role.

I have noted that you have already mentioned the particular attention to, as it were the interest of provinces.

MR MASONDO: Provinces.

ADV FREUND SC: And through that I assume the

relationship with local authorities. That is something you touch on here, but I am really inviting you to use paragraphs 13 to 16 really to elaborate so that we get as full a sense as we can of the role played by the NCOP.

How it sees its function in the, to the extent that that is relevant for present purposes.

MR MASONDO: Ja, maybe just to say that the NCOP like any legislature, is a platform to tolerate their own matters, and this debates range from the finances, the programs.
10 They really centre on what we think the NCOP is about, which is we cannot talk of the NCOP outside of the people.

It is the people that makes the NCOP relevant. We also tend to pay a lot of attention in ensuring that in an ongoing way we are kept sensitised on issues that arise at the core phase of government, and that is local government issues.

Either through interaction and engagement with the SALGA, the local government association, or the even really ensuring that SALGA thought it may not have
20 evolved, the stern representatives continue to have a voice.

Maybe just also to add that the NCOP organises from time to time in our program what we refer to as taking parliament to the people, where we go to communities out there and ensure that we organise these mass meetings

and gatherings where not only do we have the MP's from the NCOP speaking, but you also get the presence of ministers as well as ministers to raise a whole range of issues that relates to governance.

We also have a local government which also provides a platform for local government to make the matters to be raised and ministers, the Minister of COCTA or related people who do government work and this includes the South African Local Government Associations
10 and related stakeholders.

So the NCOP is a very pre-occupied with ensuring that the voice of people find an expression and that we provide a platform that engages on matters that are closer to the minds and hearts of honourable people.

ADV FREUND SC: Alright. Can I take you please to page 26, and I draw your attention to paragraphs 82 to 89. These, this is under the headings motion, debates and subjects for discussion in the NCOP. Now of course I understand that this submission to the commission is now
20 focussing not on the general work of the NCOP, but on that part of the work of the NCOP that has some relevance to this commission, because this is a commission into alleged State Capture, alleged corruption.

So it seems to me it might be helpful to you to draw on these paragraphs 82 to 89, try to explain to the

commission instances or illustrations of work done by or in the NCOP that has relevance to these questions of State Capture or corruption.

I am not confining you to these paragraphs, I am really trying to zoom in on the work of the NCOP in so far as it relates to the subject matter of this commission.

MR MASONDO: You are saying 82 to?

ADV FREUND SC: 82 to 89. You will see that is a set of paragraphs, all of which relate to motions, debates and
10 subjects for discussion in the NCOP and a lot of them talk about corruption, state owned enterprises, this very commission.

I am really trying to help you to tease out in a practical way how you would illustrate the work done by the NCOP on oversight in respect of corruption, in respect of State Capture, because that is really what we are interested in today.

MR MASONDO: Maybe one should settle by saying that the subject of corruption is not anything new. If you had to
20 look at the resolutions and decisions taken by NCOP whether in committees or in plannery, you realise that this matter would have surfaced from time to time.

The stance that is generally taken by members of parliament, of the NCOP is that of being anti-corruption. Anti-corruption. We have tendered to have debates that

seeks to indicate that you should be building from what we know to be happening in communities.

For instance the whole notion of wrong and right. That generally in communities people have that starting point, and these are things that one learns either from home or if you like from various institutions in society, religious organisations. Churches and forums like that.

To say that we need to build on this. By basically judging as many people in our communities to reinforce
10 these believes and understanding, and seek to build on them, moving into the future. Because when all is said and done, I mean the question of corruption is not something that is sustainable.

Looting and abusing state resources and so on, of course I must say of course that corruption is not just limited to the problem. The problem of corruption is not just limited to the public sector. There is corruption in the private sector and so on.

But in general this is what we have sought to do, to
20 use the NCOP as the platform to educate, inform, to ensure that corruption is opposed and that it is fought not only by members of parliament, by communities and the society.

ADV FREUND SC: Alright. If I can take you then to page 28. You will see that we find from page 28 through to page 32, or 31 a whole list of questions that have been put. Ms

Modise touched on but we did not deal in any detail with the question of questions.

But if you look at page 28, you will see there is three examples of questions in the NA, in the National Assembly. If you look at page 29, page 30, page 31, you will see a whole list of questions that had been put in the NCOP that have something to do with questions of corruption and the like.

So perhaps you might like to refer to these to
10 illustrate the way in which the capacity to put questions in the NCOP serves as part of the effort to hold the executive accountable on the question of alleged corruption.

MR MASONDO: The question of corruption as I have already indicated, has been debated quite a number of times in the NCOP but one of the instruments that we have used at counsel, has been that of questions. Questions come from the different political parties and they get directed ministers, deputy ministers, deputy president, the president.

20 The questions serve a number of purposes. I mean, one of the purpose that it really serves to serve is to ensure that members of the public out there, because remember when these issues are being, when these questions are being raised at the NCOP, there are thousands and thousands of people out there in

communities who follow the debates and therefore get enlightened, and indeed some of the questions are questions that come from constituencies that are raised by members of national council provinces, because they have been raised in their own constituency offices or in various meetings and gatherings in communities.

So questions play a very, very important role as an instrument to debate the matters that are of concern in communities.

10 **ADV FREUND SC:** Now the, if I can refer you to page 35, paragraph 112. This is part of your joint submission with the speaker of the NA, page 35 paragraph 112. You both say this. You say:

20 “While acknowledging that since the dawn of democracy parliament has put in place mechanisms to ensure that effective oversight is conducted over the executive and there is still room for improvement on our oversight and accountability systems, to ensure that the parliament’s oversight of the executive is more robust, more effective and more meaningful.”

Now what I am really interested to know is what room for improvement, what is it in your opinion that needs still to be improved, if the object is to be more robust, more effective, more meaningful, and in particular what

within the NCOP in your opinion needs still to be addressed?

MR MASONDO: Well, my view is that it does not matter how good the organisation is, the platform is. If you do well, of course we need to acknowledge. But it does not really matter how you work and whatever improvement you make.

There will still be room for it, so for me that is really a starting point, that in an ongoing way we need to
10 be seeking to improve on the work that we are doing. If we are robust, can you be more robust and more [indistinct].

If we are effective, can we take that to a higher level. If we do things in a manner that is meaningful, can we do a bit better and so. So it is the whole question really of saying there is room for improvement in relation to your question of oversight.

We must learn ...[intervenes]

ADV FREUND SC: Well ...[intervenes]

MR MASONDO: If the legislature that are doing some
20 innovative work and so on, we must engage in that, them and with the aim of course of ensuring that we improve for the better. So what I am saying is that there is room for improvement in relation to oversight, and I am going where we need to engage the question.

We need to be finding more innovative ways of

doing this work. Letting everybody else in government, from president to deputy president, to minister, deputy ministers and the departments in the state owned enterprises and so on, get all of them to pull up their socks and act in a manner that is [indistinct] with the expectations of communities out there.

ADV FREUND SC: Well, if I asked you just to look back with the benefit of hindsight, I know hindsight is 2020 but if one looks back with hindsight, whether you feel that in fact
10 we have experienced a serious problem of corruption, and if you do feel that we have experienced a serious problem of corruption and I am focussing for the moment in the public sector.

If you feel that that is correct, whether you can see any fault in the manner in which the NCOP has dealt with that, in other words are there specific areas where in your opinion with hindsight the NCOP did not do as much as it should have, and if there are then we can start to talk about what if anything to be done to improve it.

20 But let us start at the beginning. Do you accept with the benefit of hindsight, that the evidence before this Commission has demonstrated quite a serious problem that warrants concern in relation to corruption over an extended period.

MR MASONDO: Well the certain point that is that

corruption is a real challenge, it constitutes part of a context if one talks about South Africa and South African legislature, and if that indeed is the face, and I believe it is, we need to say what is it that needs to be done to address the problem. Some of the things are being done as we speak. This Commission is part of that work, but the Commission alone I mean won't really solve all the problems, so we need to address specific areas and just to mention a few of them. One of them is really to ensure
10 that we develop leadership in an ongoing manner, so leadership is very critical.

ADV FREUND SC: Is that leadership within the NCOP?

MR MASONDO: Within the NCOP, within National Assembly and so on. We need to be spared in some of our resources in leadership development on an ongoing way. We need to ensure retention of MP's and not lose the skill, so that people who come in they don't ...[indistinct] to catch up and in the end the quality of work is not seriously undermining you and compromise.

20 We also need to resource an institution like the NCOP a bit more than is the case at the moment, when I say to you that we have cluster committees and we have done some work with the NCOP including the Speaker would agree with me that people in committees in the NCOP tend to do more work than MP's in the National

Assembly. The numbers are smaller, the work is more intense, even the clustering, and so I would say that there are specific areas that we need to address. The areas where we need a bit of an improvement, quite a few studies have been done, I have seen some reports that may be of assistance going forward on these issues.

ADV FREUND SC: I am going to turn in a moment to the broader questions addressed in your joint submission, which really focus largely on the National Assembly. Is
10 there anything else that you would like to say or to contribute at this stage in addition to what you have said in relation to the NCOP?

MR MASONDO: I think the Speaker covered a lot of ground and the joint submission speak to all the issues that we need to ...[indistinct].

ADV FREUND SC: Alright, well then let me just in conclusion give you the opportunity, you have at here, listened to the Speaker, you have been party to the preparation of this written submission and the
20 supplementary submission. Is there anything in particular that you feel you either want to add or you want to qualify or slightly perhaps disagree this is your opportunity to make your contribution.

I don't want you to go home tonight and to say you know Mr Freund was very unkind to me, I was burning to

say something, I never got a chance. This is your chance?

MR MASONDO: No I think we have been properly covered and yes we would as the Speaker said would like to express the view that we are committed to assisting the Commission to do its work and any time we are required to step in to assist with information or just detail and so on we are very pleased and willing to do so.

ADV FREUND SC: Yes, thank you. I do also want to place on record, because, although it is on the
10 documentation, I haven't referred to this orally today, to place on record, the appreciation of the Commission for the quite considerable assistance we have received from Parliament, from both Houses of Parliament in furnishing quite a lot of documentation and so forth, I am sure the Chair will join me in just placing that on record.

Chair I have no further questions, I don't know whether there is anything you would like to raise.

CHAIRPERSON: Yes, no that is fine, but before I also emphasize our appreciation I just have one question Mr
20 Masondo. Are you in agreement with Ms Modise that, obviously you now talk about NCOP, in relation to the performance of their functions members of the NCOP should always regard the interests of the people of South Africa as trumped.

MR MASONDO: I can also just confirm Chairperson that

we think the people are at the centre of what they are about. And that we should everything to support the aspirations of the South Africa citizen and voter in general and that in whatever we do we should desist and avoid doing anything that seeks to undermine the ...[indistinct].

CHAIRPERSON: No thank you. I also do want to say, and I didn't say it when Ms Modise was here but I am sure you will share with her my remarks, that I really appreciate the support and the cooperation that the Commission got
10 from you and Ms Modise and the Parliamentary support staff from Parliament that was designated to assist the Commission whenever it needed information, we really appreciate it and we thank you for that cooperation and that support.

MR MASONDO: Thank you.

CHAIRPERSON: I will then now excuse you, I think Mr Freund it is twenty past four, but let me excuse Mr Masondo so that we don't detain him when he has nothing further to say.

20 Thank you very much Mr Masondo, you are excused.

MR MASONDO: Thank you Judge.

CHAIRPERSON: Mr Freund what do you propose? I guess Mr Mantashe would not be here at this time, or is he here?

ADV FREUND SC: Not to my knowledge, he is only expected at five, but he may arrive a little before that but the arrangement was to do it from five o'clock.

CHAIRPERSON: Yes, ja.

ADV FREUND SC: So subject, perhaps if it comes to my attention that Mr Mantashe is here earlier I can let you know or I can endeavour to let you know but otherwise my proposal is we should adjourn until five.

CHAIRPERSON: Ja, no I think we should just adjourn for
10 five o'clock.

ADV FREUND SC: As you please.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Good afternoon Mr Mantashe.

MR MANTASHE: Good afternoon Chairperson.

CHAIRPERSON: Thank you for coming back, Mr Freund
we may proceed, I think let us do the oath again, registrar
20 if you could just administer the oath again.

REGISTRAR: Please state your full names for the record.

MR MANTASHE: My name is Samson Gwede Mantashe.

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

MR MANTASHE: No I have no objection.

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

MR MANTASHE: 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.

SAMSON GWEDE MANTASHE: (d.s.s)

CHAIRPERSON: Thank you. You may proceed Mr
10 Freund.

ADV FREUND SC: Thank you Chair. Chair at the outset if I could just mention that three points have been raised with me by Mr Naidoo who for present purposes serves as legal advisor to Mr Mantashe. The first is in relation to Mr Mantashe's evidence previously in relation to the Mr Mbalula incident, the incident at the NEC, it is common cause and accepted that it did take place in 2011 and not as originally stated in error in the affidavit of Mr Mantashe, I think no more need to be said about that.

20 The second is that there is some controversy about whether I correctly or incorrectly put what is to be established from the Amatole judgment and the arrangement that we have made is that you will of course consider the judgment yourself by reading the judgment, but that Mr Naidoo will be given leave, as it were to

address the letter to you through us to the Secretariat and just indicating what the point of view that he wishes you to consider is, and you will take a view on that in due course.

CHAIRPERSON: Ja, that is fine.

ADV FREUND SC: The third issue is this, I have just handed to you the original of an affidavit that I had only just received a copy of and it arises out of Mr Mantashe's evidence last Wednesday about the Integrity Commission, and his evidence that it was also in his affidavit that in
10 2013, the Integrity Commission called upon the then President, President Zuma to step aside or to step down.

And you will recall that you expressed a request to Mr Mantashe to find out whether it will be possible for the Commission to receive a copy of that. In response to that I have now received an affidavit which actually clarifies the situation according to the deponent of this affidavit, it is a very short affidavit and with your leave. I would like it to be into the record.

CHAIRPERSON: Yes, no, that is fine.

20 **ADV FREUND SC:** So this is an affidavit of Uriel Llewellyn Abrahamse, and he says this, he says:

"I am an adult male and the facts contained herein are within my personal knowledge and belief, both true and correct."

I am going to leave out the paragraph numbers as I read it.

“I am an employee of the African National Congress, and my primary role is that of Chief National Presenter in disciplinary proceedings instituted by the organisation against its members. Since 2015, I have been a member of the Secretariat of the Integrity Commission of the ANC. The Integrity Commission has its own administration and makes use of offices outside Luthuli House, the headquarters of the ANC. I am aware that the

10 Integrity Commission heard a number of cases in 2013, involving members of the ANC. However, the former President comrade Jacob Zuma was not one of them. On 3 December 2016, the Integrity Commission under the Chairpersonship of comrade Andrew Mlangeni called former President Zuma to appear before it. Each member of the Commission speaking in turn outlined the reasons why comrade Zuma should step down as President of the country and of the ANC. Former President Zuma after

20 listening to all the Commissioners spend two and a half hours elaborating on the decisions he made during his tenure as President, in response to the issues raised by the Commissioners. The nature of his of his response was such that he requested all recording devices to be turned off, and that no

minutes of the meeting should be kept. The Commission complied with this request, consequently, no written report was produced. After listening to former President Zuma's explanation, none of the Commissioners changed their position that he should resign."

And that is deposed on the 18th of April of this year, as I say by Mr Abrahamse. Now that is his evidence that has now been made available to the Commission and perhaps
10 arising out of that I might ask a question or two of Mr Mantashe.

CHAIRPERSON: Yes, it is going to be necessary because firstly, Mr Mantashe there was Secretary General of the ANC at the time but also, because I see that Mr Abrahamse was not a member of the Secretariat of the Integrity Commission in 2013. The only - on his affidavit he only became one in 2015. So when he tells us about what happened in 2013, we are not sure how he knows about that, it may well be that the Integrity Commission keeps
20 certain records and he has looked at those records, even though he was not there at the time, and comes to a conclusion that no such thing happened in 2013.

So it may be necessary that he clarifies how he comes to know what happened in the Integrity Commission at that time. Maybe it is the records that are available to

him or maybe there might be somebody who was there at the time who can definitely say, no such thing happened in 2013. But I think Mr Naidoo who is listening so he knows what my concern is in regard to part of the affidavit.

But otherwise, it will be proper for you to ask Mr Mantashe, certain questions arising out of it, whether it changes anything in terms of what he had said.

ADV FREUND SC: Yes if I might do that and Mr Mantashe if I might refer you to your own affidavit in bundle 1 at
10 page 100.41.

MR MANTASHE: Page 100.

ADV FREUND SC: Point 41, four, one.

MR MANTASHE: Yes, I have got that.

ADV FREUND SC: At paragraph 144, and I think you will – can remember, Mr Mantashe that when you testified last Wednesday, you gave an opening statement, in which you referred to the Integrity Commission recommendation in 2013, the former President Zuma should step down and there you were repeating what you had said in your
20 affidavit as we are now reading at page 100.41. And you will recall that I specifically asked you whether when that committee - when that recommendation was made, and whether you were saying was made in 2013, and you said yes you were.

Now we have an affidavit from Mr Abrahamse,

saying there was no such recommendation in 2013. I wonder if you can enlighten us as to what you know and what you do not know in this regard?

MR MANTASHE: No, there was such a recommendation, that is why if you read the affidavit it says a recommendation was made and former President was invited on the 3rd December 2016, under the Chairpersonship of Mr Mlangeni and it says each member of the Commission speaking in turn outlined the resolution
10 because this called for him to stand down came back from 2013 but only on 2016, did they call him in a physical nature.

CHAIRPERSON: Oh so, what you are saying is, you did not make a mistake when you said in 2013, there was such a recommendation, indeed you say there was. But in 2016, there may have been another engagement between him and the Integrity Commission.

MR MANTASHE: In 2016, there was a physical meeting between the Integrity Commission and the former
20 President.

CHAIRPERSON: Yes, in 2013 they made a recommendation without any physical engagement, or what was the position as you understand it?

MR MANTASHE: It is exactly that happened that is why they say, after listening to the former President

explanation, none of the Commissioners has changed their position that he should resign.

CHAIRPERSON: Okay, okay.

ADV FREUND SC: Now in fairness to you Mr Mantashe, if you read paragraphs 6 and 7 of Mr Abrahamse’s affidavit he says in paragraph 6:

10 “On 3 December 2016, the Integrity Commission under the Chairpersonship of comrade Andrew Mlangeni called former President Zuma to appear before it.”

And then paragraph 7:

“Each member of the Commission speaking in turn, outlined the reasons why comrade Zuma should step down as President of the country and of the ANC.”

In other words, on Mr Abrahamse’s version, he would agree with you that that the committee members all had already taken a view that he suggested they first did that on the 3rd of December 2016.

20 I understand your evidence to be that whatever happened in December 2016, you know, that in 2013, the Integrity Commission had already recommended that the President should step down.

MR MANTASHE: Yes, that is why we refer to 2013 because when there was that recommendation, there was

chaos almost in every ANC meeting referring to this, because the NEC members began to express their views on the matter and there were actual physical calls in the NEC for the President to step down.

CHAIRPERSON: In the light of the recommendation.

MR MANTASHE: In the light of the recommendation of the Integrity Committee.

CHAIRPERSON: Yes, and that would have - well, it may be that that debate went on for some time in the NEC
10 between 2013 and 2016.

MR MANTASHE: It went on for some time between '13 and '16 and beyond 2016.

CHAIRPERSON: Yes.

MR MANTASHE: And beyond 2016 that debate continued.

CHAIRPERSON: Yes, okay.

ADV FREUND SC: Yes, and in fact, Mr Mantashe just to support what you have said, when you testified previously, you linked in your own mind, the Waterkloof landing incident, which was a 2013 issue.

20 **MR MANTASHE:** Yes.

ADV FREUND SC: And the way I understood your issue, your evidence on the last occasion was from 2013 onwards. There was, as you said, in the affidavit, instability because of this leadership issue and from 2013, you are clear that there was an Integrity Commission

recommendation that the then President should step down.

MR MANTASHE: Correct.

ADV FREUND SC: Right, I do not...[intervene]

CHAIRPERSON: Well I do not want to say anything because Mr Abrahamse might or might not supplement his affidavit. But as I said, he was not a member of the Secretariat of Integrity Commission in 2013. So that is why I was saying, you know, I am interested to know, from somebody who was there.

10 **MR MANTASHE:** Yes.

CHAIRPERSON: But, Mr Mantashe, was a member of the NEC, he was the SG of the ANC. So he has a good chance of knowing that as well.

MR MANTASHE: No, I know that from 2013, there was chaos at the ANC, all the time.

CHAIRPERSON: Ja, arising...[intervene]

MR MANTASHE: Around the question of asking the President to step down.

20 **CHAIRPERSON:** Yes, and the 2013 recommendation of the Integrity Commission, as you remember, was for him to step down both as President of the country and as President of the ANC or only one of those?

MR MANTASHE: You see the main interest was on stepping down as the President of the country.

CHAIRPERSON: Of the country, okay.

MR MANTASHE: Yes.

CHAIRPERSON: Okay.

MR MANTASHE: And if you recall that it was time that there were merges, you know, by building by many, many formations, demanding that the President step down.

CHAIRPERSON: Okay.

ADV FREUND SC: Now it appears that Mr Mlangeni was Chair of the Integrity Committee by 2016. Do you recall who was the Chair of Integrity Committee back in 2013?

10 **MR MANTASHE:** It was Dada Mlangeni.

ADV FREUND SC: Mlangeni, and do you recall any other members of that committee in 2013?

MR MANTASHE: You can get the record of it whether it is Sindiso Finyana, there were quite a number of them, of the people of the ANC.

CHAIRPERSON: But that can be obtained?

MR MANTASHE: We can give you the right information.

ADV FREUND SC: Alright, well then through Mr Naidoo let this be considered a request just for the identities of
20 the membership at that committee at that time. I had not really intended to deal with this issue at all until I received just a few minutes ago, this affidavit of Mr Abrahamse, so let me now take you to where I had intended to start. If I can take you to the same affidavit of yours at page 100.7.

MR MANTASHE: Point?

ADV FREUND SC: 7, and I want to take you to paragraph 7 of your – this is your own affidavit. I am just taking the paragraph 7 of your own affidavit as a foundation for all the questions which are going to follow. You say there, do you have the right page?

MR MANTASHE: Yes, I have.

ADV FREUND SC: You say there:

10 “I have read the affidavit of comrade Magashule and adopt and confirm the position in his affidavit on the recommendations to strengthen Parliamentary oversight and accountability.”

MR MANTASHE: Alright.

ADV FREUND SC: And that affidavit, I just want to check for the record is right at the beginning of this file, it is in fact, the very first exhibit that has anything to do with Parliamentary oversight. It starts, am I correct at page 4 and it runs through to page 45, is that correct?

MR MANTASHE: Correct.

20 **ADV FREUND SC:** And what you are really doing is saying, although this evidence was to have been given...[intervene]

MR MANTASHE: To page 26.

ADV FREUND SC: To page 26 did I make a mistake.

MR MANTASHE: 26, yes.

ADV FREUND SC: Sorry, I think you are quite right, I did

make an error or when you say 26, you mean 26 at the foot of the page, which is 29 at the top left.

MR MANTASHE: 29, at top left.

ADV FREUND SC: So we use those numbers on the top left, and you are quite correct I have also made an error. It is from pages 4 to 29 of the Commissions pagination system. That is an affidavit given by Mr Magashule one that have been testified to by him to this Commission.

But as we discussed, on the last occasion, a
10 decision was taken that instead of him talking to this affidavit you would represent the African National Congress in relation to the content of this affidavit.

MR MANTASHE: Correct.

ADV FREUND SC: Right, now, the affidavit speaks for itself. I am not going to take you through all of it but I am going to take you to certain aspects that strike me as being of particular importance and perhaps if we could start at page 11.

MR MANTASHE: I got that.

20 **ADV FREUND SC:** You will see in paragraphs 33 and 34 there is a reference to the oversight and accountability model. That is a model developed by Parliament about which we have lots of evidence before this Commission, and against the background of referring to the oversight and accountability model. But Mr Magashule's says and

therefore what you now say is, here are some recommendations and that starts at page 12, just immediately before paragraph 36.

So that is where I would like to start off, and am I correct in understanding that this affidavit by Mr Magashule which you are adopting and speaking in support of, actually contains a set of - would you say this, the party says this:

10 “The ANC will support the undermentioned recommendations contained in the model and which are yet to be implemented by Parliament.”

So there what is being referred to is the oversight and accountability model back from 2009 as various recommendations, some of which have not yet been implemented but to the extent that is set out in this affidavit, the ANC now supports implementing those as yet unimplemented recommendations. Do you agree with what I have said Mr Mantashe?

20 **MR MANTASHE:** I do not agree with that you used the word now.

ADV FREUND SC: Alright.

MR MANTASHE: The ANC always supported those recommendations.

ADV FREUND SC: Yes, but some of them to this day are not in place.

MR MANTASHE: Because Parliament is an institution, he has a responsibility to execute not the ANC.

ADV FREUND SC: Alright, I am not going to quibble about that.

CHAIRPERSON: Well, I am also thinking about it. Let me tell you what I was thinking I understand completely what you are saying but something says to my mind, that you are able to go to Parliament and say to your members, this is what you must do.

10 **MR MANTASHE:** No, that is not how it works, Parliamentary structures work on their own under the leadership of the Chief Whip. So the ANC from Luthuli House does not walk to Parliament every week to say do this, do that. That is why there are various Parliamentary Committees environment, they execute. So we do not have this authority or arbitrarily of walking to Parliament and say do X, Y, and Z they are working independently of the ANC.

20 **CHAIRPERSON:** I guess, we should say, at least based on your evidence that would be reserved for the motions of no confidence in the President.

MR MANTASHE: More than that, we said that is reserved for issues that are more political in content and impact on the body of the party.

CHAIRPERSON: On operational matters you leave that to

them.

MR MANTASHE: Operational matters, we do not interfere.

CHAIRPERSON: Okay.

ADV FREUND SC: But nonetheless, Mr Mantashe and accepting the distinction you draw in the Secretariat on the one hand, and the ANC deploys to Parliament on the other hand, the ANC deploys to Parliament would have been in support in 2009 of the oversight and the accountability model and its recommendations.

10 Yet, as we sit here in 2021, having the majority representation in Parliament, they have not as yet made these changes and that is why Mr Magashule's is saying the ANC supports this and it still remains necessary more than 10 years later, to actually implement part - there are parts that clearly have been implemented, but we are focusing on the parts that have not been implemented.

MR MANTASHE: If you understand, you want to understand that in detail and proper context, is that we are a young democracy even the concept of Parliamentary
20 Committees, Portfolio Committees in Parliament is a concept of the new administration. It was not there in the old administration. So it is a process of growth of the democratic model of the country. So it is not going to grow in one day, it will grow as it is unfolding, and other things that are corrected as we go but that framework was

supported by the ANC then it is supported now, aspects of it if you can interrogate it have been implemented, other aspects have not.

ADV FREUND SC: Yes, I think we are in agreement on that. Now, the first feature, a specific feature that catches my eye, is what I see in paragraph 38. We had a debate this morning with the present Speaker of Parliament, Ms Thandi Modise about the question of should there be any Parliamentary Committees that have amongst their
10 responsibilities, oversight over the Presidency itself?

Now, this paragraph 38 does not deal with that but it seems to me it might be relevant, because what Mr Magashule says and what you endorse is this:

“The ANC also proposes the establishment of a joint Parliamentary Oversight and Government Assurance Committee, whose main purpose and mandate will be to consider and deal with broader transversal and cross cutting issues. This committee will further pursue all assurances, undertakings and
20 commitments given by Ministers on the floor of the houses and the extent to which those assurances have been fulfilled.”

But my first question to you is, if you could perhaps elaborate a little on this proposed establishment of a joint Parliamentary Oversight and Government Assurance

Committee. What is the reason why it is believed it would be a good idea and what would be its primary function?

MR MANTASHE: I think is outlined in the affidavit itself, that whole purpose and mandate will be to consider interior project transversal and cross cutting issues. The reason that those were the views is because almost every Ministerial scope, has a Portfolio Committee in Parliament but they work almost in isolation and in silence.

And what is proposed is that, there must be an
10 attempt to pull them together and destroy the silence and make them integrated into a government machinery environment.

ADV FREUND SC: And part of that is to - as we see in the last sentence of paragraph 38:

“To pursue all assurances, undertakings and commitments given by Ministers.”

And I fully understand the sense of that, and the wisdom of that. But I want to ask a question, nonetheless because I want to continue a debate we were having this morning.
20 The – what Ms Modise says is - and she is of course, correct. She says:

“The President delegates to Ministers, responsibility within their domain, and so there were a lot of work that was President is responsible for is in fact handled by the Ministers and those Ministers in turn

deal with specific Portfolio Committees.”

And that thus far, I had no difficulty with what she says. But the question I raised with her is whether there is not a bit of a gap and that relates to oversight over the Presidency itself. Whether there may be issues, and it may be that our experience over the last Parliament is that issues pertinent to the Presidency itself, falls through the cracks, there is no Portfolio Committee that in any way is responsible for monitoring the Presidency, and dealing with
10 the Presidency.

So what we are left with is things like votes of no confidence, questions in the National Assembly, but no other mechanisms to control or to exercise oversight over and to receive accountability from the Presidency itself.

And I was wondering whether you would comment on whether this proposed joint Parliamentary Oversight and Government Assurance Committee might perhaps wisely be vested with some authority also on the question of oversight over the President himself?

20 **MR MANTASHE:** My understanding is that all the work of the Ministers are upwards to the work of the President. We had a discussion recently, somebody said, the economic reconstruction recovery is not a plan, it is a vision. We interrogated that statement, and came to a conclusion that there is nothing wrong with the President having a vision

and then the Ministers developed implementation plans and execute on the vision of the President. That is why every Minister has a performance agreement with the President and the President is overseeing on the basis on the promise of those Ministers.

Another complication would be the President by the way is not an MP, he is an elected President but he is not a member of Parliament. Therefore, the responsibility remains in Parliament, for the oversight of the executive
10 and that executive is a collective description of all the work of the Ministers under the supervision of the President.

And the point I am making is that, if oversight is strong on Ministers you going to see that there is no need to have a committee overseeing the President because it would have no particular responsibility to oversee.

ADV FREUND SC: Well, apart from this that Parliament has a constitutional duty to exercise oversight over the executive.

20 **MR MANTASHE:** Yes.

ADV FREUND SC: And the President is the head of the executive.

MR MANTASHE: Yes.

ADV FREUND SC: And our experience I want to put to you for your comment our experience shows us that sometimes

problems can be particular to the President and they do not get properly addressed precisely because they are particular to the President and that is a gap in our oversight system that is what I am putting to you.

MR MANTASHE: I do not know if you have followed the practice in Parliament. One of the things you go and answer questions openly in Parliament is the President. Ministers have short sessions to answer a few questions but the President is given the whole day of the sitting to deal with
10 questions directed at him. That is the Parliamentary Oversight over the President that is followed by other questions to the Deputy President which is actually taking forward the oversight over the Presidency.

And even not to those questions they cut across the Ministerial responsibilities but after he has done that Ministers take up specific responsibility that are relevant to the Ministers. But that oversight role is clear of Parliament over the President or deliver of the State of the Nation Address it is a Joint Sitting. President get summoned to the
20 Provincial 00:01:36 of Provinces. That is the oversight of Parliament over the President and the President cannot say no I do not want to come he goes every time he is required to go and answer questions in Parliament.

CHAIRPERSON: I guess the...

MR MANTASHE: But the proposal other than a committee

for the President has been coming in and out of Parliament particularly from the opposition and our argument is that where he has done – he has no Ministerial responsibility. The responsibility is with all – with all those Ministers.

CHAIRPERSON: I guess that the – the question that – this question raises is the inadequacy or otherwise of the current oversight mechanism Parliamentary Oversight mechanisms in relation to the President. You are right in saying when the President goes to Parliament to answer questions that is part
 10 of oversight and being held accountable when he has given a State of the Nation Address and there are questions that is part of that. But Mr Modise told me and you may have said the same thing also last time that Portfolio Committees that is where the real oversight work gets done.

So the question then arises whether if you leave out the Presidency in terms of not giving it – not giving a Portfolio Committee the responsibility to do what other Portfolio Committees do in relation to other departments whether that does not have the effect that proper and
 20 effective oversight over the President does not happen.

Ms Modise herself was took the position that she in effect has reservations about the proposal – she made the point you make also that that proposal has been you know raised from time to time and she made the point that well the work of the Presidency is largely given to Ministers and then

if you have a special Portfolio Committee relating to the Presidency there might not be much for it to do.

So – but of course one of the issues may well be whether the time that is provided in a big order such as the National Assembly when the President answers questions whether that is adequate or whether you might require a smaller body which is more focussed on the President or not.

So – so there are those questions and I was – I raised the question with Ms Modise I said well if you have a
10 President who is for example not exercising proper supervision on the Ministers and the Ministers are not doing their work properly and maybe Parliament in various Portfolio Committees you know complain about certain things and Ministers do not really cooperate and so on it may be that such a committee would be able to say to the President but President what is happening – you are not in control – your Ministers are doing as they please as far as government is concerned. Of course they can say that in the National Assembly as well but the question is simply whether the
20 environment of a big body such as the National Assembly is – is more suitable for that or you need a more focussed smaller body.

But as I understand you – you are not saying no to it – to the idea you are simply saying there are certain question marks about whether it would be necessary or not.

MR MANTASHE: No. The first issue is that the President has no Portfolio. Portfolios are with Ministers and the committees in Parliament are called Portfolio Committees they oversee Portfolios that is why if it is in my portfolio Mineral Resources they visit mines. If there is a problem in a particular mine Portfolio Committees go there and they call us to go and account that they found this gap in the work we are doing and we go back and account to them because there is a Portfolio that they are looking after.

10 But with the President there is no Portfolio. The Portfolio is with the Ministers. So Parliament has oversight over all portfolios – all the portfolios without exceptions – all of them and those portfolios go and account to the President from time to time on the performance of that particular Minister accounting for the portfolio to the President.

 But if you want to recommend to oversee a President well no portfolio after 00:07:49 be given a name it is not a Portfolio Committee. The President has no Portfolio he is overseeing Ministers who account to the President.

20 So I always never understood the rationale of wanting a Portfolio Committee for the President who runs no portfolio.

 I want to Nigeria one time Mr Chair.

CHAIRPERSON: Maybe it should not be called Portfolio Committee but it should be a committee never the less.

MR MANTASHE: I do not know that.

CHAIRPERSON: Ja.

MR MANTASHE: What will it do?

CHAIRPERSON: Ja

MR MANTASHE: The content of their work must be defined but wanting it because you just want to have people who can call the President any time then does not maybe defeated in the course of execution.

When I went to Nigeria one time Mr Chairperson the
10 Minister of Energy in Nigeria is the President and they
appoint the Minister of Trade for Energy but if as a Minister
of Energy I visit Nigeria to discuss Energy matters I talk with
that Minister of Trade but ultimately I meet the President
which give me a value of any Ministers that I must meet the
President because my 00:09:03 in South Africa there is no
such an arrangement where there is a Portfolio which is in
the Presidency.

So if the debate is introduced it should not be
narrowly just putting people into a committee that 00:09:22 it
20 – maybe it is a debate about whether they should be a
portfolio in the Presidency.

CHAIRPERSON: Okay Mr Freund.

ADV FREUND SC: Yes I want to come back to this but I
want to digress before I come back. You would be aware
from Mr Magashule's affidavit that before Parliament adopted

the oversight and accountability model back in Dr 00:09:45 day in the First Parliament Professor Corder was appointed to do a report on Parliamentary Oversight and he made certain recommendations and you address that or Mr Magashule addresses that from page 19 onwards. So if you could turn please to page 19. Now Professor Corder has testified to this commission and as is reflected in this affidavit Professor Corder made certain recommendations which you see summarised in paragraph 67.

10 “67.1 Legislation in the form of an accountability and independence of constitution’s Act.

67.2 Amendments of the Rules of the National Assembly and NCOP for regulation of reporting to Parliamentary Committees.

67.3 The establishment of Parliament of a Standing Committee on constitutional institutions.”

Then this affidavit continues as follows:

20 “The ANC proposes the recommendations of the Hugh Corder report. He considered to further strengthen Parliament’s accountability and oversight model.”

So far so good and may I say I have no difficulty with this. And then it continues.

“In particular a key recommendation that accountability – you will remember the constitution talks about holding accountability. Accountability also requires that a person in addition to explaining and justifying decisions and actions.”

So if we consider for example a Minister accountability requires that a Minister explains and justifies decisions and actions and then the important point.

10 “Goes on to make amends for any fault or error and takes it to prevent its recurrence in the future.”

In other words accountability is not satisfied by simply saying this is what I did and why I did it. It is the overseeing body Parliament says yes that is what you did we understand why you did it but we have a concern. This is our concern and our proposal is that in order to address this concern something needs to be done that resolves the problem.

20 What Professor Corder is saying and what Mr Magashule’s affidavit which you are endorsing is saying is sometimes accountability requires that amends be made – that the problem be right and I am assuming because you have confirmed this affidavit that you accept that – that basic proposition, am I right, you agree with that?

MR MANTASHE: Yes pending on what do we establish that to mean?

ADV FREUND SC: Well fair enough but let us for the moment focus on the principle. That the principle is if Parliament's committees have concerns having heard the report of the Minister that there remains a problem that has not been satisfactorily addressed to its – to its – in its judgment and it wants the problem resolved and it makes recommendations as I understand it what typically happens
10 is that that Portfolio Committee's report is then referred to the National Assembly for consideration and usually not necessarily always usually the National Assembly adopts that report and then through the Speaker as I understand it communication then takes place with the affected Minister and the Speaker will say you will see from this report that it has been adopted by the – by the National Assembly that the National Assembly is concerned about XY and Z problem and would like XY and Z to be done and please you know can we have a report within X period on XY and Z.

20 Now let us stay away from the problem for the moment and what XY and Z is that is a problem all on its own. But the point is that is the way the system works.

Now against that background if we can come back to the debate we have just been having. The debate we have just been having...

MR MANTASHE: Can I – can I make a minor correction?

ADV FREUND SC: Of course.

MR MANTASHE: The formulation assumes that Ministers are not part of the National Assembly. When a report of a Portfolio Committee is tabled to Parliament Ministers are sitting in Parliament and actually a part of that report to Parliament and half the time whenever that debate is concluded Ministers are given an opportunity to react in Parliament and then you respond to XY and Z that was
10 raised in the debate. Few Ministers 00:14:32 because we have another time to respond.

ADV FREUND SC: Yes and I do not take issue with what you have just said but nonetheless and I have understood this 00:14:40 to be completely uncontroversial if we go back for example to Mr Gordie's evidence but it has been explored with subsequent witnesses.

It happens not infrequently that the reports adopted – reports emanating from Portfolio Committees having been adopted by the National Assembly contain requests or
20 proposals to Ministers to please address X problem.

So it might be if we are dealing with PRASA and – and irregular expenditure and a repeated problem of a certain type it might be this has got to be sorted out and we need to know how you are going to sort it out and we need to know in X time how you are going to sort it out. And I

understand that it is not been controversial thus far that that type of thing happens from time to time. That type of – that type of communication from Parliament to the executive happens and that is the very reason why as you deal in this affidavit with the need to track and monitor to find out well what happened in response and was it adequate and as I understand your affidavit you accept that there does need to be some tracking and monitoring of whether there has been adequate response to these reports that Parliament have –
10 have conveyed to the affective Minister through the Speaker. Do we – are we on common ground? Do you accept what I am saying?

MR MANTASHE: Except that that report goes to Parliament but the actual responsibility to actually follow it through with the Minister is the Portfolio Committee. That is why there is always a contradiction between the work of the Portfolio Committee and the executive. Because sometimes the Portfolio Committee wants the Minister to go and account to the Portfolio Committee during the time of an executive
20 meeting in Cabinet.

But I do not remember once a Minister who says my Portfolio Committee has invited me told by the 00:16:46 you cannot go. Because everybody except that the Portfolio Committee have the responsibility of oversight over the work of the executive.

So the Portfolio Committees follow through the reports and the recommendations that you said in here X you will do XY and Z but that has not happened what is the issue? Then that means they must make new commitments to the Portfolio Committee and try to execute.

ADV FREUND SC: Yes.

MR MANTASHE: So the actual responsibility is not in Parliament – Parliament receives the report but the Portfolio Committee does oversight work and chases Ministers to
10 execute their commitment.

CHAIRPERSON: So – so it seems to me that you do not have any difficulty with the proposition with what Mr Freund was saying you were simply clarifying that at least as far as you understand the position after the National Assembly has adopted the report the Portfolio Committee – it is the Portfolio Committee’s responsibility to monitor and track what is happening and call upon the Minister if necessary to report back on what they have done to address the issue in the province. That is what you are saying and you are
20 simply saying Portfolio Committees should try and not call upon the Ministers on the days when the Ministers are having a cabinet meeting, is that right?

MR MANTASHE: No I am not saying that I am saying it happens now.

CHAIRPERSON: Yes.

MR MANTASHE: The Portfolio Committee sits on the same day as the executive.

CHAIRPERSON: Yes.

MR MANTASHE: They call upon the Minister to come.

CHAIRPERSON: And the Ministers go.

MR MANTASHE: In all the cases the executive releases that Minister to go to the Portfolio Committee because what we are conscious of is that the Portfolio Committee is an oversight structure over that Minister.

10 Sometimes serious actions between the Minister and the Portfolio Committee from time to time it happens because that is oversight you see.

CHAIRPERSON: Yes but I think the bottom line is unless I have misunderstood something you do not take any issue with what he is saying because I think what he is saying is not inconsistent with what you are saying.

MR MANTASHE: What is that proposal that I do not understand?

20 **ADV FREUND SC:** I have not got there yet. I am just trying to lay a foundation.

CHAIRPERSON: Oh okay. Okay.

ADV FREUND SC: So what seems to be accepted by you and I must say I accept it is that the process and the concept of oversight can require identifying problems, proposing solutions and an on-going engagement over whether the

solutions have been found which is an on-going process.
Now I think you would accept that.

MR MANTASHE: Yes it is.

ADV FREUND SC: Alright now...

MR MANTASHE: Can I add?

ADV FREUND SC: Yes.

MR MANTASHE: 00:20:06 that is where I want to add is that if a Minister also go and report to the Portfolio Committee on their work even if they are not questioned about it.

10 **CHAIRPERSON**: Yes.

MR MANTASHE: Even 00:20:22 you go and account or do you in this area we are doing XY and Z, in this area we are doing XY and Z and the Portfolio Committee takes that as a commitment that the Minister is doing. They will call you for the down the line and say on the meeting of date X you made the following commitment how far are you? Then you are required to come and account on the progress on that particular commitment.

ADV FREUND SC: And the position of the Portfolio
20 Committee may be we are as yet not satisfied with what the Minister has done to resolve this problem but that does not mean to say that we believe that Minister must be fired it just means that there is further pro – there are problems that need to be addressed and we need to engage with each other in an on-going process to address the problem. You

follow what I say?

MR MANTASHE: Yes what you – the emphasis on that the relationship between a Minister and the Portfolio Committee is not required to – 00:21:31 and dispute it. That is not the relationship. Actually a Minister works better when the relationship with the Portfolio Committee is got here but tough but when there is hostility that slows down the work of both the Minister and Portfolio Committee.

ADV FREUND SC: Right now I took this digression but I
10 said I wanted to come back to where we were when we were talking about oversight over the Presidency.

Because what I want to put to is this. There is of course always the nuclear option. The nuclear option is for Parliament to a vote of no confidence to try to remove the President and we have heard your evidence on that. We know where you stand on that.

But short of that it seems to me there is no institutional mechanism or a comparable process of engagement with the – with the Presidency – the President
20 and saying we have a problem with X can you tell us about Y we think Z needs to be done can you come back to us? Can we monitor and oversee in the way that we do with the Minister there is no parallel for the Presidency and if that is corrected there is not is there not a need for that?

MR MANTASHE: The President gets called to Parliament

regularly and cross-examined on a number of issues regularly. Is the most regular invitee of Parliament and ask any questions put on anything. I can also submit that half the time you will sit there you watch the President sometimes ...[indistinct] half the time insulted by people – yes insulted. But he must take that on his stride you know as a President. Then we have to be – need to say this is not enough – this is what needs to be added for that proposition to be – to be heard.

10 At this point in time we are saying the President has no portfolio. All portfolios are with the Ministers and therefore functionally he has access and oversight on the executive over all the portfolios and then it is seen the National Assembly and the NCOP have oversight over those portfolios.

 And when it goes to the NCOP or the NA the President answers a whole range of questions regularly. So if there is a need for a Portfolio Committee over the President maybe it is a nice to have but it will have no
20 practical work to do on a day to day because the President has no portfolio.

ADV FREUND SC: Alright now let us just take a hypothetical example. Let us assume that the concern that is harboured is that there is undue influence over the President himself. A hypothetical example and that that is to the detriment of

the country. That there is undue influence in relation to appointment processes, in relation to access to contracts and the type.

Assume that there is a concern about that. Assume that nobody in Parliament can know for sure whether those concerns are well founded but there is reason to be concerned – there are allegations out there. What I want to put to you is that we really do have an adequate institutional mechanism for dealing with concerns of that type.

10 As you yourself have said when the President comes and faces question time he gets a barrage of – of as it were partisan criticism but a process to properly investigate are these concerns legitimate? If so we have a problem that has to be addressed does not seem to exist and if it does not exist does it not need to exist?

MR MANTASHE: It does exist Mr Chairperson because whatever misdemeanour happens it will be in a portfolio. That Portfolio Committee has the authority to investigate that things.

20 That is why with all the witnesses and the problems I still make the Portfolio Committee on Public Enterprises had to investigate issues of around Eskom that too because they happened within the jurisdiction of that Portfolio Committee. If there is something about PRASA the Portfolio Committee on Transport have the responsibility to investigate issues

about PRASA.

CHAIRPERSON: Can it call the President to their committee about PRASA?

MR MANTASHE: Yes it can because it will submit a report to Parliament. Parliament is still trying to summon the President to Parliament.

CHAIRPERSON: Well that answer does not support – that explanation does not support the answer that it can because what your explanation means is the National Assembly will
10 call the President.

MR MANTASHE: Yes.

CHAIRPERSON: To deal with those questions. So it is not the committee whereas when it comes to a Minister the committee can call the Minister to the committee and deal with and ask him what – why is this happening? Is this happening is it not? In the case of the President where there are concerns such as the concerns that Mr Freund makes there are concerns all over in the media and to say the President is – is being dictated to by people outside of
20 government to make certain appointments or to fire certain people you need to ask the President himself.

You know the Ministers are not going to maybe assist you much about that. One need to ask the President. Now if there was a Portfolio Committee that could call him to the Portfolio Committee it would ask him pointedly but you –

what you were saying is well the Portfolio Committee and I do not know whether there would be a Portfolio Committee for that kind of thing in the National Assembly he can be called and he can be asked the same questions. So I – I am just wondering about whether the focus.

MR MANTASHE: Let me not go to war about Portfolio Committee of a Presidency. But my worry is ...

CHAIRPERSON: Ja.

MR MANTASHE: An assumption that says inherently
10 President will be corrupt for example. So they will be dictated to by people outside.

CHAIRPERSON: Ja. Ja.

MR MANTASHE: That assumption will be a dangerous assumption for society.

CHAIRPERSON: Yes but that is not – that is not – that is not an assumption. Remember you would have heard this that when you – you make a constitution or you make a law you have to think about the worst scenario you know. You must not think of the best President that you are going to
20 have because you could have the worst. You have got to say in case we get to a very really bad situation – in case we get a really bad President if he or she tries to do this and that and that which is against the interests of the country do we have adequate mechanisms that will make sure that he will not or she will not harm the interests of the people because

if you always think that all Presidents that – should South Africa have for the next five hundred years will be the best Presidents you know. So you have got to say look, we are not going to assume that everyone will be bad but we must put in place mechanisms that in case somebody is not the right person, there will be mechanisms that will ensure that the interest of the citizens are taking...

MR MANTASHE: Mr Chairperson.

CHAIRPERSON: H'm?

10 **MR MANTASHE**: Our democracy is like America. They do not elect the same calibre(?) of presidents.

CHAIRPERSON: I agree.

MR MANTASHE: But the constitution of the land assumes that a president must be of a particular calibre or so it assumes. When it falters, you will have a president who will come and occupy the seat of government and try to say I am not going. It happens in all democracies. So the effort to try and put on the President the mechanisms of actually almost sitting on the President on day to day basis
20 is an assumption that we are not intending to have the best presidents all the time.

But even if we have the wrong president, it will be a wrong president in the process that was intended to elect the best president and then ...[indistinct] that as far as the Constitution we will give the prerogative to appoint

ministers to the president.

It does not assume that sometime a president will appoint friends and not look at competence because you give that board to the president because the Constitution assumes that the president will be having the intelligence to do the best for the country, not always happening, not always happened.

Now should then the rules on the date of acception of a country rules on what should be the
10 constitutional obligation in the country that is put on the president. My own view is that is where the Portfolio Committee on the president. We can have him to work on 12-hours a day, it is fine with me. That we will work 12-hours a day because it is dealing with no portfolio.

CHAIRPERSON: But maybe – and again, you see, it is important to deal with these issues because both Mr Freund and I are not in Parliament, not in the Executive. You are in Parliament, you are in the Executive. So it is important to get a perspective from
20 somebody who is there. That is why it was useful to have Ms Modise and Mr Masondo as well.

But it may well be that one does not need to have a separate standalone Portfolio Committee. Maybe let us remove this Portfolio Committee which will do this oversight of the President. Maybe one of the existing

committees can get given additional responsibility apart from what they normally do. That might be another way of looking at it but – I mean, we certainly are not pushing a particular line but we are just exploring what is possible.

MR MANTASHE: In politics there is nothing as dangerous as in allocating responsibility without assessing it because you give a Portfolio Committee on Mineral Resources and Energy additional responsibility to be an Oversight Committee on the President. All the committees are
10 always seen as a super committee and there will be tensions on day one.

CHAIRPERSON: [laughs] Well, I have heard you sound like a super DG. [laughs]

MR MANTASHE: [Indistinct]

CHAIRPERSON: A super general. [laughs]

MR MANTASHE: Chairperson for example whether and particularly if you do work it must – you must get concurrent from Minister X and Minister Y. The feeling is that these are super ministers.

20 **CHAIRPERSON**: Ja.

MR MANTASHE: So I cannot move without them.

CHAIRPERSON: [laughs]

MR MANTASHE: But is how the system works.

CHAIRPERSON: Ja.

MR MANTASHE: In government, I can tell you,

Mr Chairperson. It does lead to you to serious tensions. Most of the time unnecessary.

CHAIRPERSON: Ja.

MR MANTASHE: Ja.

CHAIRPERSON: Ja, ja. Or you could even have maybe a particular minister being seen as if he or she is prime minister or something. [laughs]

MR MANTASHE: ...a minister in the presidency who deals with monitoring and evaluation. Man, you do not know
10 what is... [laughs]

CHAIRPERSON: [laughs] Mr Freund.

ADV FREUND SC: Yes. I only have one final question on this line because we have spent a lot of – well, a lot more time on this issue than I have expected. You will recall where I started with this conversation, I was at page 13, paragraph 38 and that was the paragraph where your party ...[intervenes]

MR MANTASHE: Wait, wait, wait. Page 13?

ADV FREUND SC: Page 13, one three, paragraph 38.
20 And you will recall that was where your party proposes – and it seems to me to have a lot of sense – the established of a joint parliamentary oversight and Government Assurance Committee and I just wanted to put to you again and for a final time that if there were to be any wisdom in allocating to committee amongst its responsibilities where

necessary, and you would hope it would not often be necessary, some oversight over the presidency itself.

It might well wisely be located in this particular committee. Now I did ask you that before. I think your answer was somewhat negative to the idea. I am just wondering in the light of the further debate we had whether you have shifted your position, whether you think there might be some wisdom in that.

MR MANTASHE: No, I have not shifted but I support this
10 but it must be thought, there must be a well thought out concept otherwise you will have it and it will create a new problem that did not exist before. That is all I am submitting.

ADV FREUND SC: Alright. Let me move on. I think we have explored this issue quite thoroughly. I want to move onto something much more prosaic but important. You will see at the next page, page 14 there is a section headed Oversight Advisory Section.

And what paragraphs 44 through to 50 really say
20 is that there is the need for the establishment of a section within Parliament, an Oversight Advisory Section which will have these functions of:

- Providing information and advisory support
- Tracking and monitoring executive compliance
- Assisting with coordinating all oversight

related information

- Monitoring and tracking executive compliance with House resolution

And paragraph 46, the affidavit says:

“The ANC proposes that the Oversight Advisory Section be prioritised and implemented by Parliament within 12-months...”

There seems to be consensus. I do not think we
10 have had a witness yet who does not support this idea and
I presume that you can confirm that this is – this remains
the position of the African National Congress. We need to
do this.

MR MANTASHE: Yes. Except that the devil is always in
the detail of what you want to do because with good
intentions you create a nightmare with good intentions. All
I am saying is that ...[indistinct] that work of Parliament
must be scrutinised that we accept but the nature of the
animal you put in place to do that scrutiny becomes very,
20 very important.

ADV FREUND SC: H’m. And I agree with that. And I also
agree that this afternoon is not the occasion to debate the
detail of that.

MR MANTASHE: Ja.

ADV FREUND SC: That is a matter that will have to be

considered by Parliament in its wisdom and work out how to do it. Now you make certain comments or Mr Magashule makes certain comments in this affidavit about certain legislative changes which are aimed at, as it were, typing out our laws on corruption including where there should be unethical conduct by members of Parliament.

I think these are sensible proposals. They are not controversial. I do not think – I do not propose to spend any time dealing with them now. What I would suggest we spend a little more talking about is Section E of this affidavit, starting at page 18 which talks about ...[intervenes]

MR MANTASHE: Wait.

ADV FREUND SC: One, eight. Eighteen.

MR MANTASHE: Oh, page 18. Okay.

ADV FREUND SC: You will see from paragraph 62 onwards, there is a section under the heading, Early Warning System to detect State Capture and Corruption. And as you said a moment ago, the devil is always in the detail. It seems to be, it is perfectly sensible that if it is possible we want an early warning system to detect state capture and corruption. It is really what we are going on about at length here. The question is how. How would this work? And I see the real nub of this seems to be paragraph 65.

“The ANC proposes that Parliament considers establishing a National Integrity System incorporating coordination and information, chairing among the builds early warning indicators into Parliament’s Accounting and Reporting System to arrest and prevent corruption...”

Now I have from my perspective no difficulty with the principle but I am wondering if you could elaborate at
10 all as to what suggestions you might have that would assist in achieving this noble goal. The goal is early warning systems that arrest and prevent state capture and corruption.

I do not know if you have any ideas. I mean, the one thing that seems obvious to me is that one uses the reports of the Auditor General which investigate the degree of deviation from applicable legislation on irregular expenditure and the like. That seems to me to serve as an early warning system and we have had some evidence on
20 that.

I am wondering whether that is it or whether there is anything else you can suggest because that really is the fundamental object of this part of this inquiry is to think about what can be done to avoid in the future the problems of the past and if it is possible to have early

warnings systems that we attack this, then we are open, of course, to whatever suggestions may be made.

MR MANTASHE: The question we are going through maybe the ANC appreciates the need for early warning systems. And then advocate about that is that AG, half the time come at the end of financial period and discover many things. Then it becomes a high report done on early warning system. Our view is that the National Integrity Systems in Parliament helps to strengthening the work of
10 the Active(?) Committee in Parliament.

There is an Active(?) Committee in Parliament. Is to move one of the most relaxed committees in Parliament. It should now – we say it should be strengthen to have integrity systems in that committee. Then the Auditor General will compliment the work that is there.

CHAIRPERSON: Well, this of course deals with the matter from the angle of Parliament. You are giving evidence on behalf of the ANC. The other question that may be asked is. What should the ANC itself put in place, as long as it
20 mains the majority party or the ruling party, to put in place that would give it early warnings signs.

You gave evidence last week to the fact the ANC, as I understood you, the ANC takes time before it addresses certain problems. You made an example of how members of the ANC, I think, were dismissed some years

ago. I do not know whether it was the seven to six years or something like that.

In the context of allegation of state capture, you made reference – we made – reference was made to what Mr Mabula said in the MEC in 2011. Reference was made to the Waterkloof landing of the aeroplane but, at least on my observation and on the evidence that one has heard, there seems to have been little or nothing done by the ANC in regard to what maybe it should have seen as early
10 warnings of challenges maybe until quite a number of years later.

And then there is the issue of corruption in the SOE's which has been rising and you also think that the ANC would have an interest in saying to the government, to the Executive, to its deployees: We are – this government is an ANC government. We cannot afford a situation where corruption is rising in this way and nothing is being done.

And therefore the ANC might want to say: What should we do when we see maybe early warnings that
20 corruption is rising and so on and it is not being addressed properly.

So but in the question of alleged allegation of state capture, it might be important to say would there be early warning signs that the ANC would like to see before things get too far? Should these things that have

happened in the past happen again in the future? And to the extent that it would want to arrest the situation what it could do.

MR MANTASHE: It is not always the case that people take five years or six years.

ADV FREUND SC: [laughs]

MR MANTASHE: Sometimes it takes very ...[indistinct].

CHAIRPERSON: [laughs]

MR MANTASHE: And they are removed.

10 **CHAIRPERSON:** Ja.

MR MANTASHE: But the point I am making is. You know the concept of state capture developed in the ANC. We never claimed it. Actually, it did not start as state capture. It started as corporate capture and described corporate capture as when a company sponsors an individual leader in one form or another. That is corporate capture.

We expanded that concept and if you rising(?) the issue into state capture and we said it is when that where activity(?) to individual leaders now going to
20 department in government in the state. Then you see but like a department doing things in a particular way and you can facilitates that corruption. Then we said this is corporate capture.

And the corporate(?) part was very vocal about this concept. So it takes time because it is also important

to also theorise the nature of the problem so that that theory must guide your reaction. And given that the ANC there is no other party that has a conference resolution for the establishment of this Commission.

The ANC theorise that it ultimately came to a resolution that there must be this Commission into state capture. And many people came up and criticised the ANC and said this thing is going to work(?) in the ANC. In the ANC the strong(?) is regarded as prevailed is that these
10 exercises are going to help the ANC to come through because you do not deal with that unless you want to have it.

So what happens here is after a like that it will make the ANC wiser in dealing with these issues into the future but important of taking time is that you do not take decision on your feet just on your own and you take decisions and you commit more serious mistakes but now wherever in your process that time add to debt(?) and the sense(?) of that debt.

20 The people who have not come before the Commission, who – they have come across serious issues that are there, it will continue. And we see that process as very fundamental because the crowd(?) is that it is always exciting(?) as we improve and growing leaps and bounds which has grown during day of covert by 18% called time.

We will trace its problem from the cultural revolution and it goes throughout the point where it is today but it is where it is today where it says the corruption is an exception, functionality(?) is an exception. It is because it has gone through a very long process with tensions. And unfortunately some ministers or some people who enlarged(?) in that process because that almost destroy everything that the revolution stood for.

10 In South Africa sometimes there is impatience about addressing issues and everybody and one professor in UNISA described our society as very noisy and impatient. Mainly it is a good character but sometimes it pushes institutions to commit mistakes and those mistakes translating to more deeper problems...

All I am saying is that the slowness, the time we take is quite important but there must be intention and will to correct the situation and I think we are in that situation now.

CHAIRPERSON: Mr Freund.

20 **ADV FREUND SC:** Yes, thank you. Now following on the Chair's question about the ANC or what should be the ANC's own attitude in respect of when these problems are perceived to emerge. I want to take you to page 127.

MR MANTASHE: 127.

ADV FREUND SC: Paragraph 97. And I – you will

...[intervenes]

MR MANTASHE: Come again?

ADV FREUND SC: Page 127... Sorry, page 27, not 127. Page 27, paragraph 97. And you will be aware Mr Mantashe this is an affidavit deposed to by Mr Magashule on the 8th of October 2020. Mr Magashule says this:

10 “If credible information points to unethical behaviour by a public representative that representative should step aside from public office and prove his or her innocence in the ordinary course...”

You would support that I presume?

MR MANTASHE: It has been a resolution of the ANC not once – one from one conference to the other.

ADV FREUND SC: And then what he says and what he endorses ...[intervenes]

CHAIRPERSON: I am sorry. The slowness, Mr Mantashe, I mean you say that this has been the resolution of the
20 ANC from one conference to another.

MR MANTASHE: Yes.

CHAIRPERSON: But in terms of how often that has happened ...[intervenes]

MR MANTASHE: It has happened regularly.

CHAIRPERSON: Has it happened regularly?

MR MANTASHE: Regularly.

CHAIRPERSON: Okay.

MR MANTASHE: I can remind you of the Minister of Communication who stepped aside without a noise.

CHAIRPERSON: Okay.

MR MANTASHE: I can give you a long list of people ...[intervenes]

CHAIRPERSON: Okay.

MR MANTASHE: ...who has stepped aside.

10 **CHAIRPERSON**: Okay, okay. Maybe I was just unnecessary.

MR MANTASHE: Ja. The only problem is that when there is an allegation that are revolving around the President, everybody takes an interest. When issues revolve around the Secretary General, everybody takes an interest and ignore many people who stepped aside because of this resolution.

CHAIRPERSON: Okay, okay.

20 **ADV FREUND SC**: And then what Mr Magashule says and you endorse. He says at page – at paragraph 100 on page 28. He says:

“On behalf of the African National Congress, I give an unconditional undertaking that the ANC has the political will to make Parliament work and to ensure effective oversight and

accountability...”

I take it – I presume I can take it ...[intervenes]

MR MANTASHE: Yes.

ADV FREUND SC: You endorse that sentiment?

MR MANTASHE: Correct.

ADV FREUND SC: Now as admirable as that may be and it is admirable, the question that I want to put to you is. Well, where have been in the last ten years? Is it your view that throughout that period that that political will has
10 been in existence to make Parliament work and ensure oversight effective – ensure effective oversight and accountability? And if not, why must we take this assurance of the ANC? What is the context and the background to this?

MR MANTASHE: My answer will be yes.

ADV FREUND SC: Yes, it has always been the position?

MR MANTASHE: Yes.

ADV FREUND SC: In other words, we must read this assurance of saying it has always been our position that
20 we have the political will to make Parliament work and ensure effective oversight and accountability? That is your position?

MR MANTASHE: Yes.

ADV FREUND SC: Well, I thought you said the other day, in fact, I thought you said in your own affidavit that there

was weaknesses, confusion, division, failure to do what should have been done. I thought that is what we agreed on in your last evidence.

MR MANTASHE: No, I think we should understand it this way. The problem with social silence is that it does not work like natural silence where you mix water and cereal when you are going to pour and to drink. It does not work that way. The commitment requires repetition of activity and consistence of obligation which does not always
10 happen even if the desire and the will is there.

And then we must appreciate it that is that and number two, you must also appreciate the fact that – the social science is because when you deal with and institution of human beings a good intention may be resisted and that institution must deal with that resistance and that resistance tampers with the way and therefore for people who are seen from outside they say that there is no political will but there is political will.

There is also very strong resistance that the
20 organisation find it difficult to go through but it must repeatedly and consistently try to deal with that resistance until it makes a breakthrough.

ADV FREUND SC: Alright. I see. If I can take you to the next paragraph, paragraph 111? Mr Magashule says, you agree:

“Of this political will to translate into action, all members of the ANC who are deployed to Parliament as public representatives are expected, not only to oversee Executive Authority but to scrutinise the action of the executives as is required by Section 42(3) of our country’s Constitution without fear, favour or prejudice and to take the Oath of Office very seriously, namely, that they will be faithful to the Republic of South Africa and will obey, respect and uphold the Constitution of the republic and perform their functions to the best of their ability...”

I take it that you agree with that sentiment?

MR MANTASHE: I agree with that.

ADV FREUND SC: Well, I want to do and I do not want to belabour this because we have travelled over this material on the last occasion in some detail but what I want to put to you for your comment, your final comment, as far as I am concerned is, whether there is not a conflict between this sentiment on the one hand and the sentiment on the other hand that there are no circumstances in which should be acceptable for a ruling party MP’s to support a vote of no confidence of the President. That one simply cannot be reconciled with the other.

MR MANTASHE: No. That issue – we have dealt with this issue over and over. It is a typical example of where politics and law are in conflict.

CHAIRPERSON: H'm?

MR MANTASHE: It happens from time to time that politically how does this help to be handled? But in terms of the framework, we agree that that sentiment is correct. And I want to emphasise this thing of an expectation that the ANC should actually be a willing one to expel his
10 president.

I think it is a dangerous proposition to the ANC if we get defeated in that vote of no confidence and the President of the ANC is removed it will happen maybe one day. But this explanation that the ANC must champion a vote of no confidence on its president is an expectation that is out of this world because the ANC must interact [word cut] to say but if this behaviour is in conflict with the commitment and the oath you have taken. We do that – I would not in public, we do not call a press conference, we
20 do that all the time. I wish you could attend some of the NEC meetings where they were discussing about very serious matters, whether it is the question of Nkandla or the Public Protector's report for this. The NEC, when it deals with those issues, actually almost tear itself apart. That does not reflect lack of political will, it reflect

contradictions intraparty, in the party itself, there are contradictions in the party itself and the ANC must navigate through those contradictions, that is not a question that says we are not having the political will and therefore, we disagree with the constitution. No, that is not the issue. It is the issue of an institution of human beings.

ADV FREUND SC: If I can just follow up on that?

MR MANTASHE: Yes.

10 **ADV FREUND SC:** Because the record will bear me out, we get a transcript of the evidence.

MR MANTASHE: Yes.

ADV FREUND SC: But I am not sure that I heard you correctly, that is why I want to just check. What I thought you said at the beginning of that quite long answer is that in this situation, the situation of the vote of no confidence and the alleged conflict in the constitution and the oath, I thought I heard you to say that this is a situation which politics and the law are in conflict.

20 **MR MANTASHE:** In the operation, yes.

ADV FREUND SC: And what you really are saying is that politics must trump the law.

MR MANTASHE: That is why at the end of the day political contradiction and in court – political contradiction, how did that end up in court because sometimes political

decisions that are taken are in conflict with the law and we end up in court and sometimes the court rules us that no, listen, thou shall do as follows and every time that happens to us we comply including nullifying outcome of conferences of the ANC. We comply all the time because the political is in conflict with the law and we end up in court and the court give the...

ADV FREUND SC: Ja, I do not dispute that what you have just said is factually correct but I do have and I have to put
10 to you a real concern about what you have just told me because what you seem to be saying is – well, let me put it this way, the Constitution Court has used a German term to summarise our Constitution, we are a *regsstaat*, we are state founded constitutionally in law and what I hear you to be saying, unless you correct me, is that if there is a conflict between the political imperatives that deal with the interests of the African National Congress as an organisation on the one hand and the law on the other hand, they law will take care of itself later, for the
20 meantime politics must be superior.

MR MANTASHE: No. The point I am making is that there is a political organisation called the African National Congress with the primary responsibility to run that institution. When you are Secretary General that is your primary task and because the union of the ANC is not in

conflict with the constitution of the Republic, it has never been found to be in conflict with the constitution of the Republic, we do that.

Now in the process of executing political work you may be seen to be acting in conflict with the law. Half the time we end up in court for that and when the court gives a judgment we comply.

CHAIRPERSON: Well, we discussed this last time but you may or may not have heard that when Ms Modise was here
10 I raised the issue and I said when you are coming back later we will revisit it. It is important that what you say about this issue is understood the way you intend it to be understood because there will be members of parliament who are members of the ANC who are watching or listening but also just the public because the ANC is not just another political party, it is the majority party in parliament. Okay. Now I was – I remained with the concern last time because I understood you in effect to say – and you might say I misunderstood you. I understood
20 you in effect to be saying look, when it comes to the vote of no confidence in the President or a President of the ANC who is President of the country on a motion put in by an opposition party, no member of the ANC should – no member of parliament who is an ANC member should ever vote in support of that motion. I think I must add no matter

what the circumstances are. That is how I understood it and I had a concern with that.

I think in part you explained it by saying that could create all kinds of problems for the ANC and I understood you to say it could end up in the destruction of the party when you remove a President of the country, as a President of the ANC in that way and I was concerned about that simply because the mere fact that the constitution does contemplate that members of parliament
10 can vote on such a motion and does not say only members of the opposition can vote and the mere fact that the oath of office of all members of parliament is to the effect that they are going to be faithful to the Republic seems to suggest to me that there may well come a time where a member of parliament, who is a member of the ANC, truly believes that to be faithful in the Republic in a particular case with regard to a particular President at a particular time would mean that he or she must vote in support of that motion and on my understanding of what you were
20 saying, it seems that there would be consequences for a member of the ANC who would ever do that and yet he or she would be complying with the constitution of the Republic which the ANC supports. So I had that concern which I wanted to raise and when Mr Freund raises the question again I think it is an opportunity to make sure that

one does not I misunderstand what you have said.

MR MANTASHE: You see, Chairperson, you are using a word that changed the context.

CHAIRPERSON: Okay, you must correct this.

MR MANTASHE: One word, one word, you changed the context altogether.

CHAIRPERSON: You must correct that.

MR MANTASHE: You say ANC, the majority party, members will ever vote – will ever, you see? You put ever.

10 **CHAIRPERSON**: Ja, ja, yes, yes, yes.

MR MANTASHE: Ever vote with the opposition.

CHAIRPERSON: Yes, yes, yes.

MR MANTASHE: Now that ever...

CHAIRPERSON: Changes.

MR MANTASHE: You are putting the words and going to change the context.

CHAIRPERSON: Yes.

20 **MR MANTASHE**: And changes the reality that in one vote of no confidence – I said nine members voted with the opposition. When I came out of here I was corrected by another MP, said no, we are actually 35. Okay? So if 35 members of the ANC voted with the opposition, therefore “ever” cannot apply. Okay? The party may require to consolidate its votes as a party but the reality is that voting happens in parliament, they would want a secret

ballot and we allow the secret ballot.

Once we allow the secret ballot, immediately the word “ever” collapses, does not apply. And people voting one vote of no confidence, 35 members of the ANC voted with the opposition, okay? Now so – and meaning that we did not investigate who they are, tell you the story of our faithfulness to the constitution. We proceeded that line with them but a person who runs a party always seek to have maximum unity in the party.

10 That is why I made an example last week of I have never seen – I cannot [indistinct] 10.28 experience [indistinct] 10.30 for a man of my age, it is a lot of experience. Three years is a lot of experience. Now with those years I have never seen opposition parties having a divided vote on any issue but I have never had, equally, any pressure put on them for this faithfulness to the constitution. Never. It is put on the ANC and our understanding is that it is desirable for the ANC vote to be divided. And the question is why is it desirable for the
20 ANC vote to be divided? That is the issue.

It is not the faithfulness on lack thereof to the constitution, it is a question of the party system we have adopted. We have elected a political party system. Every member of parliament is on the list of the ANC and it is the job of a Secretary General. I am no longer one and I

always sympathise with SGO of the ANC to keep the ANC united. That is the issue.

And in driving for that unity, does not reflect lack of faithfulness to the constitution, it seeks to have optimal operation of the party because if we can have a list of the ANC and you say when you arrive at parliament you are free agents, we will have no party and therefore our role in supporting the constitution will be much weakened when the party collapses.

10 So it is not the party or the Republic, it is gathering the ANC so that its faithfulness to the constitution is exercised with responsibility. That is the reality of the matter.

CHAIRPERSON: Mr Freund.

ADV FREUND SC: I do not have at my fingertips the newspaper article but I think we discussed on the last occasion that you personally not only encouraged members of the African National Congress party caucus to vote against the last two votes of no confidence but you have
20 said to them that to support such a vote would be the highest form of betrayal. Am I right? Is that what you said?

MR MANTASHE: Let me talk about betrayal. My second language is Sesotho, Mr Chairperson, in Sesotho betrayal is called *u hlaba ka liphio*, that means stabbing you on the

kidney and you cannot stab anybody on the kidney unless you are close enough and therefore, breaking a position of the party is betrayal of the party position. You are stabbing the party on the kidney because you say to the party yes, you are a majority but it does not matter, here we are free agents, we can, with the majority of us, vote against the portion of the party. Then that undermines the party system. We do not have a political system, we have a party system, party political system. It means that that

10 party is a majority in theory but in practice it is never a majority because it is a party of free agents. I think you should understand that politically what does it mean, to have a party of free agents? It means that you no party actually.

CHAIRPERSON: I guess your answer is you are not denying that you said what was attributed to you.

MR MANTASHE: No.

CHAIRPERSON: But you are giving a certain context.

MR MANTASHE: Yes.

20 **CHAIRPERSON:** Okay.

ADV FREUND SC: Thank you, Chair. There is a great more I could deal with but my view, the affidavits speak for themselves.

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

ADV FREUND SC: And unless there are other issues you

would like me to raise, I have no further questions.

CHAIRPERSON: No, I think we have covered most of what I also wanted to be dealt with. No, no, I think if we have no further questions then we are done, yes. Yes. Mr Mantashe, I am going to excuse you unless you have some issue that you want to deal with before I excuse you.

MR MANTASHE: No, I have nothing to express. Expressing my gratitude that I was invited to the Commission, I was given time to express my views even
10 where there is apparent disagreement. I did not have a sense of hostility.

CHAIRPERSON: Yes.

MR MANTASHE: And to me that was important, it made our submission to be optimal. Thank you very much for inviting us, we are looking forward to further investigation of the ANC.

The ANC supports this Commission and it wishes that this Commission finishes its work and come with a report. We will read that report with interest, what the
20 outcome is and that is it. I am quite grateful that I was invited here and I am hoping that our contribution as various players from the ANC made the work of the Commission real and [indistinct] 16.26. Thank you very much.

CHAIRPERSON: No, thank you very much, Mr Mantashe. I

can say that the contribution that the ANC has made including your contribution in your affidavit and the contribution in Mr Magashule's affidavit which you have confirmed, they include some recommendations that are quite attractive that should be looked at quite carefully by the Commission. It seems that there is a desire to try and put some recommendations on the table to assist the Commission in whatever contributions it makes. Thank you very much we appreciate the contribution of the ANC.

10 Thank you very much, you are now excused.

We are going to adjourn and just for the benefit of the public, tomorrow the Commission will continue to hear evidence, the evidence of Mr Montana, the former Group CEO of PRASA. That is during the day session and in the evening session tomorrow, the Commission will hear the evidence of Dr Dintwe, the Inspector General. Ja, okay, we adjourn.

INQUIRY ADJOURNS TO 20 APRIL 2021