

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

**28 APRIL 2021**

**DAY 384**



**Gauteng Transcribers**  
Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 28 APRIL 2021**

**CHAIRPERSON:** Good morning Mr Pretorius, good morning Mr President.

**ADV PRETORIUS SC:** Morning Chair.

**CHAIRPERSON:** Good morning everybody. Thank you. Mr Pretorius are you ready?

**ADV PRETORIUS SC:** Yes we are ready Chair.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** The President will testify today and  
10 tomorrow. I will introduce the bundles in a moment if the President could be sworn in please?

**CHAIRPERSON:** Sorry.

**ADV PRETORIUS SC:** If the President could be sworn in?

**CHAIRPERSON:** Oh yes, no that is fine. Before that is done I just want to say a few things. Mr President we are happy that you are here representing the ruling party. We are happy that the President of the party is the one who comes to give evidence to the commission but I also want to say that your appearance before this commission is not  
20 a result of a decision taken recently it is a decision that was taken in 2018 as you will remember because soon after the commission had started its hearings I realised that the commission could not properly complete its task without the ruling party appearing before the commission because the ruling party is the party that was given power

by the voters to form the government for – so it was important that the ruling party should appear before the commission and say what it knew about all sorts of allegations that have been heard in this commission when it knew it and what it did about those things and also to indicate what it is prepared to do to make sure that those things never happen again.

I also realise that it would be important that the current President should appear because during at least  
10 part of the time when these allegations – these things were alleged to have happened it was a time when he was Deputy President of the ANC and Deputy President of the country so that he could indicate also what he may have known and what he did not know and what was done to deal with purely allegations of state capture and the high levels of corruption that we have seen.

So towards the end of 2018 I had a meeting with the President where I conveyed to him my view that it would be important that the ruling party appears before the  
20 commission and that he or the executive should also appear to deal with these matters and the President agreed that he would appear before the commission and he indicated also that the ANC would appear.

So I thought I must just remind everybody how it comes about that he appears today. It is not a recent

decision. But I want to also take this opportunity to indicate Mr President that the commission appreciates the support for the work of the commission that both you as President of the country and the ruling party has shown. So that is appreciated. Thank you. Mr President you will need to take the oath or affirmation depending on what you will be taking. Which one would it be Mr President?

**PRESIDENT RAMAPHOSA:** I will take the oath.

**CHAIRPERSON:** You will take the oath. Okay may you  
10 please stand. I do not know whether you would like to take off your mask.

**PRESIDENT RAMAPHOSA:** Is it safe to do so?

**CHAIRPERSON:** Well – well if – if we can hear you with it on clearly you can keep it on but what has happened in the past is that usually we cannot hear people clearly. But ...

**PRESIDENT RAMAPHOSA:** It is okay

**CHAIRPERSON:** If we can hear you and you would like to keep it on that would be fine. Please give your full names for the record Mr President.

20 **PRESIDENT RAMAPHOSA:** My name is Matamela Cyril Ramaphosa.

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

**PRESIDENT RAMAPHOSA:** No I do not have any objections.

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

**PRESIDENT RAMAPHOSA:** Yes I do.

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

**PRESIDENT RAMAPHOSA:** So help me God.

**CHAIRPERSON:** Thank you. You may be seated. Yes Mr  
10 Pretorius.

**ADV PRETORIUS SC:** Thank you Chair. Mr President a few housekeeping matters. Before you is a bundle – Bundle 1 and in that bundle is Exhibit BBB1 Statement of the President together with annexures. Then there is a second bundle Exhibit – containing Exhibit BBB2 which is a collation of certain documents that are relevant to the evidence.

**CHAIRPERSON:** Mr Pretorius I just want to – I do see that  
20 there is social distancing between many people but I think some can do with some more space so we just need to make sure. There is a lot of space available in the room. Okay. Ja I see some are sitting next to each other so – well just – we all know what the social distancing is I am just reminding everybody if – if there is social distancing between people that is fine. Okay you may proceed Mr

Pretorius.

**ADV PRETORIUS SC:** Thank you Chair. So there are two bundles as I have said Bundle 1 and Bundle 2. Bundle 1 contains the statement of the President, Bundle 2 contains certain additional documentation.

Bundle 2 has only been recently compiled and I will explain why in a moment.

**CHAIRPERSON:** Do I need it immediately – Bundle 2?

**ADV PRETORIUS SC:** No you do not need it immediately  
10 Chair.

**CHAIRPERSON:** Okay.

**ADV PRETORIUS SC:** May I then ask Mr President if you would take the first bundle, do you have it?

**CHAIRPERSON:** Please switch on the mic Mr President there..

**PRESIDENT RAMAPHOSA:** Okay permanently?

**CHAIRPERSON:** Yes. Mr Pretorius I think it would convenient – it would be important before you start to for the benefit of the public to explain what will be covered  
20 and what will not be covered with the President this time.

**ADV PRETORIUS SC:** Oh I had planned to do that next Chair.

**CHAIRPERSON:** That is fine – that is fine.

**ADV PRETORIUS SC:** If that is okay?

**CHAIRPERSON:** That is fine.

**ADV PRETORIUS SC:** And I will do that in full.

**CHAIRPERSON:** Okay alright.

**ADV PRETORIUS SC:** At page 79 and we will refer to the black numbers in the top left hand corner is a page with your – with a signature above your name could you please confirm that that is your signature? Page 79 black numbers in the top left hand corner.

**PRESIDENT RAMAPHOSA:** Yes indeed it is my signature.

**ADV PRETORIUS SC:** And if you would go please to the  
10 same bundle at page 5 and particularly at page 6.

**PRESIDENT RAMAPHOSA:** Yes.

**ADV PRETORIUS SC:** Is that the beginning of your affidavit?

**PRESIDENT RAMAPHOSA:** Indeed.

**ADV PRETORIUS SC:** And are you satisfied that the contents of that affidavit insofar as you are aware are true and correct?

**PRESIDENT RAMAPHOSA:** Yes they are.

**ADV PRETORIUS SC:** Thank you. Chair may the affidavit  
20 and annexures and I see each page has been initialled be admitted then as Exhibit BBB1?

**CHAIRPERSON:** Is that BBB?

**ADV PRETORIUS SC:** BBB we have been through the alphabet 3 times in this commission.

**CHAIRPERSON:** The affidavit of President Matamela Cyril



Ramaphosa which starts at page 6 will be admitted as an exhibit and will be marked as Exhibit BBB1.

**ADV PRETORIUS SC:** Yes. And then Mr President I believe that you wish to make an opening statement but just before we do that if I may place certain matters on record Chair.

There is a statement that we have just placed on record as an affidavit. It is attested to in your capacity as President of the ANC and former Deputy President of the  
10 ANC am I correct?

**PRESIDENT RAMAPHOSA:** Yes you are correct.

**ADV PRETORIUS SC:** And there is a further statement that will be placed before the commission dealing with matters in our capacity as President of the Republic and former Deputy President of the Republic but that is yet to be obtained. Is that correct?

**PRESIDENT RAMAPHOSA:** Yes that is so.

**ADV PRETORIUS SC:** We received your statement on the 22<sup>nd</sup> of April 2021 and we proceeded to undertake the  
20 necessary research that process is not yet complete and accordingly we may have to deal with certain issues on your return towards the end of May.

**PRESIDENT RAMAPHOSA:** Indeed.

**ADV PRETORIUS SC:** In these first two days of your evidence Mr President we will deal with our terms as ANC

Deputy President and President.

**PRESIDENT RAMAPHOSA:** Yes indeed.

**ADV PRETORIUS SC:** And those facts or facts relevant to that are contained in your affidavit just admitted. I will deal with certain matters and then Advocate Freund will deal with certain matters tomorrow.

In these second two days towards the end of the month we will deal with matters related to your office as Head of State and there will be questions from the legal  
10 team Advocate Seleka, Soni and Myburgh in relation to that as well as questions from myself. And that is just the background I think that the DCJ wanted placed on record.

**PRESIDENT RAMAPHOSA:** Thank you. I will be here.

**CHAIRPERSON:** Thank you. Well Mr Pretorius you have said that you will deal with other matters with the President towards the end of the month now the public does not know towards the end of the month. They know mid-May.

**ADV PRETORIUS SC:** Yes I was leaving that to you Chair it is an announcement from the Chair.

20 **CHAIRPERSON:** Okay let me say this about that because Mr Pretorius forgot that it is – it was not public yet it – there was something that I discussed with him.

Mr President currently you are due to return to the commission wearing your cap as President of the country in mid-May I cannot remember the exact dates but mid-May

but I indicated to Mr Pretorius that we will have to advise your office that those dates will need to be moved towards later in May because there are still a number of witnesses that the commission would like to hear and – so that was something that was still to be done but I do not know Mr Pretorius may have spoken to your team about it but that was – that is something that is in the pipeline. So you might also have been wondering why he was talking about towards the end of May but – so those dates will change  
10 and we will move you towards the end of May. Yes Thank you. You are done Mr Pretorius?

**ADV PRETORIUS SC:** For the moment Chair.

**CHAIRPERSON:** For the moment obviously. Okay Mr President if you wish to make an opening statement this is the opportunity for you to do so.

**PRESIDENT RAMAPHOSA:** Thank you Chairperson and thank you Mr Pretorius.

I appear before this commission as you have stated Chairperson at the request of the commission but I also  
20 appear to assist the commission in its work and I would like make this opening statement on behalf of the African National Congress.

When I was confirming that I would be appearing I happened to be talking to one of my colleagues who is also Head of State; we had to attend to some matter and I said I

would be appearing before the commission and his reaction was Ah how can you do that as Head of State? I said this is how our democracy works. It works in such a way that when there are important matters that affect the state and the government and indeed the governing party we will not shy away from appearing before commissions so that we may shed light on the matters that the commission is dealing with and also be able to assist the commission in its mandate.

10           So I appear here in my capacity as President of the African National Congress having been elected to this position in December of 2017 at the ANC's 54<sup>th</sup> Conference.

          Yesterday our country celebrated 27<sup>th</sup> anniversary of the advent of democracy. On that day we ushered in a new era and as a nation we made a decisive break to the horrible past of colonialism and apartheid.

          The ANC working together with many anti-apartheid formations led and facilitated a process of crafting a new  
20 constitutional dispensation that is today the bedrock of our democracy.

          This month marks 25 years since the first hearing of the Truth and Reconciliation Commission into apartheid era human rights abuse.

          It was a remarkable moment in our history to hold

that commission the Truth and Reconciliation Commission demonstrating our determination as a nation to unearth and confront the crimes of our past so that we may make a decisive break with those violations of human rights and so that we may forge a better future for all our people.

This commission on inquiry into allegations of state capture, corruption, fraud in the public sector carries a similar responsibility. This commission is the instrument through which we seek as a nation to understand the  
10 nature and extent of state capture to confront it. To hold those responsible to account and to take the necessary measures and steps to ensure that such events do not occur ever again in our country.

State capture and corruption have taken a great toll on our society and indeed on our economy as well. They have eroded the values of our constitution and undermined the rule of law.

If followed or rather if allowed to continue they would threaten the achievement, the growth, development  
20 and transformation of our country. It is for these reasons that the ANC's 54<sup>th</sup> National Conference in December 2017 resolved to support the establishment of this commission.

The ANC has consistently expressed its support for the objectives and the work of this commission. The National Executive Committee of the ANC has expressed

itself in that regard and we continue to do so.

The ANC has taken this position knowing that the organisation would itself be placed under great scrutiny and that the process of examining these matters would very likely be difficult and painful for the ANC.

Nevertheless the ANC maintains that this commission is a necessary part of the broader social effort to end all forms of state capture and corruption.

The ANC's position has been that it is the  
10 responsibility of ANC members and indeed all South Africans to assist the commission in its work.

Therefore I appear before the commission not to make excuses or to defend the indefensible. The ANC has agreed to not only support the work of the commission but to assist the commission in every way possible to fulfil its mandate.

My submission other submissions made on the ANC'S behalf are a number of my comrades and colleagues are therefore intended to provide whatever information  
20 context and explanation the commission may require.

Corruption is not a new phenomenon in South Africa. The apartheid system was morally and systematically corrupt. Not only did its legal provisions appropriate to a small minority their assets and the resources that rightfully belonged to all South Africa's

people but there was also a prevailing culture of corruption within the apartheid state also within its state owned enterprises but it also went broader than that into private business establishments and the numerous Bantustan administrations that had been set up to organise our country.

The advent of democracy in South Africa was an opportunity to make a decisive break with that past through the adoption of a new constitution we established a new  
10 era of transparency, accountability, ethical conduct and respect for the rule of law.

The experience of the past 27 years shows that endeavour to have been for the most part successful and its success can also be measured by the establishment of this commission which is in a very transparent and open manner opening up a can of worms of corruption and state capture.

Our country has a National Parliament and Provincial Legislatures elected by universal suffrage and  
20 regular and free fair elections. We are proud to have a strong and independent judiciary.

Our democracy is supported by robust institutions and we have a free and vibrant media.

An important aspect of the ANC's approach to corruption over the years is a recognition of the extent to

which some ANC leaders and members were advertently and inadvertently complicit in corrupt actions and this recognition was well articulated in our conferences where we did say that we need to openly and publicly acknowledge that these are the problems that we have to deal with.

And as a consequence the extent to which corruption contributed to practices, patronage, factionalism and the manipulation of organisational processes in the  
10 ANC is a matter of effort.

The recognition of these facts does not mean that the ANC is itself corrupt or uniquely affected by corruption. There are other institutions in society, various political and social formations as well as the private sector companies that have to confront corruption within their own ranks. Nor is South Africa alone in the world in having to deal with pandemic corruption.

Many other countries have to deal with corruption in the political, economic and social spheres and it is clearly  
20 not sufficient for us to recognise the problems.

The task of any organisation like the African National Congress especially with its history of principled struggle, its values and its mission is to address the problem.

It should be noted that why there is broad



consensus within South African society but a process of state capture took place over the course of several years. It took some time for the term state capture to gain currency and for the phenomenon it described to clearly recognised as such.

Therefor even though some of the incidents that I refer to in my submission may be regarded as instances of state capture they were not necessarily recognised or described as such at the time.

10           And even as the term gained currency there were individuals in the ANC and in society more broadly who contested both the use of the term and the existence of the phenomenon.

In my submission I outline how allegations of state capture arose within the structures of the ANC and how the organisation responded at different moments.

Without going into detail in this opening statement it is worth mentioning that one of the earliest claims made within ANC structures of the possibility that members of  
20 the Gupta family may have had an improper role the functioning of the Executive was a statement by Minister Fikile Mbalula at an ANC meeting in 2011.

To my knowledge the matter was not taken further by the NEC or in any structure of the organisation after he had mentioned it.

At the time the statement did not prompt any specific concerns about the capture of the state. With the passage of time more reports began to surface in the public domain about the alleged capture of public enterprises by a private interest and the undue influence of certain individuals notably members of the Gupta family in executive decisions and appointments.

As the volume of evidence began to mount in the public domain the issue of state capture even if it was not  
10 described in those terms at the time began increasingly a subject under discussion in the National Executive Committee of the ANC and ANC structures.

It was also a matter taken up more directly by ANC's alliance partners, South African Communist Party and the Congress of South African Trade Unions. It was also ANC veterans and other outside structures of the organisation including service society formations including religious organisations. Corruption is by its nature a  
20 covert activity. Those who perpetrate corruption and related to crimes, generally, seek to keep their actions hidden or masked and disguise their intentions without direct evidence, without any investigative capability and mandate and in the face of the vehement denials.

It is difficult for any structure to confront such activities. In addition, the ability of any organisation but

especially a political formation to act on allegations of maleficia relies not only on its formal rules and procedures but also on the balance of power within a structure.

The alignment of use within such an organisation is further influenced by access to the offices of state where the ability to appoint and to dismiss and even to dispense patronage is concentrated amongst a few individuals. For the ANC this was compounded by its own subjective challenges.

10           The ANC took time at its 54<sup>th</sup> National Conference to reflect on these subjective challenges and recognised the erosion of its organisational integrity as processes had been manipulated to advance the material interest of certain members and associated by that companies and individuals.

This manifested itself in weak and pliable branches of the ANC. It also manifested itself with both buying and gate keeping, factionalism and open conflict. This provided fertile ground for state capture and  
20 corruption. As I outlined in my submission, Chairperson, the ANC has over the course of several years recognised the existence of corruption within the state, within its own ranks and within other parts of society.

It has taken a number of resolutions on measures to prevent corruption including on issues relating

to state capture. These are evident in the statements of ANC National Executive Committee particularly from 2016 onwards which included a call for an independent investigation by competent authorities into these allegations.

The question that arises is whether these resolutions and pronouncement were followed by a meaningful action to fight corruption and state capture. In answering this question, we must acknowledge that the  
10 issue of state capture was a matter of great political contestation within the ANC.

Differences over whether indeed state capture existed, its extent and form and what should be done about it, contributed to divisions within the National Executive Committee and other ANC structures. These divisions were evident also in government, in Parliament and other sections of society and indeed the issue of state capture and corruption was prominent in the contestation that took place ahead of the ANC's 54<sup>th</sup> National Conference in  
20 December 2017.

However, we would argue that over the course of time, through political debate and democratic contestation, the organisation took active measures to confront state capture. This is evident, for example, in the events that unfolded in Parliament from late 2016 and into 2017, where

the ANC and other parties initiated a number of inquiries into allegations of malfeasance and some state-owned enterprises and parts of government.

It is clear from the affidavit submitted to the Commission by the former ANC Chief Whip, the late Mr Jackson Mthembu but the determination by the ANC in Parliament to probe these allegations was both a response to the evidence of wrongdoing that was accumulating in the public domain and the implementations of the decisions  
10 taken by the ANC's constitutional structure especially with NEC.

The ANC's 54<sup>th</sup> National Conference was in many ways a watershed moment in the ANC's effort to confront state capture and corruption within its ranks. Much of the discussion at the conference on the issues of state capture was framed by a diagnostic organisational report presented by the then Secretary General, Gwede Mantashe, on behalf of the National Executive Committee.

This report directly addressed the allegations of  
20 corruption and the involvement of ANC members and leaders in the broader context of state capture. The conference consequently resolved to demand that every ANC member accused of or reported to be involved in corrupt practices should account to the Integrity Commission immediately or face disciplinary processes.

It also resolved to summarily suspend people who failed to give an acceptable explanation or to voluntarily step down while they face disciplinary investigative prosecutorial procedures. Also, resolve to publicly exhaust this associate organisation from anyone whether business, donor, reporter or member accused of corruption or reported to be involved in corruption.

It further resolved to ensure that ANC members and structures cooperate with law enforcement agencies, 10 to criminally prosecute anyone of corruption and further it said it requires the ANC depoyees to Cabinet. That is National Cabinet. Especially the Minister of Finance, the Minister of Police of Justice, the Correctional Services to strengthen state capacity to successfully investigate and prosecute corruption and account for any failure to do so.

Now these resolutions, in more ways than one, signalled a clear determination by the membership of the African National Congress to acknowledge the organisations failing, to make also a clean break with 20 corrupt practises and to initiate an ethical, political, and organisational renewal of the ANC.

Now following the 54<sup>th</sup> National Conference and in line with its resolution, the ANC embarked upon a process of organisational rebuilding and renewal. This included corrective measures both within the ANC and

indeed the state by the latter I dealt with more extensively in my statement to the Commission in the capacity as the Head of State which was presented.

It is important to note that these measures were informed and inspired by the mandate of the ANC's National Conference which, as you might be aware, is attended by thousands of members of ANC branches across South Africa.

In one of the areas in which the ANC has taken  
10 clear action is to require that members of the ANC who are formally charged with corruption, other serious charges must immediately step aside from all leadership positions in the ANC, legislatures or government structures pending the finalisation of their matters.

Such members who do not step aside may be summarily suspended. Furthermore, members of the ANC who are reported to be involved in corrupt and other criminal practises must go to the ANC's Integrity Commission and provide a credible explanation for these  
20 allegations or reports.

Should members fail to give an acceptable explanation, they may be suspended subjected to disciplinary processes. In line with the ANC constitution, ANC members who are convicted of corruption or other serious crimes must resign from leadership positions and

face disciplinary actions.

It is worth mentioning that some of these requirements, especially on the so-called step aside provision, have in the past been the subject of much contestation within the organisation. However, there is now broad support within the organisation or its implementation.

At its most recent meeting on the 26<sup>th</sup> to the 29<sup>th</sup> of March, the NEC directed that all members who have  
10 been charged with corruption or other serious crimes must step aside within 30-days, failure which they should be suspended in terms of Rule 25.70 of the ANC's constitution.

The ANC has embarked on a process of renewal to build a movement characterised by integrity, accountability and the highest standards of ethical behaviour but the process renewal is by itself a process. It is not a one-day event and it is a process that is ongoing.

The rate or progress is determined not only by  
20 the existence of political will and organisational capacity but also by the continued existence of invested interest and resistance from those who have much to lose from the corrective measures mandated by the ANC's 54<sup>th</sup> National Conference.

I will now turn to some specific issues that the



Commission has asked me to address. The first of these are the ANC's approach to pave the development and deployment. This issue has been covered in some detail by the ANC National Chairperson, Mr Gwede Mantashe.

His testimony before the Commission, Mr Mantashe described the evolution and the development of the ANC's policies, the principles that informed this approach under structures and processes that the ANC has put in place to manage cadre development and deployment.

10                Since even before the advent of democracy, the ANC has said that in transforming the public service to reflect the values of our democracy and the demographics, or better still, the diversity of our country, we must emphasise professionalism and competency.

This is reflect in our earliest policy pronouncement which were part of the ready to govern document which was release in 1991 as the ANC was preparing to enter government knowing that the level of support that it had would give it a mandate to do so but it  
20 was also confirmed at the 54<sup>th</sup> National Conference.

The ANC fully embraces the principle that all public servants should undertake their duties in a fair, balanced and non-partisan manner. It should be noted that the deployment of cadres to strategic positions is not unique to the ANC. It is practised in various forms and

through various mechanisms even if not always acknowledged as such by other political parties in our country and also in other countries.

In our view, cadre development has acquired such prominence in part because of the perspective that there should not be political interference in the selection of people who work in the public sector. However, international practise suggests a more nuanced approach to this matter.

10                   For example, an OECD working paper on public governance published in 2007 written by a number of scholars including one called Martinsen, said that with specific reference to appointments of senior public service staff:

“Political involvement in administration is essential for the proper functioning of a democracy.

However, public services need protection against being misused for partisan purposes.

20                   They need technical capacity which survives changes of government and they need protection against being used to impair the capacity of future government to govern.”

In identifying suitable candidates for positions in public entities, the ANC does not seek to circumvent to

establish an often legally mandated processes for the appointment of individuals for these positions. Candidates are expected to submit their applications, meet the necessary requirements and be subjected to the normal processes of recruitment, selection, and appointment.

Even with these requirements, there are several instances where individuals appointed to positions may not have been fit for purpose or may not have had the necessary experience or qualifications and this much I am  
10 prepared to accept.

The ANC's 54<sup>th</sup> National Conference recognised this problem and resolved that the married principal must apply in the deployment to senior appointment based on legislative prescripts and in line with minimum competency standards.

It is the ANC's view that the practise of cadre development should not be inconsistent with the principles of fairness, transparency and merit in the appointment of individuals to public entities. Cadre deployment cannot be  
20 faltered in principle. It is a common feature of democratic practise around the world and I think it properly describe and is not diluted to various other intents and forms.

It is a useful process used by governing parties around the world to make sure that the mandate that they had been given by the populous is carried out but we could

concede that there are weaknesses in this practical implementation that make the case for greater clarity both within the political parties and the state.

Ultimately, political involvement in administration of the public service should be and must be circumscribed by legislation, by convention as well as by practice and we should do so to protect both political and administrative positions and to create certainty as to the division within political and administrative responsibilities. There are a  
10 number of governments around the world who utilise this very mechanism as outlined in the OECD.

The Commission also asked that I address the funding of political parties. Any successful multi-party democracy requires a diversity of functioning of political parties that are capable of articulating and representing the needs, the interest and the concerns of the electorate. For this, political parties require funding and in the absence of sufficient public funds for this purpose need to rely on donations from their own members, from supportive  
20 individuals, and yes indeed, from businesses.

Until adoption of the Political Party Funding Act which took effect on the 1<sup>st</sup> of April 2021, there were few, if any, specific restrictions on donations to political parties and no requirements on the reporting of donations, either publicly or to any particular authority. Like other parties,

the ANC relies on several sources of funding. Many Treasurer Generals who run their financial affairs of various political parties will testify that the running of political parties as the government increasingly costly, expensive, and requires a lot of funding.

These includes funds allocated to represented political parties which are administered by the IEC, membership subscriptions as well as levies that are levied on members who are deployed by the Parliament of various  
10 places, fundraising initiatives, like, in the ANC's case, the Progressive Business Forum, funding dinners and other events, and donations from individuals and companies.

Despite the absence of any official policy on donations, there is an expectation based on the ANC's constitution, its principles and its values that the ANC would not knowingly accept monies that are a product of a criminal act, are offered in exchange for favours or are from a source known in illegal or unethical activities.

The ANC has long recognised the risk presented  
20 by the lack of regulation with respect for political funding. The lack of transparency in donations to political parties increases the potential for corruption and the exercise of improper influence on political activity and government processes. It wants to address this problem that the ANC resolve at its 52<sup>nd</sup> National Conference that:

“The ANC should champion the introduction of a comprehensive system of public funding of representative political parties in the different spheres of government and serious society organisations.

This should include putting in place an effective regulatory architecture for private funding of political parties and civil society groups to enhance accountability and transparency to the citizens.”

It was not until the next ANC conference in December 2012 that the Political Party Funding Bill was introduced into Parliament to achieve this purpose. We believe that the Political Funding Act will have a far-reaching implication for the integrity and transparency of our political system and will help to rebuild public trust in the political process.

While the Political Party Funding Act deals with donations to political parties, the ANC has also identified weaknesses in its approach to the funding of internal party contests. That is leadership contests. Specifically, it has noted that its guidelines on the conduct of internal leadership elections are not suited for the conditions of the time that we live in and has initiated a process to review its policies on this matter.

The issue form part of the discussion documents published last year in preparation for the ANC's upcoming National General Council. I am raising this issue during the MEC meeting of 26 July 1990. I said as President:

“In the absence of clear, appropriate and realistic guidelines, our leadership contest will continue to play themselves out in the shadows in conditions of secrecy and mistrust, encouraging patronage and factionalism.”

10           In conclusion. The position of the ANC on leaders and members who have been complicit in acts of corruption or other crimes is clear. Their actions had a direct violation, not only on the laws of the republic, but also of the ANC's constitution, its values and principles and the resolutions and decisions for the ANC's constitutional structures. Such members must face the full legal consequences from their action. They cannot rely on the ANC for support or protection, nor may they appeal to the principle of collective responsibility.

20           In accounting for their actions, they must be accountable for their actions themselves because the ANC did not and could never direct its members or leaders to commit acts of corruption. While the ANC distances itself from those within its ranks who have been involved in corruption or who are complicit in state capture, the

organisation must and does acknowledge that it must provide explanations for the matters currently under investigation by the Commission.

We should do so because state capture took place under our watch as the governing party. It involves some members and leaders of our organisation and had fertile ground in the divisions and weaknesses and the tendencies that have developed in our organisation since 1994.

10 I should say, however, that the vast majority of ANC leaders, ANC cadres and ANC members are vehemently opposed to corruption in all its manifestations but we all acknowledge that the organisation could and should have done more to prevent the abuse of power and the misappropriation of resources that defined the era of state capture.

20 Particularly the period under review by this Commission, the ANC does admit that it made mistakes as we have admitted in our various conferences. We made mistakes as it sought to execute the mandate that it was given by the voters. It had shortcomings and living up to the expectations of the people of South Africa in relation to enforcing accountability and in generating a culture of effective of consequence management.

The leadership of the ANC newly elected at its 54<sup>th</sup>



National Conference, we acknowledge these shortcomings as an organisation and we did acknowledge that at our 54<sup>th</sup> National Conference and we do so now. For this, we acknowledge to the people of South Africa that we did not always live up to the values and the principles that have defined the glorious movement that we belong to for over more of a century of its existence.

We are, however, determined and we undertake to work alongside all South Africans to ensure that the era of  
10 state capture is relegated to history and that the excesses that took place may never, never, never ever occur in our country. I thank you, Chairperson.

**CHAIRPERSON:** Thank you, Mr President. We are at nine minutes past eleven, we normally take an adjournment at quarter past eleven, I think we should take an adjournment now so that when we resume then we can continue. We are going to take the adjournment now, we will resume at twenty five past eleven. We adjourn.

**INQUIRY ADJOURNS**

20 **INQUIRY RESUMES**

**CHAIRPERSON:** Let us continue.

**ADV PRETORIUS SC:** Thank you, Chair, Mr President. By way of introduction it appears from your statement and your opening statement in addition to public statements that there are indeed three issues that the Commission

should properly investigate.

The first is to understand what happened in the period under review and we have three years of evidence before the Commission and we have certain statements in the opening and in your general statement in that regard.

But the second is perhaps more important for present purposes and that is to understand how things could have happened and it is that regard that many of the questions will be put before you, Mr President. In other  
10 words, what were the circumstances and events that allowed these things to happen which appears by public consensus, as you say, to have conceded to – be to conceded to have happened.

And the third element that is also very important, it may have to stand over to a large extent to the second session of your evidence as how can these things be prevented from happening again. So we will cover all three issues but concentrate principally on issues two and three.

Of course we will also ask questions of what you  
20 knew was happening in terms of the – or in relation to the terms of reference and in relation to the third question, we will also ask what you, as President, the ANC and the executive which you are leading are doing or intend doing or think should be done to prevent it happening again and many of those elements are already in progress, for

example matters in relation to law enforcement agencies, the Political Party Funding Act and others but there are other questions that will arise out of that and the object will be to ask on your part for evidence that will allow the Commission and the Chair in particular to understand what best are the remedies that it can recommend. But having said that by way of introduction, Mr President, there is a unique element to this evidence, this is your Commission, this Commission is reporting to you and in that sense it is  
10 a unique situation but notwithstanding we hope that you will help us do our job for you properly.

**CHAIRPERSON:** Of course it is a Presidential Commission in his capacity as President of the country and not as President of the ANC.

**ADV PRETORIUS SC:** Yes, well that is also true, Chair, so maybe I should reserve that question for the next session.

Mr President, what we have done in response to your statement is look at certain paragraphs in the  
20 statement and to deal with matters arising from those paragraphs and in particular your statements in those paragraphs but if we leave anything out in the sequence please alert us to it so that we can then go back and everything can be taken in its proper sequence. So the first issue that we do have to raise is on page 12 of

bundle 1, EXHIBIT BBB1, but if there is anything before that you no doubt will alert us to it. This is the introductory portion of your statement.

**CHAIRPERSON:** I am sorry, Mr Pretorius, you said page 12?

**ADV PRETORIUS SC:** Page 12.

**CHAIRPERSON:** You explained to the President the black numbers and red numbers?

**ADV PRETORIUS SC:** Yes. We will be dealing – there  
10 are two sets of numbers on each page, we will be dealing with the numbers at the top left hand corner and we have taken the liberty of using the acronym CR there.

**CHAIRPERSON:** My page 12, Mr Pretorius, starts with:

“In the course of this Commission’s work...”

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** Is that the right page?

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** Okay.

**ADV PRETORIUS SC:** In paragraph 21 on that page, Mr  
20 President, you say:

“In such circumstances political parties do not merely represent their members but often act as instruments to advance the needs and interests of entire sections of society. This is among the reasons that the ANC describes itself as a liberation

movement first and foremost that, among things, contests elections as a registered political party.”

I understand from this paragraph as well as parts of your opening statement that the party is itself in terms of liberation, constitutional policies and principles the development of the South African society in accordance with this principles as a leader in society. There can be no doubt about that fact and, as I understand it, that would be the justification that the party holds for adopting the stance  
10 that it is entitled to and does seek to control the leaders of power. Do you have any comment on that? Is that common cause?

**PRESIDENT RAMAPHOSA:** With reference that you make to paragraph 21, indeed the ANC characterises itself as a liberation movement which we really have been from formation and largely because we were set up to achieve certain objectives and those objectives remain current, to be executed and you could say, in part, some of them have been – now have a democratic dispensation but we still  
20 want to pursue a truly non-racial South Africa. That has not yet been truly achieved.

We are also a liberation movement because we seek also to attain a non-sexist South Africa, sexism is still rife in our country and it is also compounded by a continued violence that is perpetrated against women. But

more importantly, also, to attain a prosperous South Africa, that is an overarching objective and that remains what the ANC has as its objective, that characterises it as a liberation movement. But in the midst of all this, it still has to be a political party that contests elections and in doing so, it then is supported by millions and millions of South Africans, so when it acts it needs to fulfil the mandate that it has set itself out to achieve which is informed by the ordinary people who elected because as we craft our

10 manifestos, we do not do it just merely for ourselves as a party, we go out and gather the views and aspirations of ordinary people and therefore, when we are then elected, we represent the people of South Africa and it is for this reason that we say we hold power not just for ourselves, we hold power and execute power – exercise, rather, power in the interests of the people of South Africa, the many millions who elect us and it is for this reason that we say – and it has been conceded that we are leader of society and what the ANC does and says quite often determines the

20 mood in the country, determines the direction that the country should go, so it is the role that is given to the African National Congress by the majority of the people of this country and they expect the ANC to act in a way where it will lead government and it will lead transformation and achieve the objectives as set out by itself as a liberation

movement.

**ADV PRETORIUS SC:** Thank you, Mr President. It may seem what you have said should be taken for granted but perhaps it should not be taken for granted. There are two things that flow from that statement, particularly the latter part of your statement that there is an expectation on the part of South Africans that the party will lead in dealing with policy, problems, solutions and the like and we will come back to that point later.

10           But the second is that the electorate would then be entitled to know how and what – how the ANC intends to go about its business and business of the country, the people and what it is doing in that regard. Is that a fair statement? Obviously there are exceptions, but...

**PRESIDENT RAMAPHOSA:** I would concede that, yes, they are entitled and in other ways we also describe ourselves as the ANC as the parliament of the people. When the ANC was formed in 1912 we – the leaders of past then characterised even that moment as the creation of the  
20 parliament of the people because the people, as the whole of the majority were excluded from the so-called parliament that existed there. So yes, people are entitled to know and that is why the ANC for the most part has been one of the very few parties in the country that has been willing and prepared to open, as it were, its chest, its heart to the

people of South Africa and admit its own mistakes and also set out the ways it seeks to correct much as sometimes, because it is a political movement, there will be contestation of some of the issues.

**CHAIRPERSON:** You may keep mic on, Mr President.

**PRESIDENT RAMAPHOSA:** Okay, I will do so.

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** Then, Mr President, after certain introductory structural remarks concerning the ANC's  
10 structures and processes you deal with cadre development and deployment beginning at page 15 and in paragraph – well, perhaps I should presage that with a summary of the evidence – a very, very broad and perhaps superficial, but if it is superficial you will tell me, summary of the evidence in relation to cadre development and “cadre deployment”.

On the one hand there has been evidence that the policy goes far beyond mere recommendation and in fact is a policy implemented on the instruction and mandate of the deployment committee. That is one view and there is  
20 certain evidence in regard to that. Whether that is exceptional or the rule, maybe we can deal with in due course when we come to detail.

The other view, which is reflected in your statement and other statements, Mr President, is that the deployment committee goes no further than make recommendations



and abides by the formal selection processes that take place for example in the public service.

Those are the two extreme views and whether either is correct or not, Chair will have to consider and decide. Or it may be that neither is correct as a general rule and that there is quite a large grey area between. What would your comment be?

**PRESIDENT RAMAPHOSA:** The deployment committee, as I said in my statement-in-chief, should really be seen as  
10 committee that recommends, the recommendation committee and having been the Chair of the deployment committee as Deputy President, the process that really gets underway is as follows, and maybe I am simplifying it. The minister concerned, for instance when it comes to say state owned enterprises - or state entities, would come forward and say I need to appoint the CEO of one of the key state owned enterprises and in doing so, they will then have that post advertised, as they should in terms of the regulations and corporate governance and so forth and a  
20 message will then be forwarded to yes, the ANC deployment committee, that there is a position that the minister will come to the deployment committee with to articulate what position they need to fill but then they will have triggered the process of – the formal process of filling that position. So the advert then goes out so that

whomsoever applies but then internally in the ANC people will then be encouraged to apply that there is a position, if you qualify, you could be one of those who are either shortlisted or whatever. So the minister will then say we have shortlisted a number of people and in the short listing these are people who have been shortlisted. Some of them may not even be ANC members, some of them may well be ANC members and what is then looked at by the deployment committee is to say we really need someone  
10 with experience.

For instance, if it is a railway entity of railways and who has been well-trained and well-prepared and all that, and having done that, the deployment committee could well say well, in our view so and so fits the bill. It could be an ANC person, it could be a non-ANC person, completely unattached to the ANC, that we believe that this person can do the work. And then it then goes off, it goes off to the selection – final selection process, that the minister then gets involved in with her colleagues in cabinet  
20 because an interviewing panel then is put up and if it is, for instance, a Director General, it happens in cabinet, if it is a state owned enterprise it happens in terms of company rules and what have you. So that then ensues.

And then at times, Chairperson, the desires of the deployment committee are not even fulfilled. They may

well have said we want so and so and it may not happen and we say that should be in terms of the prescripts of the law, corporate governance and the prescripts of the selection process in, for instance, in the public service.

So having chaired the deployment committee, I know that for a fact that in some cases the deployment committee wishes may not happen. So it is for that reason that I describe in the main a deployment committee as a recommendation committee. And it takes into account a  
10 whole number of considerations. You could ask are some of them political? Yes. For key positions where we seek to advance the mandate of the governing party? Yes.

But where, for instance, the requirements and the experience of a candidate overrides that. We then say we rely on this person as an South African to execute the task.

**ADV PRETORIUS SC:** Whether it always happens that way or not we can explore in due course with some of the more detailed evidence that we have been given but I understand you to have said that the whole process does  
20 require some form of statutory or other regulation and we can explore that issue as well in due course. But, for the moment, in paragraph 25 on page 15, your statement reads:

“The policy of the ANC is aimed at ensuring that the person most fit for purpose is appointed whatever

critical position has been identified.”

And the statement is quite a strong statement, in other words the object of the policy is to ensure, not merely to suggest, that the person most fit for purpose is appointed to a particular position. You have also now recently said that the deployment committee goes out to seek candidates. How does one ensure that a person most fit for purpose is appointed if it is only a recommendation and another body makes the decision?

- 10 **PRESIDENT RAMAPHOSA:** The process of selection of - let me put it deployment of people – has evolved, has been evolving and has been a subject of discussion even in our past conference and in recent time, the last conference, the issue of professionalising the civil service, professionalising state owned enterprises and getting people who are fit for purpose has become accepted and has become more current. And as it has evolved, it has evolved from a past that did not necessarily subscribe to that. So, as everything evolves, as everything improves
- 20 and gets better, this is now where we are. And to this effect even the Minister of Public Service has now embraced this process and it is now in the process of being fully implemented in government so we now have a new era, a new dispensation that is going to see to it that we have people who have fit for purpose.

So what the deployment committee will now to be doing is to yes, seriously ask itself whether people are fit for purpose. Even as it will recommend certain people who could head any state owned enterprise or head any department as DG, it has to this as a filter and ask itself is that person fit for purpose as it recommends? So I see – I do not see the two things as mutually exclusive, I see this process as being seamless.

Chairperson, we do so because we are serious  
10 about correcting what has gone wrong in the past and this is an important plank that we are working on to make sure that we build this up as an important pillar of improving state capability. So when I will speak as head of the state I will talk about how we are going about improving state capability and this is one of the areas that I will address myself.

**CHAIRPERSON:** I am sorry, Mr President. What is the importance, Mr President, of this deployment committee having the power to recommend as opposed to simply  
20 identifying potential candidates and encouraging them to apply like everybody and be considered and if they are considered, the most deserving, they get appointed. So what is the importance of the committee having to recommend as opposed to simply saying we know there is this position available, we would like some of our members

that we know are qualified and we think are suitable or, as you say, people in society that the organisation is aware of that it thinks should be encouraged, encourage them to say you apply and you compete with – like with everybody. So if you did it that way, the people that the deployment committee thinks are appropriate will be the among those who will be considered but they will not be coming with the recommendation from the deployment committee that the minister knows about, they will be coming like everybody  
10 but the deployment committee and the organisation should be covered because it has made sure that people that it thinks should take those positions are there with others and competing there.

**PRESIDENT RAMAPHOSA:** With respect, Chairperson, I hope you do not think that I am pedantic when I say maybe the two are not mutually exclusive.

**CHAIRPERSON:** Yes.

**PRESIDENT RAMAPHOSA:** And I say so advisedly because as previous chair of the deployment committee we  
20 did have a situation, some situations were – the deployment committee will have identified two or three really suitable candidates and would say all of them, their names should go forward and in the end the final decision is then left to the final selection process in government. So what you are saying is that could the deployment

committee not just identify instead of recommending, I would say the two are not mutually exclusive, it is impossible where two or three names have been sent forward and in other situations it has been a recommendation of one or so, so – and I take that and it is not impossible for the deployment committee to function in that way because all that it really seeks to do and should seek to do is to get whoever is fit for purpose, particularly now in this new, if you like, reformed era of making sure  
10 we do have people who are really good and fit for purpose who would be able to execute the task at hand without feeling that they need to pursue – advance certain side interest.

**CHAIRPERSON:** Well, that question arises in my mind because it would seem to me that where a minister is the appointing authority, for example...

**PRESIDENT RAMAPHOSA:** Yes.

**CHAIRPERSON:** And he or she knows that among the candidates there is this candidate who enjoys a  
20 recommendation of the deployment committee and remember, the deployment committee is chaired by the Deputy President of the party and the Deputy President of the country because that is how it works at the moment.

**PRESIDENT RAMAPHOSA:** Yes.

**CHAIRPERSON:** It seems to me that it might put some

pressure on the minister to take this candidate unless one of the other candidates really excels. So, in other words, this candidate seems to come with an advantage that nobody else knows about other than the deployment committee and the minister. So the other candidates think we are all competing on an equal footing but this one already enjoys a recommendation from the deployment committee, of course a recommendation that has been made by the deployment committee, not knowing the  
10 strengths and credentials of other possible candidates and then the minister is aware, the committee chaired by the Deputy President thinks this is the person who should – or recommends that this person should be appointed. Would you want to say something about that?

**PRESIDENT RAMAPHOSA:** I do indeed.

**CHAIRPERSON:** Yes.

**PRESIDENT RAMAPHOSA:** I do want to say something, Chairperson, and I will paint to you the practical experience that unfolds at the deployment committee and it  
20 is good that you actually cite the situation of a minister who will come to the deployment committee. Quite often ministers come to the deployment committee, having gone through a process, a pre selection process themselves and the various other officials or committees embedded in their own ministry, where they sift through a number of say



possible names.

When they come, they seek to convince the deployment committee about certain candidates who may be short listed. So in the end, quite often it is not even at the instance of the deployment committee. It is at the instance of the minister, who knows and should know the skills, the experience that are fit for purpose for the task that they manage or they run in the ministry.

10 So they would know for instance, the CEO of an entity what the requirements are and the deployment committee does not know in full. So they come to the deployment committee and seek to convince the deployment committee and even put up a pitted not fight, but argumentation of why the persons that they may want to see appointed should be recommended by the deployment committee.

20 So that is the practical experience that I have had. So the deployment committee, in the end it will tell people that apply, there are these positions and but it is the deployee in that ministry or in that who manages that state owned enterprise, who would know in greater detail, in finer detail precisely what is required.

So they seek to convince the deployment committee. So if you like, the deployment committee therefore plays a recommendation role, but it also plays

more of a reactive type of role. You could ask is there any desirability for the deployment committee and we would say yes, there is because it should serve as a filter.

We are a political organisation and what we do in government is very political, so you do need that political filter but it should also not be a political filter that will go ahead and appoint people who are not fit for purpose. It should be a filter that will make sure and if you like, it should be a quality type of assurance, that in the larger  
10 scheme of things we are going to have people in senior positions who are going to execute the mandate as set out in the manifestoes of the governing party.

**CHAIRPERSON:** Now the two approaches, you said they are not mutually exclusive.

**MR RAMAPHOSA:** Ja.

**CHAIRPERSON:** And I agree. I have already indicated what possible criticism can be directed at the approach as you have described it.

**MR RAMAPHOSA:** Ja.

20 **CHAIRPERSON:** Namely that the candidate recommended by the deployment committee has this added advantage, and I assume that is not known to anybody, other than the deployment committee and the appointing authority, the minister.

I may be wrong on that. What criticism would you

have with the other approach, which simply says your interest as an organisation in making sure that you, that certain strategic positions are occupied by people who understand your policies and so on and so on.

That would be taken care of if you encourage candidates, suitably qualified candidates to apply, but once you ... once they have applied, why do you not leave it to the process and the appointing authority and the appointing authority is your own cadre who is supposed to  
10 understand the policies of the ANC and he or she will then look at all of this.

But in that way the candidate does not come with some extra added advantage. Would you have criticism for that approach and say it would not be suitable?

**MR RAMAPHOSA:** No, I would not except that what often happens, it is actually the minister who ...[intervenes]

**CHAIRPERSON:** Who comes to you.

**MR RAMAPHOSA:** Who comes and say I am recommending the following and the deployment committee  
20 then examines that and it is often convinced ...[intervenes]

**CHAIRPERSON:** About the ministers.

**MR RAMAPHOSA:** Oh yes.

**CHAIRPERSON:** Yes.

**MR RAMAPHOSA:** And I have been in situations where the minister would come back maybe two to three times.

**CHAIRPERSON:** Ja.

**MR RAMAPHOSA:** And say ...[intervenes]

**CHAIRPERSON:** I want this one.

**MR RAMAPHOSA:** This is the best one.

**CHAIRPERSON:** Yes.

**MR RAMAPHOSA:** And I want to convince you and even bring further documentation to prove the case.

**CHAIRPERSON:** Yes.

**MR RAMAPHOSA:** And then I am not suggesting that the  
10 minister brow beats the deployment committee into  
submission, but ...[intervenes]

**CHAIRPERSON:** Ja.

**MR RAMAPHOSA:** That is how it often happens.

**CHAIRPERSON:** Okay.

**MR RAMAPHOSA:** But having said that, your point is a good one and I would say yes, because I do not really see the two being so mutually exclusive, particularly because of the role that the minister does play.

**CHAIRPERSON:** Yes, yes.

20 **MR RAMAPHOSA:** As the minister should because they are the executive authority who has been deployed to do precisely that.

**CHAIRPERSON:** Mr Pretorius?

**ADV KENNEDY SC:** Thank you Chair. Perhaps it bears mention Mr President, that there are three issues that we

will canvass in the time allowed. The first issue is, as you have elaborated in some detail, how is the system designed to work? How should it work.

The second issue is how, whether in part to the greater or lesser degree that may be debatable, how it did work in the past. What problems arose. You have mentioned some problems and we will come to it in a moment.

So that one can understand how best the third issue  
10 can be addressed, and that is the regulation that you yourself have proposed in your statement towards the end and we will get there. There is another distinction that is quite important to bear in mind, and that is there are various categories of quota and quote deployment.

The first is executive positions, for examples ministers, deputy ministers and the like. The second is members of public service. EG's and employees employed in the public service, at whatever level and we will come to that as well, and the third is state institutions.

20 The Captain Nine institutions, other institutions, whether at the hands of parliament or the president. Perhaps we should be aware of those distinctions when, well I certainly will try and be aware of them when I am putting questions to you about that.

The deployment policy of the ANC is I presume a

developing document. It is contained in your bundle, at page 122.

**CHAIRPERSON:** Did you say 182 Mr Pretorius?

**ADV PRETORIUS SC:** 122.

**CHAIRPERSON:** Paragraph 122?

**ADV PRETORIUS SC:** No, no on page 122.

**CHAIRPERSON:** Page 122, okay.

**ADV PRETORIUS SC:** Is this the deployment policy of the ANC?

10 **MR RAMAPHOSA:** Yes.

**ADV PRETORIUS SC:** And does it have a date or is it a developing document? Has it grown over time? I see if you look at page 138, there is a reference to 2018 in paragraph 67.

**MR RAMAPHOSA:** Yes. It is what I would call a living document. Living because as the ANC develops its own policies and polishes those policies up, so are these types of policies also being panel-beated into better shape. If I can put it in that way.

20 **ADV PRETORIUS SC:** Right. That point we can deal with perhaps at the end in more detail Mr President, but if one could ... if I could ask you please to go to page 105. This is a different document. This is the ANC constitution.

**MR RAMAPHOSA:** Yes.

**CHAIRPERSON:** What page Mr Pretorius?

**ADV PRETORIUS SC:** 105.

**CHAIRPERSON:** Thank you.

**ADV PRETORIUS SC:** To paragraph or Clause 25 17.20.

This is the ANC constitution. That is how it is identified in your statement.

**MR RAMAPHOSA:** Yes.

**ADV PRETORIUS SC:** This, paragraph 25.17 appears on the face of it to be a list of active misconduct, which would apply to members of the ANC for which disciplinary proceedings or in respect of which disciplinary proceedings  
10 may be instituted.

25.17.20 says:

“In the case of a public representative breaching his or her contract of deployment concluded with the NEC.”

Does that creature still exist? Contract of employment with the NEC, or please tell us about it.

**MR RAMAPHOSA:** Ja, this presupposes a public representative. An elected public representative. Public  
20 representatives are substantively supposed to have a contract with the NEC. When I was secretary general and I think even during the tenure of the subsequent secretary general, we presumed the situation where a public representative would literally accept their deployment as a public representative and sign a contract with the NEC.

In the end, you know with the secretary general where they say I accept my deployment, so that where it comes to a point where they have to be either removed, it is a termination of contract, because in the past we face a situation where some would say I have been elected and I am not stepping down or whatever.

I am not agreeing to being removed. So it deals more with publically elected representatives and not so much with the appointees who would be governed by other  
10 provisions, which has to do with the appointment either in the civil service or in terms of company laws in the public enterprise.

**ADV PRETORIUS SC:** Understood. Would the contract of employment have any substantive provisions setting out the duties of the public representatives?

**MR RAMAPHOSA:** Yes, substantively it is supposed to have that, and I was also involved in the preparation and the drafting thereof in the past and I have not really kept abreast with the continuity of such, and I would say that if  
20 it has not continued, it is a very good instrument to have, because it helps to regulate the relationship in the end between the organisation and the person who is deployed.

This would also apply to a president, where the president has a contract with the organisation, because even as president or minister or whoever you are, in the



end deployed by the organisation because we have that type of political system.

**ADV PRETORIUS SC:** Would it be fair to say or would you accept that the electorate which elects the person to public office, would be entitled to know by what contractual provisions their representative is bound?

**MR RAMAPHOSA:** Absolutely, I would say yes. Just as right now we have even published as you might well know at government level and we can deal with that when I come  
10 as president of the republic. Published the contracts I have entered into with the minister.

**CHAIRPERSON:** Well, in passing I must just say Mr President that the commission has struggled a lot to get previous performance contracts of ministers. We to the best of my recollection, we got documents which reflected how they were supposed to look like, and I am not sure that we ever got the ones that were actually signed, but maybe some units of the commission has, because we wanted them at a certain stage, starting from 2010 or  
20 2009.

The information I was given at some stage was it looks like nobody knows where those contracts are, but maybe they have been found, I am not sure. But it would be good if the ones that have been signed are kept properly with the public or a commission like this wants

them and they can get them.

**MR RAMAPHOSA**: Chairperson, I undertake when I come before you again, I undertake to bring a box full of documents.

**CHAIRPERSON**: I also hope Mr President, in the box will be included performance assessments of ministers during that time.

**MR RAMAPHOSA**: We are in the course of doing performance assessments now.

10 **CHAIRPERSON**: Now, ja.

**MR RAMAPHOSA**: Yes. So you may find a very incomplete process.

**CHAIRPERSON**: Alright.

**ADV PRETORIUS SC**: Including presidents.

**MR RAMAPHOSA**: Including presidents, yes.

**CHAIRPERSON**: Ja.

**MR RAMAPHOSA**: Maybe I will ask the Chairperson to assist me.

**CHAIRPERSON**: Mr Pretorius?

20 **ADV PRETORIUS SC**: May I ask you to go back to the deployment policy at page 124?

**MR RAMAPHOSA**: Yes.

**ADV PRETORIUS SC**: Paragraph 9 of the deployment policy says:

“Our immediate goal as set out in strategy and

tactics, is to deepen the hold of the liberation movement over the leaders of state and begin to impact positively on other centres of authority and responsibility, outside the immediate realm of state institutions.”

Now can you assist, what are those other centres of authority and responsibility/

**MR RAMAPHOSA:** This put simply is a political speak about the ANC exercising its leadership role in society.

10 That the more we perform well, in the state that will have a cascading impact on a whole number of other institutions, be it whatever is your supporting bodies and all that, and we will all start working in a harmonious way.

With the ANC imposing this very positive developmental approach to how we should develop the country going forward. So that is what is envisaged here. It is more political.

**ADV PRETORIUS SC:** It does talk about positive impact.

**MR RAMAPHOSA:** Precisely.

20 **ADV PRETORIUS SC:** Rather than direct control.

**MR RAMAPHOSA:** Ja, positive impact which is the leadership of society.

**ADV PRETORIUS SC:** Right, and then in paragraph 10 the policy reads:

“The following are the key centres of authority

and responsibility within the state and should be given priority.”

10.1, cabinet.

10.2, the entire civil service but most importantly from director level upwards, and

10.3, premiers and provincial administrations.”

Then over the page it goes on to legislatures, local government, parastatals, education institutions, independent statutory commissions, agencies, board and  
10 institutes, ambassadorial appointment and international organisations and institutions.

That list from 10.1 to 10.10 does that entire list fall within the scope of activity for the deployment committee or is that list, should it be interpreted differently?

**MR RAMAPHOSA:** For the most part, yes it does. But I say for the most part advisably, because in some instances the deployment committee never really get involved or concerns itself with this. If you like the deployment committee has set itself its own limit that we will only limit  
20 ourselves in terms of how we function or recommend people to these key positions.

For instance, the deployment committee does not get involved in the appointment of ministers to cabinet. That is left to the president, but the president does consult his immediate colleagues which are the officials of the

ANC, but in the end in terms of the government system we have, it is the decision of the president and the president alone.

So the deployment committee does not get involved in that. When it comes to the entire civil service, that has to be read to mean the top leadership of the civil service, because it could never, it is not possible for the deployment committee to involve itself in the appointment of you know secretaries or you know, directors and so  
10 forth.

But it does however get involved in the appointment of directors general, and to some limited extent to also deputy directors general, but for the most part, the civil service appointments are done within the civil service itself and in the end, even the minister does not also get involved in the appointment of directors.

It is the director general who gets involved in that. Of course with premiers, yes. It is the deployment committee. Provincial administrations hardly ever. The  
20 positions of DG of the provincial administration is done at the provincial level.

The legislatures, there is a process of if you like deploying people there are legislatures as well. The national parliament and provincial and local, which really does not even, the deployment committee does not really

get involved with that, because that is more of a very vigorous and robust democratic process that is involved there.

Local government and I explained somewhere in my affidavit, something quite innovative is now being done, as this has evolved in the ANC, where it is no longer only the branch committees, it is also the community that gets involved in the final selection of people who should go into local government.

10           Parastatals, yes.       They key top positions. Education institutions, hardly ever.       The deployment committee like with cabinet, hardly ever get involved. Independent institutions, only to the extent of your top key one, and for instance you will be interested to know that when it comes to the judiciary it is left to that process that we have in the law.

          Ambassadorial appointment.       Those will be recommended and they are always often recommended by the minister.       The minister, and in the end because  
20 ambassadorial appointment are at the instance of the president.

          It is the president who appoints ambassadors, because in terms of our system, they represent the president in where ever they are deployed. So that too is a process that he is engaged in, and the president in those

cases takes the final decision, but he will also have discussed it with some of the colleagues.

So international organisations is even a much more complicated one, because we do not appoint people to international commission organisations. All we can do is to recommend, and after that, it is left to the board as it were.

**ADV PRETORIUS SC:** Yes, there has been some controversy on the latter point in relation to the Bricks Bank, but we did not go there at present. I note the  
10 judiciary is not mentioned in paragraph 10 as one of the institutions falling within the scope of the policy.

But in relation to that scope, I understand you to be saying that that scope is, it does not although very broad and although would in terms of its policy statement, permit the deployment committee to intervene in those areas. As a matter of practice this is not done.

Is that correct?

**MR RAMAPHOSA:** It is.

**ADV PRETORIUS SC:** For example the entire civil service  
20 is mentioned here.

**MR RAMAPHOSA:** It is not done. It is just the very top key positions as I have said, yes.

**ADV PRETORIUS SC:** Well perhaps a closer integration between policy and practice may be looked at.

**MR RAMAPHOSA:** Absolutely.

**ADV PRETORIUS SC:** If I could take you to another paragraph, on page 133. Para 47. This refers to strategic centres of deployment and paragraph 47 reads:

“Deployment within each of the five pillars requires its own sets of strategic discussions. For example within the state sector, what principles should inform the deployment of cadres to institutions with judicial or investigative functions and how should cadres be deployed to perform such functions, relate to the organisation.

10

There is a second point made later on, but we can come back to that. That seems to indicate that there is at least a discussion taking place in terms of the policy about judicial and investigative functions, persons deployed to those functions and how they should relate to the organisation.

Firstly, are persons deployed at least in the sense of being identified and encouraged to stand for appointment in the judiciary?

20

**MR RAMAPHOSA:** In the judiciary, no hardly ever. Hardly ever and I think much as it might have been thought of, it has never really resulted in that, because the appointment of people in judiciary in our country, is so well managed through the dispensation we have through the judicial



services commission which manages all these matter so well and in the end my full understanding is that whenever there is a vacancy there is a lot of activity amongst the legal organisations and fraternity who encourage one another, that why do you not apply, why do you not apply, why do you not seek to be chief justice or whatever.

So that is what I believe happens. So that one has if any, has actually been very much likes touch and not at all in as far as I am ...[intervenes]

10 **CHAIRPERSON:** Would those members of the judicial service commission who may be members of parliament, ANC members of parliament, not be expected to talk to the ANC, to say here are candidates for various positions that will be interviewed in due course.

Does the ANC have preference in terms of candidates? Do you know whether anything like that does happen?

**MR RAMAPHOSA:** Not as far as I am aware.

**CHAIRPERSON:** Okay.

20 **MR RAMAPHOSA:** We have always relied on what I have said now, yes.

**CHAIRPERSON:** Okay. Mr Pretorius?

**ADV PRETORIUS SC:** And again there appears to be at least on the face of it, and you may correct me if I am wrong, a disconnect between what the policy reads and the

practice. You concede that?

**MR RAMAPHOSA:** Yes.

**ADV PRETORIUS SC:** The JSC, the judicial services committee, positions on the JSC. Are they subject to the activities of the deployment?

**MR RAMAPHOSA:** No.

**ADV PRETORIUS SC:** No. Then a second point is made which does not necessarily relate to the first point. It says:

10                   “Within the “economy” the potential for cadres to accumulate capital in their personal capacities as manifest, should such capital accumulated by deployed cadres be regarded as under the command and control of the movement and if so, how.”

Is that something that should not stand or what do you say about that?

**PRESIDENT RAMAPHOSA:**       The – I think this is impractical, wholly impractical and to the extent that this  
20 may have been inserted here it could have meant that those who may well have been put in certain positions in the economy are meant to manage those centres very well, because it is improbable that anybody once you have accumulated capital for yourself you know acting in the economy you would then account to the organisation. It

never happened.

**ADV PRETORIUS SC:** Well, it says two things, it suggests in the first sentence that there is an expectation that cadres and deployed cadres might accumulate personal wealth, whether that is in Government or outside Government it doesn't say but the second point is that there's a thought, at least expressed here, that the policy says that, well we should at least or consider whether that money should come to the movement, is that an  
10 appropriate clause?

**PRESIDENT RAMAPHOSA:** No, it is wholly misplaced because as I say it is improbable and could never have happened because if people are in business, they do ...[indistinct] on personal accumulation processes and if they so want to donate money and give money to the movement then they should be able to do so and not that they should inherently be expected they should because they never would.

**ADV PRETORIUS SC:** Paragraph 56.1 on page 135, again  
20 black number, I've just made the mistake of reading red numbers myself, 56.1 it says,

“Cadres should be ready to be deployed where the movement deemed it necessary to deploy them”,

That is quite a strong statement and veers towards the hard interpretation of the deployment policy, do you

have any comment?

**PRESIDENT RAMAPHOSA:** Well, this really should be seen in a historical context and this is where the ANC acting as a liberation movement when it was banned and in exile you were deployed wherever and you could not question where you were deployed and if you were – for instance Umkhonto we Sizwe you would be told you were going to be deployed on the Mozambican front or Lesotho front or wherever and you go, no question asked because  
10 you are the NS soldier and similarly people who were not in the armed forces would be deployed anywhere you'd be deployed to London, to Moscow wherever and this is a remnant from the past but today you actually do engage the discussion with a comrade and say, we would like to deploy you wherever but when – as President I appoint Cabinet, I say this is where I want you to go and quite often no question asked in fact no question asked, people are deployed as they are informed by their upper leader. So, in other situations there are discussions because you  
20 have to take into account the circumstances of the comrade. You've got to take into account their skills space, you've got to take into account a whole number of other things. So, my answer to this would be, yes and no and the no part would represent the considerations that you need to have and the yes part, in certain deployment

situations you've got to agree to go where you are deployed.

**ADV PRETORIUS SC:** Well, perhaps, as you've pointed out, Mr President, in a modern and democratic economy as opposed to the history or the historical situation in which the party found itself, perhaps it could be qualified or...[indistinct – dropped voice].

**PRESIDENT RAMAPHOSA:** Precisely.

**ADV PRETORIUS SC:** Paragraph 60 on page 136, this is  
10 perhaps more of a commentary rather than a strict expression of policy, but it reads,

“The ANC’s range of national and regional deployment committees ebbed and flowed over time as the movement battled intra organisation positioning, optimisation of state governance, factionalism, careerealism and over the page opportunism, desperation for employment and the organisational dilemmas of having to act against corrupt comrades”,

20 Clearly – or perhaps I’m being presumptuous but if I am, you will tell me so, Mr President, clearly this is an expression of the problems faced in fact, in the history of the application of the deployment policy, am I correct in that?

**PRESIDENT RAMAPHOSA:** Yes, you are correct, I mean,

as you correctly say, Chairperson, this is commentary and this is apt commentary because truth be told we have had to deal with issues like that, the deployment committee and as the ANC broadly, careerealism, opportunism and some of these deployments have caused internal ructions within the ANC because we are a living organisation composed of people with interests and people with aspirations and ambitions. So, in the end you've got to manage all of that, very, very delicately and carefully so it is apt commentary.

10 **ADV PRETORIUS SC:** Well, how would factionalism arise?

**PRESIDENT RAMAPHOSA:** Factionalism arises because members of the organisation, like it happens in any organisation would have different perspectives, different interests and some of the perspectives may be ideological some may be just organisational and some may even be economic where people have economic interest and they then cluster around those interests and become, say, a grouping within the organisation and become a faction that

20 then feed on things that happen in the organisation be they say, different deployments or appointments. So, that then involves into distinct groupings that could be pitted against each other but then there could also be groupings that have a minimum – minimum sort of agenda that pulls them together but at the other end both ends there are different

ones, ideological, economic, or organisational.

**ADV PRETORIUS SC:** So, is it fair to say that in the history of the party in implementing and developing the deployment policy it has had to face particular factions seeking to further, legitimately, economic interest?

**PRESIDENT RAMAPHOSA:** Well, that does happen and as any organisation would attest to, it is something that can be faced but it really beholds on the organisation whether it recognises that as a challenge and addresses it  
10 and I can never say that it has not affected the ANC and it has and it is this that we're now involved in, in our renewal process that we need to rid the organisation of elements, factions that pursue certain divergent interest to our broad strategic objective of advancing the interests of the people of South Africa.

**ADV PRETORIUS SC:** And, to get to the third large topic, how can it be prevented from happening again, these experiences, I understand from your evidence inform the degree to which regulation is required?

20 **PRESIDENT RAMAPHOSA:** Regulation, Chairperson, is required, regulation at a state level but because the ANC is so broadly supported, it is the leader of society, it has to do things not so much for its own interest but for the interest of the people of South Africa. It, therefore, needs to embark on a renewal process so that it corrects all

these maladies within the organisation and if you like, clean up its own act so that it is much more presentable, even electorally to the people of South Africa and I comment on this in my document that over time we saw the electoral support of the ANC going down largely because of the corrosive corruption that our people found abhorrent and it is this, even at our 54<sup>th</sup> conference that we sought to address. That we've got to arrest this and reverse it and it is for that reason that we embarked on a renewal process

10 to renew the organisation and organisations do go through these ups and downs and that's what we've also gone through, renew our organisation but renewal should not just be in theory it should be in practice, which is precisely where we are now. We are putting into practice the entire renewal process and we – as it were, trying to herd everyone, everyone in the same direction and that is why I referred to the resolution that we passed at our 54<sup>th</sup> conference, were supported by thousands of members of the ANC who came from right across the length and the

20 breadth of the country. So, what remains now is the full implementation as we move.

**ADV PRETORIUS SC:** Moving between categories again, not to be confusing, Mr President, appointments to Law Enforcement Institutions for example the National Director of Public Prosecution the Commissioner of Police, the head



of HAWKS, the head of IPID, SIU and others, we know, and perhaps it put a – obtained a mention that in the appointment of the NDPP most recently, a completely new process involving public participation was directed by yourself but let's go back to trying to understand how appointments in the past – and I'm now going before your reign Mr President, in the past did the deployment committee involve itself in appointments to Law Enforcement Institutions, for example NDPP, Commissioner  
10 of Police and the like?

**PRESIDENT RAMAPHOSA:** No, not under my Chairpersonship, no it did not. So, we didn't do so, I need, maybe on further reflection, need to maybe correct the impression I may have made when you asked me about those who would apply to the Judicial Services Commission.

**CHAIRPERSON:** Oh yes.

**PRESIDENT RAMAPHOSA:** Ja, because I do recall once where vacancies were mentioned and it was just in  
20 passing, I should say that it was in passing and as it should that the deployment committee would look at where are vacancies, but it never resulted or descended into saying this one would be good that one would not be good and so forth and it was just in passing. So, I thought I should correct that.

**CHAIRPERSON:** Okay.

**PRESIDENT RAMAPHOSA:** But having said that my – under my Chairpersonship there was no involvement with Law Enforcement Agencies, like Commissioner of Police, NDPP and so forth, that never was the case.

**ADV PRETORIUS SC:** Right, and of course, there has also been evidence about the direct power to appoint being used for purposes that are, to put it quite plainly, illegitimate and these appointment in Law Enforcement  
10 Agencies and the like are the subject matter of other evidence and do not involve evidence concerning the deployment committee and will be dealt with separately but we should not forget about those in an overview in relation to appointments to offices of state but may I raise a further question because we've spoken about how the deployment committee should work, it's architecture and design, as it has developed over time. We've spoken about how it might not have worked or did not work in the past in instances and the extent of those instances may be debated and  
20 we've spoken about the need in relation to policies and legislation as you've stated in your statement and have spoken about now needs to be looked at it and perhaps even rewritten but there is a view that has been expressed before the Commission and perhaps your comment on this view would be useful by more than one witness and a view

that has been expressed publicly that there is no need for a deployment committee anymore and if I may just put those views to you and then ask for your comment. In her testimony, Barbara Hogan stated,

10                   “However, the usefulness of such a deployment committee these days is debatable, how can, just a handful of people possibly have the institutional knowledge and resources to pronounce on suitable candidates, for every senior position in Government and the private sector. It cannot be that closeness to or membership of the ANC or an of its alliance structures or to factions within these structures should be the determining factors in the selection of candidate for senior positions. In this day and age there are a host of capable black and white professionals, women, and men from which to choose who clearly understand and have an appetite for making the economy grow. Directorships on Boards should never be granted to  
20                   the favoured few as a reward for loyalty to a party or a faction of a party or as a retirement benefit for the well connected”,

                  There are several items or views in that passage, and you may want to consider it at more length, but do you have any comment?

**PRESIDENT RAMAPHOSA:** Yes, I do, having listened to what you have referred to as put forward by former Minister Barbara Hogan I would say that, when dealing with these types of matters it's better to be circumspect and not to throw the baby out with the bathwater because if there is something that causes an irritation it does not mean that you just chuck everything out because the deployment committee has a number of considerations that it needs to keep in mind. One of those is, just having in mind the  
10 developmental nature of the state that we are creating that we need to focus on this, what we refer to from the OECD paper of the political aspect which, in our book, would be the developmental side of the equation where we need to keep an eye on the mandate that we've been given in terms of our own manifesto in terms of support because you want – let me give you a good example. You want, for instance, the CEO or even Directors, say of an Eskom, you know right at the beginning we wanted an Eskom to electrify the country and make sure that even our people,  
20 mostly the majority black people who never had electricity in their lives to have electricity. So, that person must have a developmental as well as a commercial orientation and if you just have someone who has commercial, my grandmother in Limpopo would never have had electricity because that person would just be infused or you know,

focusing on just the commercial that she will never be able to pay because she's a pensioner and dah, dah, dah but you want someone who you know is going to be developmental who is going to have a very clear developmental agenda as well as a commercial one to make sure that that happens. So, in the end it's not necessary that they should be ANC members, no and in fact one would discover that. The other consideration, which is very, very strong in our case, which the  
10 deployment committee oversees is the gender balance in all these institutions. We've long gone past where we just have men appointed to various positions so the development, I mean the deployment committee focuses on that and says, do we have a clear gender balance, do we have sufficiently selected women who can get into key positions and it is due to the deployment committee that is today in Government, more – over and over now we have  
20 balanced Boards of Directors, we have balanced even in the state we're seeking to balance – it's a matter of concern, for instance, to the deployment committee that the Director General cohort that we have is largely male. So, the deployment committee will intervene and say to those deployed in Government, you've got an over abundance of men in key positions we need to see a balance and – so the deployment committee drives that.

So, that is why I would say, yes, we shouldn't just tilt the pendulum one way, it should be balanced, and it should never be because someone is close to the ANC. We should appoint people who are close to South Africa who are South Africans who've got the loyalty and patriotism, but we are also professional who we assure have a developmental type of approach to doing things and who would be willing to promote the ideals that the ANC or the agenda and the mandate that the ANC was elected. So, 10 whilst I hear what Barbara Hogan is saying that, there's no further need I would say, right now there's even more need, however, deployment committee as decided by, even our recent conference must focus on ensuring that there are people who are fit for purpose, who are professional who know their craft who will go and execute their craft without fear or favour and who, themselves, will not be captured by any interest will just be there to serve the people of South Africa.

**CHAIRPERSON:** Well, I should have asked this question 20 earlier, Mr President, what does the deployment committee recommend, does it recommend that a particular person be appointed to a particular position, does it recommend that a particular person be considered for appointment to a particular position?

**PRESIDENT RAMAPHOSA:** Chairperson, it is the latter.

**CHAIRPERSON:** It is the latter?

**PRESIDENT RAMAPHOSA:** Yes.

**CHAIRPERSON:** Yes.

**PRESIDENT RAMAPHOSA:** It is the latter because in the end it has to depend on the sort of final selection processes of that given institution or given position, say in Government.

**CHAIRPERSON:** And the processes.

**PRESIDENT RAMAPHOSA:** And the processes.

10 **CHAIRPERSON:** Okay.

**ADV PRETORIUS SC:** One of the points that Barbara Hogan makes in that passage that was quoted that perhaps there are selection committees with expertise more concentrated and more thorough to deal with selection to, for example, particular state owned entity Boards, should it not just be left to them, that was the statement?

**PRESIDENT RAMAPHOSA:** Chairperson, as it often happens, it is in the end left to a selection panel that the Executive Authority that has been deployed in that terrain  
20 will put together for instance I've often seen how, for instance, if a Director General has to be appointed the Minister will make sure that the selection panel is diverse but behind that there is another layer that really goes into thorough details and they often rely on external entities where external entities go through, in a very expert way,

the identification of those people who could be appointed and then the selection panel also has a number of, say Ministers and Deputy Ministers who are well versed in that sort of area but let me also say that, you know, the deployment committee is also composed of people who are quite knowledgeable. So, you know the deployment committee of the current period is composed of people from labour, people from labour are usually very sharp on human resource issues, you know, people from political  
10 type of organisation, people from community based organisation, women, and the youth so it's a collection of people who are so diverse in their own experiences that in my view, gives rise to a wealth of wisdom in the recommendation of people which should be taken forward. So, whoever is then taken through a number of filters and processes before they are finally appointed.

**ADV PRETORIUS SC:** Would there be any warrant for the regulation about which you speak later on in your statement making special provision for positions which are  
20 highly specialised requiring specialist skills and experience, is that catered for or would it specifically be catered for?

**PRESIDENT RAMAPHOSA:** It is something that we need, obviously, in accordance with what I've put forward that we need possibly to regulate that we should consider because



when you look at what other countries also do they – some of them go through similar processes and when we talk about the professionalization of the state with a view to increasing or enhancing the capability of the state, this is precisely what we now need to do because we do really, seriously need to ensure that capture of the state does not happen again. So, we need to do things in a transparent, in a convincing way, whilst yes, because we're a political organisation we still keep our eye on the mandate we have  
10 and ensuring that it is actually executed. So, it's a wonderful balance in as far as I'm concerned, we should really give rise to something that's quite new, innovative, and really beautiful for South Africa, as we go forward.

**ADV PRETORIUS SC:** Chair, I see it is one o'clock.

**PRESIDENT RAMAPHOSA:** Really?

**CHAIRPERSON:** Yes, okay.

**PRESIDENT RAMAPHOSA:** I thought it was five o'clock already.

**ADV PRETORIUS SC:** It is only one o'clock.

20 **CHAIRPERSON:** Let us take the adjournment and we will resume at two o'clock.

**ADV PRETORIUS SC:** Thank you.

**CHAIRPERSON:** We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Before we proceed Mr Pretorius I think we must have in mind how far we would go this afternoon and I do not know whether the arrangement with the President and his team is that we would stop at four or five or whether if necessary he would be available for us to proceed beyond that time and I do not know your own situation and your team.

I am mentioning that because

- 10 1. I do not have an evening session this evening. So if the situation was such that we can beyond five o'clock I would be available but the President might have other plans because he might have worked on the basis that we would stop maybe at four or five. But tomorrow we do have an evening session.

So I am mentioning that in case if we do not use some time after five – after four today tomorrow might not be enough. I am just giving that information so that while we proceed everybody would be ready that when we come to four o'clock  
20 whether the answer would be we can go up to five or we stop at four or whether what the position would be.

So you might have canvassed that with the President or his team.

**ADV PRETORIUS SC:** Yes Chair it has been rather tentatively raised with the President's team on this

understanding that he does have a country to run

**PRESIDENT RAMAPHOSA:** Yes.

**ADV PRETORIUS SC:** But...

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** I am sure that they will express their views.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** Either now or when the time comes.

**CHAIRPERSON:** Yes. Well Mr President you will indicate  
10 what your situation is when either now or later on. So all I  
was saying is tomorrow we have an evening session so we  
would have to finish by five o'clock but in case tomorrow  
might not be enough we might go beyond four o'clock;  
beyond five o'clock today but only if that suits everybody  
because there might have been other plans if that had not  
been discussed.

But if we have to stop at five that is fine as well.  
Okay alright.

**PRESIDENT RAMAPHOSA:** Thank you Chairperson. We  
20 had envisaged that we would stop at four.

**CHAIRPERSON:** Yes.

**PRESIDENT RAMAPHOSA:** But I guess maybe to – to be  
accommodative because there are other issues we have to  
attend to five o'clock should be fine.

**CHAIRPERSON:** Yes. Yes. Well we could stop at four

strictly speaking the day session goes up to four but we normally stretch it a little bit but if from your side you are comfortable with going up to five maybe we should do that. But it just depends I do not want you to be under pressure because four o'clock is generally the normal time.

**PRESIDENT RAMAPHOSA:** Ja I would wait for another message that will be sent from my office.

**CHAIRPERSON:** Okay.

**PRESIDENT RAMAPHOSA:** About that and then we will  
10 indicate that.

**CHAIRPERSON:** Okay no that is fine. Even at four o'clock we – I will ask.

**PRESIDENT RAMAPHOSA:** Okay.

**CHAIRPERSON:** What the position is

**PRESIDENT RAMAPHOSA:** Okay.

**CHAIRPERSON:** And if we have to stop at four we stop at four if we can go up to five then we go up to five.

**PRESIDENT RAMAPHOSA:** Thank you.

**CHAIRPERSON:** Okay alright. Thank you. We may proceed  
20 Mr Pretorius.

**ADV PRETORIUS SC:** I wanted to move on Mr President to a statement made by Mr Enoch Godongwana in an interview he gave to a television station on the 15<sup>th</sup> of April 2021 I do not know if you are aware of it. But he said the following and pointers first one ultimately

“The objectives of the time were to change the demographics of the Public Service. Secondly to ensure that the transformation agenda is carried out.”

He is talking about deployment.

10 “The question one may pose and the current conjecture is have these objectives been achieved? If we look at the demographics of the civil servants as we speak they are clearly transformed from that perspective therefore that objective had been achieved.

If we look at the second transformation orientation I think there is no doubt that it diffused into the public service as a whole. So somebody may then say is there is a necessity to continue doing so? These are debates that we should be engaged on as you are aware the moment the Minister of Public Service is looking at  
20 introducing a policy of what is called a professional civil service. The debate which is taking place in South Africa at the moment will impact on the form and content of the deployment policy.”

Simply put he is speaking about the

professionalization policy which perhaps we can talk about later not now in this context. But he is asking the question and I would like to ask you whether this question is being asked within the ANC at the moment is whether deployment is necessary at all?

**PRESIDENT RAMAPHOSA:** Thank you Chairperson. I did become aware of what Mr Enoch Godongwana did say and he starts off his assertion on the basis that transformation was central to the necessity to have a Deployment  
10 Committee and this started off 1994 because you will recall when we came into government we found an all-white headed civil service and it really cut across from the top to near the bottom and the bottom was largely black people and the top – the middle and the below middle were all white.

And in the main male as well so it was pale males who dominated the civil service so it was therefore necessary to have a Deployment Committee that would address that anomaly.

But today we continue to need that type of  
20 intervention because what we are seeking to do is to build a diverse nation. A nation that is united across the various if you like cultures that we have in our country but also gender.

And transformation is not a one day affair; it does not happen all at one go it is a process that happens over time. And it does need to be guided; it does need a strategic

intent and for instance one of the key issues I should have alluded to was not only the gender issue but also a demographic mix.

Each time when the demo – the Deployment Committee meets it looks at that. Are we able to have a diverse sort of Deployment of people? So that we do not have an all let us say African components of the civil service leaving aside white, coloured and Indian who make up what South Africa is all about.

10           And you therefore need that Deployment Committee because that is part of our transformation process.

Now the Deployment Committee asks itself those questions and seeks to create that balance because I have also seen that even in the government circles sometimes it is lost – that focus is lost and we have always believed that it can be better inspired and it can better led from political party point of view.

20           And this Chairperson is not unique only to the ANC. If you were to look at what has also happened to other political parties and I can think of a party that is also in government alongside say the ANC like the Democratic Alliance. They do have that as well. They do in the end get approval process for the appointment of people from the party and sometimes and this occurred when a case had to be handled by the Public Protector and Mr Bredell had to say

this cannot happen until an arm or a structure of the Democratic Alliance had to give its nay or yeah.

So without getting into those processes I am just alluding to the fact that the Deployment Committee in other organisations is there even if they may not call it that and I guess the ANC in its exuberance has gone ahead to say we will call it a Deployment Committee and there had been other cases it happened as it happens.

I know for instance and I have referred to it in my  
10 affidavit that even in other countries I know for instance with  
– with the UK particularly under Margaret Thatcher the question needs to be asked is that person one of us? And there is even a book written to that effect One of Us.

And what that meant was even in her governance of the UK they always sought to find people who were one of them and so this is not unique to the ANC and you could never say that in Margaret Thatcher's era they were going through a hard core transformation process and maybe it was soft, harsh but they still needed to have one of them and  
20 in our case we are not necessarily saying they must be one of us we are saying we would like to see that all these requirements are met because they are important for the development of our country and nation building and making sure that those who are given key positions in our state are representative of who we are as South Africans. Thank you.



**ADV PRETORIUS SC:** In paragraph 32 on page 17 you...

**CHAIRPERSON:** Are you back in his affidavit?

**ADV PRETORIUS SC:** Yes Chair.

**CHAIRPERSON:** Okay.

**ADV PRETORIUS SC:** Another issue is raised that maybe significant in this discussion Mr President and that is the quote you had placed there by Matheson of the OECD that is the Organisation for Economic and Community Development times and it is an international organisation that has many countries as members. Is South Africa a member? I know it is quoted in the survey?

**PRESIDENT RAMAPHOSA:** No we are not a member we are associated – they have always sought to have us as a member so – but we are not a member of the OECD.

**ADV PRETORIUS SC:** Anyway the quote here deals with the issue of the political loyalties of public servants.

**PRESIDENT RAMAPHOSA:** Yes.

**ADV PRETORIUS SC:** The responsiveness of public servants to the policies of the current executive and what this says in your statement is the following:

“Political involvement in administration is essential for the proper functioning of a democracy. Without this an incoming political administration would find itself unable to change policy direction.”

That is the import of that quote there are some caveats which follow but they more strongly stated and I see that in your opening statement care was taken to deal with that issue clearly well prepared.

But in Matheson and it is in Bundle 2 if you need to look at it he says the following:

10            “In their quest for legitimacy democratic regimes find themselves having to balance two values that can be in some tension. Fair and political partisan public service delivery and subject to the law – importantly subject to the law – the responsiveness of public servants to the policies of the current executive.”

Now we know that that is dealt with in our constitution to a degree to which the public service must fair and partial and independent and hopefully that will be reflected in legislation in time.

He goes on to say:

20            “Neutrality in the sense of political non-partisanship and public administration is of course a pre-condition for ensuring that regardless of their political orientation citizens are treated fairly and in an equitable manner. Operationally it is delivered by

emphasising professionalism, merit and competence amongst public servants. These values are important to the level of justice and continuity and public administration. Arguably a significant determinant of how much trust citizens place in their system of government. At the same time public servants must be accountable to the government for the effective delivery of its programs and responsiveness of the administration to the government of the day within the law and its constitutions as key to the effective implementation of government policy.

10

And the report goes on to show how different countries have developed institutional arrangements which balance these two concerns to avoid the extremes of a self-serving public service immune to political leadership on the one hand or an over politicised public service hostage to patronage and serving partisan rather than national interests on the other.”

20

Now there is clearly a tension expressed. It was mentioned in your opening statement Mr President. To what

extent and leave aside the history are the future plans of the party seeking to balance those two considerations and how will that be achieved?

**PRESIDENT RAMAPHOSA:** Well there needs to be balance between what I would say the political involvement of the governing party that I spoke about with ensuring that there is proficiency – technical proficiency, fairness in terms of service delivery and that those who execute such are able to be neutral enough and not to be biased in a partisan way.

10           Now that is quite important and it is what we want to engender going forward to ensure that when it comes not only to service delivery but also to for instance appointments of people be it for public employment projects that public servants should be colour blind when it comes to that.

          They should not be partisan, they should seek to serve the people of South African with neutrality, with fairness and they should demonstrate their own technical capacity and capability.

20           That is so necessary for them to do so because the people that we serve are not blind when something is done on a partisan basis they see it and once it is done that way it basically means we are failing the people and we are therefore even violating their own basic rights as citizens of our country.

          So we need to guard against that and we need to

inculcate that culture and we will – we will seek even to – to have that approach also encoded in regulations also in legislation to the extent that we can.

It is so important and that is why I in my statement in chief if you like referred to the OECD and Matheson at 00:19:39 that they put the case so well in that document that much as you can have political involvement particularly when as a governing party you want to ensure that your mandated positions are adhered to. You do however need to balance  
10 that with that technical proficiency in non-partisanship as you implement because a party like the ANC needs society and it cannot be seen to be partisan in favour of certain people when it executes ..

**CHAIRPERSON:** Sorry Mr President.

**PRESIDENT RAMAPHOSA:** It is not my fault.

**CHAIRPERSON:** Ja no it is not yours Mr President. Will everybody please switch off their cell phones. Okay let us continue.

**PRESIDENT RAMAPHOSA:** So it is therefore important and  
20 I would agree with Mr Pretorius that we do need to have that balance but I would say that balance needs to be – to have a foundation and that foundation is what I spoke. Thank you.

**ADV PRETORIUS SC:** Right. Mr President you have spoken about a move or intention to introduce a policy of professionalization of the civil service what problems would

that move seek to address and what is envisaged?

**PRESIDENT RAMAPHOSA:** It would seek to address the problems that we have had where and I think Minister – Mr Godongwana refers to that in his – in his interview where we do have and admittedly so we do have some people in our civil service who are ill-qualified, who are not that fit for the purpose, who do not have those qualifications that are necessary. Now we want to professionalise the civil service and that will happen in a variety of ways and we are not  
10 talking about chucking people out we are talking about capacitating those people, having them properly trained and that is why the school of government – the National School of Government has moved into top gear now – moved into top gear in the sense that it is a really literally come alive in terms of its curricular, offerings, in terms of ensuring that many cohorts in the civil service do attend certain courses and we do want to move to a point where you know nearly everyone in the public service from President right down does attend lessons and courses at the School of  
20 Government on an annual basis where I even as President would know that I do need to go and spend a week at a School of Government and to address that incapacity that we have say for instance the grouping of people who are ill-qualified to be capacitated, courses should be crafted for them and they should acquire the necessary skills so

professionalising the civil service that would be part of that process.

But also going forward it would mean that we then appoint people who are fit for purpose. People who are well experienced but of course when we get say young people into the civil service the issue of experience is not something that it is actually something that the young people have said please discard that because we want to come in and once we are in then you should equip us with all the necessary skills  
10 and I have agreed with young people that exactly what we should do and we should now find a way of encoding that.

But in the end professionalising the civil service means that we want to increase the capacity of the state. That is something that I am really if you like obsessed about because many of the challenges that we face in terms of implementation of our decisions and our policies revolves around the incapacity that we have in the state.

And it is a fairly straightforward matter that we can address through this professionalization, through getting  
20 people who are fit for purpose, who have the experience and the expertise and if need be we go out and seek them out and head hunt them so that we bolster the capability of the state.

And that way I think we will – we will have achieved a great deal in this era of deforming processes that were

damaged in them.

**ADV PRETORIUS SC:** Yes. In your preparation Mr President you have no doubt been forewarned that the answer to the Parliamentary question by the Minister of Public Service and Administration Mr Mchunu in a reply to a question he stated:

10           “According to information from Purcell that the quantum system for government employees as at 15 February 2021 there are currently a total of 9477 senior managers employed in the public service. Out of this total 3301 members do not have the required qualifications. However it needs to be stated that many departments do not capture the qualification information on Purcell and therefore the information in the tables below are skewed. This information also excludes the Department Of Defence And State Security Agency.”

20           However the statistics need to be adjusted rather there does seem to be a quite serious problem about qualifications in the public service and is that problem recognised?

**PRESIDENT RAMAPHOSA:** That problem is recognised and that is precisely the problem that we will now address



through the professionalization for the public service.

Now it is a lot of people 3301 and I would say we are not about to chuck those people out. If anything we as the state are to blame for having brought in people who are ill-qualified. We therefore need to address the problem but we need to address it humanely. We need to address it taking into account the mistakes that we have made and the human rights or the rights of those people as per worker/employer and what then calls on us to do is to be innovative. To be  
10 very creative of how we are going to capacitate all these people.

And it is not like you know they are done the heads or they do nothing they are doing something and we just need to – we channel their capability, their knowledge and the ability to do the work. So it is recognised and that is precisely what we are now going to be addressing.

The good thing Chairperson is that we have recognised the problem and often when you address problems and try to find solutions you should first know what  
20 you are dealing with. You must know your business. You must be able to count what you are dealing with and once you have done that then the solutions will come quite more easily and then able to execute them.

**ADV PRETORIUS SC:** Mr President thus far in relation to the issue of deployment we have dealt with elements of the

hard definition of employment that it is much more than recommendation.

**PRESIDENT RAMAPHOSA:** Ja.

**ADV PRETORIUS SC:** And we have dealt with the softer definition which is that it is recommendation only and we have looked at the exceptions that fill the space between and I think there has been a fair statement on your part if I may comment that regulation in the form of legislation and policy reform is – is underway. But there is an aspect of  
10 appointments that may well fall right outside the question of deployment and that is what has happened in the period under review in the past and we have heard some three years of evidence of appointments which may have something to do with a definition of patronage – you have used that word patronage and we will come to that in due course in a different context. But if we look at appointments particularly within state owned entities in the past ten years and I am going to just recite a few for you and ask for your knowledge and comment.

20 In Transnet Mr Molefe, Gama, Ramasobudi, Peter, Singh, Sharma, Makwanazi, Shane, Seleke, Mabaso, Denel the entire board including the Chair. PRASA, Eskom, Molefe, Singh, Koko, Matshela, Ngubane, SAA, Dudu Myeni, Law Enforcement, Arthur Fraser, Tom Moyane, Bernie(?) Ntemensa(?), Shaun Abrahams. Now, clearly it would be

unfair to discuss with you all the evidence related to each particular appointment but there is a common thread, certainly, in the evidence that goes through all of these appointments and the dismissals associated with them that have been linked with, certainly, a definition of patronage.

If I could ask you, please, what your knowledge was of these, what your comment is? Let me say, if anything to do with the deployment policy, at the existence of the deployment policy, have any relationship to these  
10 appointments and dismissals. I know that I am making a cardinal error in the questioning here but this is a Commission not a...

And I am rolling up a whole lot of questions...  
[laughs] ...if I carry on the DCJ will take me to task.

**CHAIRPERSON:** It is after lunch, Mr Pretorius. [laughs]

**ADV PRETORIUS SC:** [laughs]

**PRESIDENT RAMAPHOSA:** [laughs]

**CHAIRPERSON:** Yes, continue.

**ADV PRETORIUS SC:** Maybe I will be excused for that  
20 reason. What was going on here? What was your knowledge?

**PRESIDENT RAMAPHOSA:** Yes. That is quite a broad sweep, I must say. It is a broad sweep because each one would need to be looked at it on its own merits and you will find that a number of those never even featured in the

Deployment Committee and I will need to do some recalling to see if any of those that you have counted - been featured in my recollection or not really.

And let us accept Chairperson that some of those deployments were done in a particular era and in a particular way and right now as we look at that past slate whether able to look at it and say we actually need to do things differently. Move away from those types of deployment that happened and that ended up being or  
10 some of them being deployments that were not fit for purpose, as I said in my opening statement.

So I would not know be able to particularise each one of them because they happened when they did and right now I would say the Deployment Committee would not have dealt with a whole lot of those. And I would say that the Deployment Committee today would deal with matters in a way that we have outlines with professionalism and all that, would be the real focus.

**ADV PRETORIUS SC:** Now, perhaps the problem lies with  
20 the question in that it is too broad and too general and in that sense to ask for a particular approach, to put the least, that is least optimistic. But the first point is that there has been evidence that there were appointments influenced by or made by the former President to fit another purpose, an ulterior and illegitimate purpose. Are

you aware of that? Is that evidence known to you?

**PRESIDENT RAMAPHOSA:** No, I was not – you know, as I said in my statement and in my – the bulk of my statement or affidavit and as I said, you know, some of these state capture issues became only evident in time as we moved on. And that is why I even referred to the statement by Minister – or let me call him comrade, Comrade Fikile Mbalula for purposes of the type of evidence I am giving now here. It was when he mentioned  
10 in an NEC meeting how he had come to know about his appointment.

Even at that time we were not alive to the fact there was state capture and there was something horrible wrong going on. So some of these appointments would have happened in that course of time and one with hindsight then became aware that there was a common thread and if you joined the dots you would find that there was something that was amiss that was really happening.

So at the time, and some of them would have  
20 happened even before I was even Deputy President, the process had been ongoing and only became evident what actually was happening then.

**ADV PRETORIUS SC:** One interpretation of Pastor Wentz(?), Mr President, is that the Deployment Committee, certainly, for a significant period of time during these

appointments and you were Chair at the time of that Committee, as I understand it, was entirely bypassed in these appointments.

In other words, the ideal, as it should have worked, procedures that you have outlined today were not applied and in fact the Deployment Committee was not involved. Was there not then a duty on the Deployment Committee to put its hands up and say to the President: But these appointments are happening without our  
10 knowledge. What is going on?

**PRESIDENT RAMAPHOSA:** There were some appointments where the Deployment Committee was not aware. I will give you a very good example where I was involved recently as President of the Republic where in finalising certain appointments, I bypassed the Deployment Committee myself and on realising that, I immediately went to the Deputy President, David Mabuza, and I said: I finalised these appointments without reference to you as the Deployment Committee.

20 And I think I even called the DSG then, Jessy Duarte, and said: I would like to apologise. But more than that, I am even prepared to come to the Deployment Committee and explain myself and I did and I said to my comrades that ordinarily I should have watched these or brought these to you so that you can either make

recommendations. I did not. I was in a hurry to have these appointments. And it was *mea culpa* and it was accepted as such.

It has happened. I mean, when I was Chair of the Deployment Committee where some deployments were finalised without reference and one will admit that and accept that. And on those occasions, I would personally go to the President and say: President, you have short-changed me and the Deployment Committee here. We  
10 were supposed to be primed and informed about this appointment and that appointment and it would be *mea culpa* but the appointment had been made and announced.

Now the approach that I have taken now is that, it is important to ensure that our structures are involved because they play a key-role in all these processes so that those types of mishaps do not happen. Now I would never say that it was intentional. Like, in my case when I did not approach the Deployment Committee, it was not intentional. It was inadvertent. It was one of those errors  
20 that one made and unfortunately one must be able to own up to it.

So there are those that have been made in the past, as you would have heard from the evidence that was presented to you without reference but I thought I should give you a context of how some of these would have

happened and they did happen. We cannot deny that.

**ADV PRETORIUS SC:** Alright. Insofar as they did happen and insofar as you have stated you took this up with the former President. The response was an acknowledgment and *mea culpa*, as you say?

**PRESIDENT RAMAPHOSA:** Yes, yes.

**ADV PRETORIUS SC:** Fortunately or unfortunately, we do not have time to go through each one but the general principles are clear.

10 **CHAIRPERSON:** May I ask this Mr President? Does the Deployment Committee ever go public about people it has recommended for appointments in terms of speaking publicly.

**PRESIDENT RAMAPHOSA:** Chairperson, no. It never goes public.

**CHAIRPERSON:** Yes.

**PRESIDENT RAMAPHOSA:** It has never been heard ...[intervenes]

**CHAIRPERSON:** Yes.

20 **PRESIDENT RAMAPHOSA:** ...to go public.

**CHAIRPERSON:** Yes.

**PRESIDENT RAMAPHOSA:** But the Deployment Committee does express its disquiet and dissatisfaction, may I say. In the case that I was involved in, now as President, it was members of the Deployment Committee



who raised the concern which prompted me, finally, to go and address them and that was accepted but they never, not a single one ever goes public.

**CHAIRPERSON:** Well, I raise that because and maybe that can be dealt with later but you may or may not know much about it because I think you would not have been Chairperson of the Deployment Committee at the time. We – I have heard evidence in this Commission relating to, for example Mr Siyabonga Gama, who at a certain stage, I  
10 think 2009/2010, at a certain stage was one of the applicants for the position of Group CEO for Transnet who was suspended as CEO of TFR, which is a division of Transnet.

And in the media there was a lot of talk about him and that position and various allegations, but there were reports in the newspapers of a number of senior ANC leaders who reportedly went public saying that Mr Gama should be appointed as Group CEO. And I wondered whether that might be because the Deployment Committee  
20 had recommended him and that was maybe the reaction of some of its members who, if they were – if they thought if he was not being appointed.

So I thought you might be able to say whether they ever go public when maybe their recommendation does not seem to be accepted. But you say, as far you

know, they do not?

**PRESIDENT RAMAPHOSA:** Yes, Chairperson as far as I know they do not and I guess in Siyabonga Gama's issue, he was then seen as a fairly successful CEO and that would have been something that was generally accepted and he would have been seen as a type of person whose capabilities could have been Head of Transnet.

So there would have been side noises, noises from the side but certainly not from the Deployment  
10 Committee because it has always operated as, if you like, a rear dart type of committee.

**CHAIRPERSON:** H'm.

**PRESIDENT RAMAPHOSA:** Ja.

**CHAIRPERSON:** Well, just because we have touched on it. When Mr Mantashe gave evidence we have touched on it as well. But this was a case where, at least at a certain point, there was a black candidate who had been recommended by the Board of Transnet who was seen as a credible candidate but Mr Siyabonga Gama had not been  
20 recommended.

And the then Minister, namely, Ms Barbara Hogan was supportive of the candidate that had been recommended by the board but there were reports of criticism of why Mr Siyabonga Gama was not the one who was recommended or who was not been appointed. I think

Mr Mantashe told me that he had not been aware of a black candidate having been recommended because I think, at least from his point of view, he was looking at the issue of black managers been given opportunities to lead some of these parastatals.

So there was that concern to say, who – if the problem was that there should be change in the CEO's of parastatals, what was the problem? Because here was a black candidate ...[intervenes]

10 **PRESIDENT RAMAPHOSA**: Ja.

**CHAIRPERSON**: ...who appeared to be credible and nobody appeared to have issues with him who was recommended by a largely black board that had been appointed by the ANC government.

**PRESIDENT RAMAPHOSA**: H'm.

**CHAIRPERSON**: So what was sort of the issue? But as I say, one, you might not have personal knowledge and two, you might not have been a member of the Deployment Committee at the time.

20 **PRESIDENT RAMAPHOSA**: Chairperson, I certainly was not a member of the Deployment Committee nor was I an official at that stage.

**CHAIRPERSON**: Ja.

**PRESIDENT RAMAPHOSA**: But what I can address to you is. There was and there is still a concerted move to ensure

that we do have as many black CEO leaders as possible, taking into account the diversity that we need to observe in our state-owned enterprises.

So that to me does not come as a surprise. It is very consistent with the approach that we also currently have that we need to have good diversity. That need to have diversity is so important and of course there are many who feel quite strongly about it to a point where they would say: When we appoint somebody who is not a black  
10 African, they take umbrage but we then say but the call for diversity means that we must accept and embrace the fact that yes as much as, and we should, have the majority of the leaders of our SOE's and the DG's in government as being black African.

But we should also ensure that there is a balance because this country is not depopulated by Africans and our policy approach and thrust is for full diversity and we need to accept that that diversity will at times bringing in people who are not black Africans.

20 **CHAIRPERSON:** Yes, thank you. Mr Pretorius.

**ADV PRETORIUS SC:** Thank you. To return to the Gondwana[?] interview Mr President. In the context of deployment, once again, and we have now returned to the former deployment policies and your application. You spoke about patronage creeping in under the guides of

deployment and to the best of my recollection you have used that term in this and other contexts. What is patronage? How does it work?

**PRESIDENT RAMAPHOSA:** Patronage would mean that you appoint someone who is not fit for purpose. Who is put in a position to advance certain sectional interests. Someone who you know will never really be able to execute the task properly or someone who is being appointed in return for some other favour or some other process that  
10 needs to be met. And that is patronage.

And it goes against the grain of what we want to achieve because we want people who are fit for purpose, who will be able to execute the task, and who are appointed without having some interest in mind which are sectional or even factional. So that is what I would characterise as patronage. I have not looked at the dictionary meaning recently but that is how – that is the political understanding that I would give to it.

**CHAIRPERSON:** Would it include appointing somebody  
20 who, as you have put not fit for purpose, who is not qualified of the job or maybe just basic standards, the requirements but the other people who meet and surpass those standards but particularly one who does not qualify because he or she will feel that she or he has been done a favour and therefore owes the appointing authority

something, loyalty. Because otherwise, he or she could not get this job and therefore the appointing authority thinks there are good chances that such a person will be compliant. Does it include that in your view?

**PRESIDENT RAMAPHOSA**: Yes, Chairperson.

**CHAIRPERSON**: Ja.

**PRESIDENT RAMAPHOSA**: Not only be manoeuvrable but be compliant.

**CHAIRPERSON**: Yes, yes, yes.

10 **PRESIDENT RAMAPHOSA**: Be compliant ...[intervenes]

**CHAIRPERSON**: Yes.

**PRESIDENT RAMAPHOSA**: I think that is what you said complaint.

**CHAIRPERSON**: Yes.

**PRESIDENT RAMAPHOSA**: And ...[intervenes]

**CHAIRPERSON**: Ja, he would be manoeuvrable.

**PRESIDENT RAMAPHOSA**: Yes, manoeuvrable and be loyal to use ...[intervenes]

**CHAIRPERSON**: Ja.

20 **PRESIDENT RAMAPHOSA**: ...who have appointed them or who would enable their appointment.

**CHAIRPERSON**: H'm.

**PRESIDENT RAMAPHOSA**: And manoeuvrable in a sense where they will do their bidding and they were always be there to guard their interest.

**CHAIRPERSON:** H'm, h'm.

**PRESIDENT RAMAPHOSA:** And that is patronage and that is the crude diversion of what we want to see in the state.

**CHAIRPERSON:** H'm.

**PRESIDENT RAMAPHOSA:** Ja.

**CHAIRPERSON:** Mr Pretorius.

**ADV PRETORIUS SC:** Of course, there is the further self-perpetuating element to patronage that a patron receives  
10 favours or even receive financial gain, becomes more powerful and then in a greater and more powerful position as a patron.

**PRESIDENT RAMAPHOSA:** Yes.

**ADV PRETORIUS SC:** Has this happened and if it has, how is it intended to be dealt with?

**PRESIDENT RAMAPHOSA:** Well, as we have said and which we have dealt with in the African National Congress. We recognise that this is behaviour that has ensued and in recognising it we have come to the conclusion that we  
20 need to rid our organisation of patronage. And in some cases we even say certain members join other members rather than the ANC.

Those are practices that we want to get rid off so that we free everyone in the ANC to know that they can stand in their own name and right and be appointed to

positions in their own name and right. And how we do it is to inculcate this morality. And the renewal that we have been talking about is part of that process that there needs to be renewed morality in the ANC to enhance the integrity of the organisation. And without doing so, the renewal process falls flat on its face.

**ADV PRETORIUS SC:** In fairness to those who have given the evidence and in fairness to yourself, Mr President. I need to put to you certain passages from the evidence that  
10 have told the Chair of the hard interpretation of deployment. In other words, that it goes much further than recommendation.

And then I would like to put to you, certainly of your own statement, which quite frankly highlights the problems that you face or have faced and do face. The evidence of Lynne Brown in relation to SOE boards, more than one, was to the following effect:

“It must be borne in mind that all appointments to the boards of state-owned entities must also  
20 be approved by the African National Congress Deployment Committee where after it gets approved by Cabinet...”

That was her clear and unequivocal evidence. Do you have any comment?

**PRESIDENT RAMAPHOSA:** [No audible reply]



**ADV PRETORIUS SC:** And this was in the period 2014 to 2015, at least.

**PRESIDENT RAMAPHOSA:** Yes, that is where the interpretation of this recommendation process would come in. And that is why I referred to the role of the minister because the minister as the executive or it plays a critical role because it is the minister who, in the first instance, knows and realises that the board's tenure has come to an end. I need to replenish the members of the board and  
10 these are the skills that are needed. I need or we need accounting skills, corporate governance skills, financial skills, you name it, environmental and so forth and we need to have a gender balance.

So it beholds on the minister and I deal with this, you know, on an ongoing basis even now as President. It beholds on the minister to then come forward and say: I need to replenish the six members on the board.

And what she will often have to do or be  
20 encountered with is. Have you sourced, have you worked out a list, a list of names that should be preferred? And the minister's task is to do precisely that and having done that, a wise minister would then say: I have got like 18 names and I need six or 12 names. They would then put that forward and say to the Deployment Committee – and

then the Deployment Committee would say – and quite often a pamphlet is set out or an advert for people to apply.

And quite often you get many applications and I actually appreciate that because it basically means you are opening up quite a number of these positions to South Africans who can play a role in enhancing governance in some of our state-owned enterprises. And it is the minister who must then summarise all that, bring together a  
10 summarised list or preferred list or summarise and then put it forward as a near or shortlist.

And once that has happened, the Deployment Committee would say: Well, we would recommend the following. And sometimes they need six and there is 18, they would recommend: Why do you not go forward with 12 and then let us see what the selection in government then comes up with. And that is where I would say maybe Lynne Brown then says this got to be approved.

But I will, as the former Chair of the Deployment  
20 Committee, will be able to say clear emphatically that it is that recommendation process. And as you can hear, it goes through a number of processes and this may be confusing and this may even create doubt in people's minds but that is the actual process as it unfolds and as it happens. And in the end, Cabinet – even with Cabinet –

Cabinet then will then be presented with say maybe a near final list.

But Cabinet then finally, Chairperson, deliberates on each of the names where Cabinet has a role in deciding because of legislation for that entity. It deliberates on that and some names fall off at Cabinet level and some on those lists are sent back to the minister or Cabinet says: Take this back. We are not about to approve this.

10 And the ministers pull out their hair and be frustrated but that is the rigorous role that is involved in the selection of those people. And may I add deployment committee level, I know of ministers who have been there three times or more just to get a list recommended.

So it is not as easy as that where you just have a list which is underpinned by nefarious intensions, just approved, it is quite vigorous and I have known and I have seen ministers coming out of that type of process just pulling the sweat off their foreheads because it means they  
20 have achieved something. It is not an easy process.

**CHAIRPERSON:** Of course, Mr President, now that we are touching on the boards and the role of the deployment committee on the appointment of boards of SOEs, when one looks at what has happened, as the evidence has revealed in his Commission over the past two and half

years, what has happened in various SOEs, Eskom, Transnet, SAA, PRASA, you name them, over a certain period, you are bound to ask the question how is it possible that in each one of those, these SOEs, the types of boards that were there did not do a, b, c, d. How could all of these things happen while they were there?

And that raises the question of how were they appointed? What criteria were followed in selecting people to be put into those boards? How could these SOEs be  
10 where they are now or be where they were a few years ago but in some we can say now when they were – they had boards? It is like – it is like there is something common, common problem with all of these boards that made it possible for the SOEs they were supposed to run to be where they are and therefore, as the Commission, one of the things we – some of the things we want to look at is how do we – what recommendations should be made that would try and make sure that in the future if anything like this were to happen, it should just be one, not all of them.

20 **PRESIDENT RAMAPHOSA**: Yes, indeed.

**CHAIRPERSON**: So obviously you go back and say who were the people who were making appointments here? What was going on? So I am just highlighting that as you share with me what the deployment committee's role is and the ministers, there is that question to say the same thing

happened with SAA, the same thing happened with Eskom, the same thing happened with Transnet, the same thing happened with Denel, same thing happened with PRASA. What was really going on? But there were boards? So you might want to say something, I am just saying that those are some of the questions we are asking ourselves.

**PRESIDENT RAMAPHOSA:** Indeed, Chairperson.

**CHAIRPERSON:** With a view to saying if we do not want to see the same thing happening to SOEs again in the  
10 future, we have got to identify what caused these problems and seek to ensure that we recommend measures that will make sure that the same problems do not happen. But as you were saying a few minutes earlier, we have to go to identify where the problem is or what the weakness is in order to be able to make an appropriate recommendation.

**PRESIDENT RAMAPHOSA:** Quite correct, Chairperson, and I think the work of your Commission is to investigate precisely that. What I can say is that there was massive system failure and some of it could have happened  
20 advertently where certain people were put in certain positions to advance certain agendas, as you are investigating now about the capture of some of those entities and – so what you are saying is germane to precisely what your Commission is dealing with and some of it was so hidden, so masked that you just could not see

that a certain individual was there to advance a particular agenda and that is why we rely on your Commission to ferret the truth out so that we are able to see – but as regards going forward and which is where your Commission will make recommendations and we will be able to overlay some of the form processes that we are involved in, we will want to have a completely new chapter, we must open a new page and be able to say when it comes to state owned enterprises, we have come from a horrible past that  
10 converted some of really top performing state owned enterprises into a shadow of themselves today, so we now need to move forward with greater firmness in as far as populating not only the boards but the management with people who are capable, who are focused and, Chairperson, we are already beginning to see that. That future that your Commission will point us forward to is already beginning to happen.

We are starting from a low base but already a number of those state owned enterprises are being  
20 reformed, rebuilt, re-birthed, if one can use – reborn, that is, and a structure which possibly we will talk about when I come back as President of the state, the structure we will put in place by the state owned enterprise council is looking precisely at that so that the rules and regulations that we have put in place should not only be theoretical or

in name only, they should now be, for lack of a better word, practilaised[sic] and implemented.

So those are issues that are top of mind to me, personally, and they are also top of mind to the ANC because it is only when these state owned enterprises function properly with proper boards and having identified South Africans who are loyal to the constitution and to the country that we will be able to reform them.

So basically I would say we no longer want people  
10 who will be appointed to advance certain agendas and we will be scrutinising everyone more thoroughly and completely to make sure that we do have people who are fit for purpose and the term fit for purpose is what should be operative here. It is an English term but it is a term that is very applicable to correct the wrongs of the past so that is how we are going to proceed.

**CHAIRPERSON:** Well, I mention this for the session that will come later probably end of May, Mr President.

**PRESIDENT RAMAPHOSA:** Ja.

20 **CHAIRPERSON:** And the legal team may or may not have included this in the scope but I mention it, that one of the things that I want to know is, in regard to various SOEs, is what the executive know because this the situation was deteriorating from a certain point, one expects that there would have been regular reports to the relevant minister

and to cabinet, you know, to the President and to the cabinet to say this is what is happening in that SOE, this is what is happening in that SOE and I would be interested to know, apart from the President, what was cabinet saying about the situation as it was deteriorating over a certain period of time? So that would be very useful because one wants also to see whether the situation could have been arrested at a certain stage if certain information was known to cabinet and cabinet did not act or what the position is but I am just mentioning it, that that would be  
10 for the next session.

**PRESIDENT RAMAPHOSA:** I am happy to give you a liner on that.

**CHAIRPERSON:** Yes, yes.

**PRESIDENT RAMAPHOSA:** Because I think we will deal with it at the next session.

**CHAIRPERSON:** Yes.

**PRESIDENT RAMAPHOSA:** What we have had in the past – and I will just mention that in short, because we will deal  
20 with it , is that we had a very silo style of work where, you know, almost everybody kept to their name and where there was no – a cross-dimensional type of collegiate involvement and I will be able to tell you, when I come back, that we are ridding ourselves of that so that there is more of a sharing of knowledge and experience in the work



that we all do so that if an experience is being – something is being experienced in one SOE that in a particular portfolio it should be talked about to see whether it mirrors another experience elsewhere so there could be this cross-pollination but maybe we will leave that until I come back.

**CHAIRPERSON:** Yes. No, no, that is fine.

**ADV PRETORIUS SC:** Yes, Chair, I might just add that although I have approached it in general terms in the context of the questions that are now being asked, they  
10 will be dealt with to the extent necessary in detail by individual evidence leaders at the second session.

**CHAIRPERSON:** Okay, alright.

**ADV PRETORIUS SC:** And the second point that I wanted to make in relation to the role of the Commission is that in August 2020 – and in fairness to you we will put these statements before the Chair, you made some very strong statements in newsletters and elsewhere about corruption and what was happening at the time and if I may say your language was quite unequivocal in that regard but what  
20 you did say was that there is no room anymore for outsourcing, that the party must take responsibility for acting and acting decisively.

And in relation to that statement of yours, Mr President, was that or is that if one looks back, the evidence has been quite strong and I think you have all but

quite frankly spoken about, is that there were improper or improperly motivated appointments and you have quite fairly made a number of statements and I will remind the Chair of those statements that you have made in that regard, whether these went through the deployment committee or whatever process was followed, ultimately I think is – well, I do not think, ultimately I suggest that the party must take account of it and take account for it. Is that not a fair proposition?

- 10 **PRESIDENT RAMAPHOSA:** No, it is fair proposition and hence we said, even in our conference, the 54<sup>th</sup> conference, we say we acknowledge some of these things had happened and we even had the courage to say it is when we acknowledge them publicly that we would be able to take remedial steps to correct them, which is precisely what we are involved in now because we have acknowledged and if you [indistinct] with that our ...[indistinct] people of this country. So yes, we will acknowledge and say things went horribly wrong but we are
- 20 here to work with everyone to correct those things and we do so with humility, we do so, you know, in a way also by bowing our heads and say because we are, if you like, a feature of a superstructure of this country, we cannot run away from all these matters, we are here to build a democratic society in South Africa and that requires that

we must confront corruption, state capture and deal with it and which is why I am sitting here and which is why some leaders of the organisation have also been here, because we want to go to the root of it, so – and as I said in my last paragraph, my opening statement, that this never happens again.

**CHAIRPERSON:** Well, talking about the fact that the ANC acknowledges that there were certain shortcomings, there were certain things that it might not have done properly and so on, I think that is quite important, that  
10 acknowledgement but I would like you, maybe before you finish today or even tomorrow, I would like you to identify the actual areas where you say, as a party, we have done our homework, we think this is where we did not do what we were supposed to do properly, this is where we did something we should not have done, so we identify exactly areas where, as a party, you say here we did not do things the way we should have and we acknowledge.

So why that is important is because while an  
20 acknowledgement is good and it should be given its proper weight, it is even better if one knows what you are talking about because when one knows what the party is talking about and says this is where we accept we went wrong, then one can look at what should be put in place for the future so that there is no repeats. So it is something you

can deal with either today or tomorrow, it is fine, it is just that, as I say, it would be useful so that it does not go – it does not get limited to simply acknowledging without being specific.

**PRESIDENT RAMAPHOSA:** With your kind permission...

**CHAIRPERSON:** Yes.

**PRESIDENT RAMAPHOSA:** You know, leading up to the point or addressing the point you are making, I would, with respect, however, say that maybe I should be able to do  
10 that when I conclude my appearance before you forever because there comes a day when I will appear before you and never have to do so again.

**PRESIDENT RAMAPHOSA:** And you will not want to ever appear again.

**PRESIDENT RAMAPHOSA:** No, I never would want to. So I would say maybe when I end my evidence before you as President of the Republic.

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

**PRESIDENT RAMAPHOSA:** Because quite a bit of it will  
20 touch also on what we should have done in the state and so forth.

**CHAIRPERSON:** Ja. Yes, no, no, that is right, it will give you enough time also to look at it properly.

**PRESIDENT RAMAPHOSA:** Yes.

**CHAIRPERSON:** Okay. Mr Pretorius?

**ADV PRETORIUS SC:** Yes, thank you, Chair. The three big headings – you in fact reflected in your August 2020 newsletter of what happened, how did we get there and where to from here. You will recall those headings.

They mirror precisely the principle headings of the inquiry that has been outsourced. I know that labour law does not have a good connotation, but it is here.

The middle part of how did this happen, could it happen? There seems to be an acknowledgement that  
10 those things that should not have happened, corruption, fraud, state capture, it happened.

There may be a question of degree and debate but for the purposes of the further questions, I am not sure how important that is, whether it is decisive of the answer to the question, how did this happen, how could it happen and only with an understanding of that will the outsourcee have the wherewithal and the ammunition really to make proper recommendations.

It seems that with your party hat on, with an  
20 understanding of what happened, already one has moved to the stage of making sure that it does not happen again and perhaps we will explore that later but I think in fairness to yourself, it is appropriate to put at least three or four of your own statements to you that have recognised problems and if it is – they all follow the same pattern and

if you do not mind, I could read them all them out and you can ask me to break it up. In your January 2020 newsletter you say:

“We are committed to end the practice of poorly qualified individuals being parachuted into positions of authority through political patronage.”

What were you describing there?

**PRESIDENT RAMAPHOSA:** Precisely the issue of us talking about that – where we do acknowledge that there  
10 were and may well have been people who were put in certain positions when they were ill-qualified and they were certainly not really fit for purpose but they were appointed and whether it was clear at the time or not, that they were advancing certain agendas, you know, would not even be an issue then but the ill-qualification seemed to testify to a patronage behind that and that is precisely what one was addressing and something that we identified as a party that we are concerned about and what we want to vent from the party because, you see, in the party circle, ANC circles, it  
20 just fuels and promotes factionalism because people then get to know that so and so is ill-qualified for this position but they have been appointed. Why were they appointed?

And then people started looking behind the reasons why they were appointed and it then becomes evidence that they were actually appointed to advance certain

agendas and that then mutates into the formation of factions and groupings that in the end become pitted against each other.

And that is how patronage manifests itself in a very ugly way. That is why it is important to get rid of it so that when you look at someone who is appointed you just look at a plain vanilla ice cream and say this person was appointed because of their capability, for no other reason, no flavourant added and all that. So that is precisely the  
10 approach that we need to have.

**ADV PRETORIUS SC:** In your August 2020 newsletter to ANC members, Mr President, you said:

“Then are jobs for pals where politicians and officials disregard hiring procedures to employ family members, friends or associates. Not only is this grossly unfair to other prospective candidates but it often means that the people employed are simply not up to the task. Public services are not rendered, public institutions are poorly managed  
20 and public funds go to waste.”

Then if I may put the next to you, in your March 2021 newsletter you wrote:

“All too often people have been hired into and promoted to key positions for which they are neither suitable nor qualified. This affects government

performance but also contributes to nepotism, political interference in the work departments, lack of accountability, mismanagement and corruption.”

So under the first head the problem is recognised. How do these things happen and in the regulatory process that you are undertaking, how would you address them?

**PRESIDENT RAMAPHOSA:** They happened – they have happened and the more we talk about them, the more raise everybody’s consciousness and awareness of it. I was in  
10 the Free State yesterday and after addressing Freedom Day occasion, a number of ANC members wanted me to greet them and meet them and one of the issues, I had to receive a memorandum from a group of four people who were representing what they call as a business forum.

This very issue is precisely one of the issues they raised, they said we have a problem that are jobs for pals, people are overlooked, there is no fair way in which people are appointed, and this like at the municipal level, and they were raising it in a very fervent manner and you could see  
20 in the way they were raising it that they were deeply concerned about this, as they should be because it evokes anger and the feeling of being overlooked by the state and it also demonstrates unfairness which people recognise.

And I went to a bigger meeting and precisely the same thing was also articulated.



So this thing of patronage, of jobs for pals, is something that is abhorrent, that people see and notice and what should we do about it is a very relevant question and we need to be transparent in what we do.

In our selection processes there needs to be transparency so that people can see that everybody has a shot in getting either a position, a job or whatever and it should never be something that is done in darkness where people do not see because when it is transparent, when  
10 there is a proper process of either election or application then nobody needs to worry because if you are selected and you are fit for that position and another person is not, then you have no real reason for complaint.

So, Chairperson, I may not have the various elements of all this now but it basically comes down to a simple process. There must be fairness, there must be equity, there must be transparency and openness and there must be a very good process that listen, once we have all this then we are well-positioned because then we are  
20 accountable and people can see – and it must also start off with being consultative where you are – where everybody buys into the system or the process and sees that it is going to be fair and without fairness and equity then we will never be able to address this malady that exists.

**ADV PRETORIUS SC:** Thank you, Mr President. I was

going to refer to other evidence that deal with the hard definition, as we have termed it, of deployment, not recommendation but compulsion in appointments.

There is the Amathole Municipality case, of which you are presumably aware, there is statements by Barbara Hogan and there is statements by Dr Ngubane that have been given to the Commission but in the interests of time, we have covered it in principle, I am going to move on to a different topic.

10 **PRESIDENT RAMAPHOSA:** I would like to comment on the Amathole one.

**ADV PRETORIUS SC:** Yes, if you would.

**PRESIDENT RAMAPHOSA:** Because I thought that that case is so descriptive of how we should bring about change, that is the appointment of the Municipal Manager.

**ADV PRETORIUS SC:** Yes.

**PRESIDENT RAMAPHOSA:** Yes.

**ADV PRETORIUS SC:** Or the mayor, I think,

20 **PRESIDENT RAMAPHOSA:** No, I thought it was Municipal Manager.

**CHAIRPERSON:** Or maybe, Mr Pretorius, you could say something briefly about it so that when the President comments everybody can follow what it is about.

**ADV PRETORIUS SC:** This is a quote from the judgment, if I may. Pickering J:

“Be that as it may, one fact emerges clearly from VM23...”

That is probably a document that was put up.

“...a fact which is not in any way refuted and that is that the Regional Executive Committee of the ANC instructed the caucus to appoint the 2<sup>nd</sup> respondent and the caucus carried out this instruction. This is not an example of democracy in action as was submitted by Mr Quinn, certainly not of constitutional democracy. I am not sure whether it makes a difference whether it was the major or municipal manager. It was the municipal manager.”

**MR RAMAPHOSA:** That one is Mr Chairperson, is so relevant in addressing the issues we are dealing with about getting a person fit for purpose. Where a person who was fit for purpose, who even in the interview process, clearly demonstrated that they know the job and when the other one was interviewed, they recognise this lack of capacity but still went ahead and appointed, and then they said we recognise it but we believe that this person will really improve going forward, without adding other elements.

I would put that in a distinct way to say when we bring in young people, young people we are saying we need to bring young people in, even without experience because we need to prepare them to play a role going

forward and then we capacitate them.

So that is separate, but in this case the person who was finally selected, this did not have the way with all and they disregarded a person who was more qualified. They then were unhappy and took the matter to court and the court said that person who had been rejected, should then be appointed.

Now this is where we bring in courts, to do what we should do ourselves as a political organisation. We should  
10 be the ones to say this is the right way of doing things. This is, these are the people that we should appoint and I highlight it because in many ways it points us to a future that we must have.

If we recognise that the other person who was appointed wrongly had shortcomings, we need to prepare them, help them but still appoint the person who is going to advance the interest of the people as a whole, and we do not do that and finally we are guided by the [indistinct].

So I am saying you know, that is the outsourcing  
20 process. A variation of the outsourcing. We are outsourcing what we should do and when we should ...[intervenes]

**CHAIRPERSON:** Yes, yes and of course and I am not talking about this particular case, sometimes when the courts do their job, some people are unhappy to say the

courts are telling us what to do, how to run certain institutions.

So yes, okay. Mr Pretorius?

**ADV PRETORIUS SC:** Yes, one final point on the issues we have been discussing today Mr President. You know the eye of a needle document no doubt. It is a document that was composed within the ANC in 2001. It reads:

“Because ...”

Or part of it reads:

10 “Because leadership structures of the ANC affords opportunities to assume positions of authority in government, some individuals then compete for ANC leadership positions in order to get into government. Many such members view positions in government as a source of material riches for themselves. Thus, resources, prestige and authority of government positions become the driving force in competition for leadership positions in the

20 ANC. Government positions also go hand in hand with the possibility to issue contracts to commercial companies. Some of these companies identify ANC members, that they can promote in ANC structures and into government so that they can get contracts by

hook or by crook. Positions in government also mean the possibility to appoint individuals in all kinds of capacities. As such, some members make promises to friends, that once selected in its constant government they would return the favour. Peaks and factions then emerge within the movement around personal loyalties driven by corrupt intentions. Members become voting fodder to serve individuals interests.”

Identifying precisely the issues that you have spoken about Mr President, and spoken in quite strong terms about. The question is, this was in 2001 and we are now 20 years later and in between the problem has been identified as you know by a succession of persons in high office.

The question is the public people would want to know what is different now? Why should the public of South Africa hear you and say at last something different is happening? What is different?

**MR RAMAPHOSA:** The eye of the needle is quite an iconic document in the life of the ANC. Much as it was crafted, if I can put it that way, in 2001. It was crafted to deal with problems that we already saw emerging as we were in government and we were already seeing those various

tendencies which even Madiba spoke about in successive conferences in the 49<sup>th</sup> conference and in the 50<sup>th</sup> conference.

Going forward, our conferences have dealt with these, and what is different now, is that if you like the eye of the needle, much as it identified those problems was articulating the theory if you like and the ideology that needs to be fostered and ensued in the ANC.

10 What is different now arising from the 54<sup>th</sup> conference, is that we are moving from theory, what we have been talking about now has to be attend to the tyre hitting the tar. Where we now say this must now happen. It must be practice.

That is why even when the MEC met, was it in August? They said we are drawing a line in the sand, and that is not being said lightly. It was the NEC that after much debate and discussion felt that we needed now to draw a line in the sand and say this is what the ANC is about. We are an organisation that should return back to  
20 its founding values.

Its principles adopted in 1912. We should be the type of organisation that is fit to be the leader of society in our country. So that is what I would like to suggest and say is different. The eye of the needle I would say, I am glad you have read it, is the most beautiful document that

sets out what are the problems.

It provides an in depth analysis, but then it also talks about the ideal situation, and the time has now arrived for us to grasp the metal and then restore the image of the African National Congress. I would say *kenako*, this is it.

**ADV PRETORIUS SC:** Hopefully we will have time tomorrow to deal with your August 2020 newsletter, you used much stronger language than tar hitting the road, but  
10 we will leave that until tomorrow.

**MR RAMAPHOSA:** Okay.

**ADV PRETORIUS SC:** If we may then, Chair in the meanwhile I have received a very stern note from the right hand side of the room, your left hand side of the room. The office of the president, saying four o'clock and not five o'clock.

**MR RAMAPHOSA:** I am at their disposal.

**CHAIRPERSON:** Well, the president I guess confirms that four o'clock or ...[intervenes]

20 **MR RAMAPHOSA:** Yes, I am at their mercy because they know my program more than I do.

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

**ADV PRETORIUS SC:** They control his diary.

**CHAIRPERSON:** No, no it is fine, we will adjourn at four o'clock then. But I do not know Mr Pretorius and your



team, you are in a better position to make an assessment whether tomorrow there may or may not be a need to go beyond four, maybe up to five because if there would be, it would be better that we talk about it now, so that the president then knows that tomorrow he could give up to five.

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** But it may be that your own assessment is such that we will not need to, but I would like us to use  
10 as much time as we are able to, subject to the president's situation.

**ADV PRETORIUS SC:** I forgot to add in the bargaining process, there is an offer to start at 09H30 tomorrow.

**CHAIRPERSON:** Is that from the president's side?

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** Yes, no, no that is fine. We could even start at nine if that was suitable.

**ADV PRETORIUS SC:** I think it was George Benatshowi who said, he has friendly apologised. He did not have time  
20 to write a short letter. He apologised for the long letter, so what I will do tonight is concentrate on trying to do precisely that.

**CHAIRPERSON:** Ja. Well, because the president says even nine o'clock would be fine, let us start at nine o'clock.

**MR RAMAPHOSA:** That is fine, yes I will be up here.

**CHAIRPERSON:** Mr Pretorius, if the president says nine o'clock is fine ...[intervenes]

**ADV PRETORIUS SC:** I have no answer Chair.

**CHAIRPERSON:** You are from the commission, you cannot complain.

**ADV PRETORIUS SC:** I will not, Chair.

**CHAIRPERSON:** Okay, so that is fine. We will stop at four this afternoon and tomorrow we start at nine.

10 **ADV PRETORIUS SC:** Thank you. If we can move Mr President to a new topic and that is party funding. You deal with that at page 25 of the affidavit. Paragraphs 51 and 52. I must just say in closing off the first topic, that perhaps it would be apposite to talk in more detail at some stage if we get the time, about the solutions, that third category that are envisaged.

But in the meanwhile if we can move on to party funding. If I have left anything out, you will draw my attention to it if you need to Mr President.

20 **MR RAMAPHOSA:** Yes.

**ADV PRETORIUS SC:** Paragraph 51 the principle has stated:

“Despite the absence of an official policy on donations ...”

And that is donations to political parties, including

the ANC.

**MR RAMAPHOSA:** Ja.

**ADV PRETORIUS SC:** “There is an exception based on the  
ANC ...” ...[intervenes]

**CHAIRPERSON:** Expectation.

**ADV PRETORIUS SC:** Sorry.

**CHAIRPERSON:** Expectation.

**ADV PRETORIUS SC:** Not exception. There is an  
expectation, my apologies:

10 “Based on the ANC constitution, its principles  
and its values that the ANC would not  
knowingly accept monies that are the product  
of a criminal act, are offered in exchange for  
favours or from a source known to engage in  
illegal or unethical activities.”

Paragraph 52 reads:

20 “I have heard that evidence has been  
presented to the commission that suggests  
that the ANC may have been the recipient of  
donations from individuals and companies that  
receive contracts from the state, including in  
instances where the awarding of those  
contracts are alleged to be or to have been  
unlawful.”

Before we get to examples, if those examples are

necessary at all, the principles are stated in your statement, and the breaches are stated in your statement. Is that discrepancy between the principles and the breaches recognised, first question, and second how is this being dealt with or will it be dealt with?

**MR RAMAPHOSA:** Yes, the principle is quite clear. The ANC would not knowingly receive funding from tainted hands, either tainted in the form of the donor being involved in acts of criminality and all that. So that is very  
10 clear.

The breaches themselves would happen in a way where maybe it is after effect, for instance businesses do donate money to all manner of organisations, including political organisations, and sometimes when they do do so, you do not know that those donations have come from entities that have been involved in unlawful contracts.

That presents us with a problem, because the money has already been donated and to a political party it is often very difficult to say, because the political parties  
20 are always strapped for cash, especially the ANC, because as money comes in it is used for a variety of activities that you would say no, refund is possible.

So the issue of the breach happens after the fact. However, what we are saying now, is that through the political funding act there would be transparency and that

is why we say the coming into effect of the political funding act, is actually in many ways revolutionary.

It has brought about a change and should be applauded by all in sundry. Much as in the end it is going to depend on the fiscus on whether the fiscus will be able to support democracy and make sufficient funds available to political parties, so that they are not tempted to go and receive the funds where these types of breaches could happen.

10           So I would say looking forward Chairperson, we have got a saving sort of dispensation that is going to enable us to open a new chapter in regard to advancing our democracy and the political funding, funding for political parties.

It is something that is new and which we should welcome and applaud because it rids us of all these processes where political parties receive funds from tainted entities.

**ADV PRETORIUS SC:** We can deal with the example of  
20 BOSASA, Eastern general terms. It must have been known to parties in government, in the administration and in the executive that BOSASA was heavily reliant on government contracts, certainly the Department of Correctional Services, if not other departments as well.

It must also have been known that the ANC itself

benefitted, at least in that elections war room and in a certain well publicised events that replace the former president's birthday party for example and there were others.

It may have been as you say that evidence about bribes, those events took place in dark corners. But how could it happen than that the party continued to receive benefits from a company that relied heavily on government contracts without a thorough investigation of what was  
10 happening there.

**MR RAMAPHOSA:** Chairperson, it did happen. It is one of the anomalous events that did happen. What is prominent in my mind is to say what do we do to prevent it from happening, but having said that, let me say let me put on the one hand that the political funding act is going to be our saviour.

On the other hand we should also say that if for instance a company donates money to a political party, and it so happens as well that in some way or fashion it does  
20 business with government, but that that funding is not being given to the political party in return for vetting contracts and all that.

I would say when it happens openly and transparently then there should not be any problem, because if you are going to give money and you know that

it is going to be transparent, even if you have won a contract, the transparency itself will be such that it prevents you and it will alert the public that you should not be seeking favours.

So I put that in a different category. So the transparency, the openness for me is the biggest saving and also the limitation to the amount that should be given, because the limitation of the amount that should be given is going to stop any entity being able to have an  
10 overarching control over a political party.

But in this case, it did happen and there is no way of running away from it or even hiding it, because it did happen that company BOSASA had contracts with government and which funded an ANC election room and all that.

I would say having happened, unless there is something criminal about it, which should be pursued following the investigation by the commission, we should now say how do we make sure that we move to a new  
20 situation where they do not have a capture of that sort.

That is what I will say.

**CHAIRPERSON:** Of course Mr President, when it comes to a company such as BOSASA, a question that arises when one has regard to the number of years that it was enjoying contracts with government departments, number one

...[intervenes]

**MR RAMAPHOSA:** Yes.

**CHAIRPERSON:** Number two, having regard to the fact that allegations of its involvement in irregular and corrupt contracts in government departments were all over the media over a long period of time, a question arises whether the ANC which ought to have been aware of whatever was in the media, like everybody whether it turned a blind eye because it was receiving donations from BOSASA.

10           That kind of question arises.

**MR RAMAPHOSA:** Certainly Chairperson, it does arise and in part it is one of those issues that you want me to address.

**CHAIRPERSON:** Yes, yes.

**MR RAMAPHOSA:** Which I have said that I would address at the end.

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

**MR RAMAPHOSA:** Because you are absolutely right. The ANC should have been aware that there are all these  
20 problems in relation to this company, obtaining contracts unlawfully, unfairly and all that. They should have been aware.

So it is one of those issues that I will ...[intervenes]

**CHAIRPERSON:** You will address, yes. Yes, well for what it is worth I just mention in passing that when I was



hearing evidence relating to parliamentary oversight a few weeks ago, maybe not a few weeks ago but at some stage, I heard evidence which was to the effect that when the Chairperson of the relevant, I think correction services portfolio committee was doing his legacy report, that is what I understand they are called, which portfolio committees prepare when their term ends, to enable the next committee to see what they were busy with, despite the fact that when that committee started in 2009, they  
10 were given the SIU report in relation to correctional services and BOSASA, and they looked at the report and the whole committee, almost the whole committee felt that it was shocking, what the report had about the allegations of corruption.

When the legacy report was prepared by the Chairperson, he did not mention anything for the next committee to take this issue further. Mr Freund is here who was leading evidence he is familiar with that. So there was that, I mean the whole committee says but this is  
20 shocking.

But during the term not much seems to be done by the committee about this, and then when the legacy report is supposed to be prepared so that the next committee can see what issues should be taken further, this very important issue is not mentioned in the legacy report.

So, but you will be able to deal with what you are able to deal with next time.

**MR RAMAPHOSA**: That is right.

**CHAIRPERSON**: Okay, Mr Pretorius?

**ADV PRETORIUS SC**: And the same principles would apply to the activities of the Guptas being known as least in the media, and the receipt of donations by the ANC from the Guptas. There is evidence to that effect. It is in the Bundle 2 which you have.

10 **MR RAMAPHOSA**: Ja.

**ADV PRETORIUS SC**: And perhaps in the morning you could deal with the CR17 issue as well, in fairness to all concerned and yourself.

**MR RAMAPHOSA**: Yes, I will.

**ADV PRETORIUS SC**: Then I would also need to deal tomorrow with the Dirco issue. I do not know if you are aware of that perhaps. We should try and get to the affidavits of Nyameko Koso and Francis Maloyi, who have submitted affidavits to the commission, stating that shortly  
20 after their diplomatic appointment to very senior positions, Mr Koso to consult general in Toronto in 2013 and ambassador Maloyi to Sudan in 2015.

They were sent debit forms by the ANC for monthly contributions to the party. So if we could deal with that ...[intervenes]

**MR RAMAPHOSA:** Yes.

**ADV PRETORIUS SC:** As well tomorrow. There are other examples the Free State Asbestos scheme and the like, which is a particularly glaring example of how things could go wrong in procurement, but perhaps two months before it would be unfair to ask for an answer.

**CHAIRPERSON:** Yes, no, no, that is fine. I think we will stop now. So Mr President, just to re-affirm this. The dates that you had been given for mid-May you can use.

10 Other dates for appearance to the commission, before the commission.

Other dates will be given, which will be towards the end of May. So the current dates that have been given for you ...[intervenens]

**MR RAMAPHOSA:** Okay, I can go to the beach and everything?

**CHAIRPERSON:** You can go to the beach Mr President.

**MR RAMAPHOSA:** Okay.

20 **CHAIRPERSON:** So we will look at other dates towards the end of May.

**MR RAMAPHOSA:** Thank you.

**CHAIRPERSON:** Parties, thank you very much. Mr President, we will then adjourn and tomorrow we will commence as agreed, at nine o'clock the morning.

**MR RAMAPHOSA:** Thank you, thank you.

**CHAIRPERSON:** We adjourn.

**HEARING ADJOURNS TO 29 APRIL 2021**