

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

29 APRIL 2021

DAY 385



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 29 APRIL 2021

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

ADV PRETORIUS SC: Morning Chair.

CHAIRPERSON: Thank you. Are you ready?

ADV PRETORIUS SC: Chair Mr Freund will deal with the Parliamentary questions.

CHAIRPERSON: Oversight.

ADV PRETORIUS SC: And Parliamentary oversight for the
10 next two hours until the short adjournment.

CHAIRPERSON: Okay no that is alright.

ADV PRETORIUS SC: Thank you.

CHAIRPERSON: That is alright. Mr President the oath you took yesterday will continue to apply today. Thank you.

ADV FREUND SC: Good morning Mr President. Perhaps you could turn on your microphone. Thank you.

CHAIRPERSON: Well I – I thought that maybe the President decided that this morning he will – today he will
20 keep his mask on.

PRESIDENT RAMAPHOSA: No. I decided it is pretty safe in here.

CHAIRPERSON: Ja okay. Yes Mr Freund.

ADV FREUND SC: Thank you Chair. Mr President you should have open in front of you Bundle 1 of your material

which is your affidavit. I am going to start at page 48. Chair page 48 of Bundle 1 which is the one that contains the actual affidavit.

CHAIRPERSON: Using the black numbers again and not the red numbers.

ADV FREUND SC: Yes it is black numbers top left. Mr President do you have at that page the section headed Role of the ANC in Parliament? Now Mr President Mr Pretorius and yourself debated yesterday the basic
10 approach adopted by this commission. What happened, why did it happen and what can be suggested that might prevent future similar difficulties?

I am going to deal with those issues as well but I am going to be dealing with the question of whether it is so that Parliament failed to exercise due oversight over the executive in relation to the issues of concern to this commission, whether it failed to hold the executive properly accountable.

But on that issue we have had a lot of evidence and
20 I am not going to re-traverse with you evidence that has already been heard.

The second question of course is why did this happen and I will say at the outset that the picture is mixed on Parliamentary Oversight. There are some successes, there are arguably some failures and really the focus is not

on the successes this focus is on the failures but it is appropriate to keep a balance to view on that. And in the questions I ask you – I am really going to be focussing on what explains the failures to the extent that there were failures?

And then very briefly because again on the third the question of – of what can be recommended to improve things? That is an issue we have canvassed at some considerable detail already particularly in the evidence
10 recently of Mr Mantashe so I am not proposing to spend a great deal of time on that with you I will touch on a couple of issues.

But the real focus then from my perspective is really if there were failures why did those failures take place?

And in relation to that I want to start just reaching common cause and agreement with you on things I am sure we would agree about and in particular what are the applicable constitutional principles? What is the
20 appropriate relationship as between Parliament and the executive?

Now you deal with that in your own affidavit and in particular if you have a look at paragraph 112 you will see that you summarise the duties of Parliament and at the footnote to 112.4 you refer to Section 42(3) of the

Constitution and Mr President your own role in the formation of the constitution is well-known I presume we take it as read that you are reasonably familiar with the provisions of the constitution.

So just to so that we all start from the same starting point Section 42(3) to which you refer says as you know this – it says:

10 “The National Assembly is elected to represent the people and to ensure government by the people it does this by and then various things but one of the ways it does it by is by scrutinising and overseeing executive action.”

So we know that is part of Parliament’s functions and that is the function to which you expressly refer in your affidavit.

But I am sure you will also be aware that there is another provision of considerable importance here and that is Section 55(2).

20 Section 55(2) I will read to you.

“The National Assembly must provide for mechanisms

a. To ensure and I would hyphenate – I would underline that word to ensure that all executive organs of state and the national

sphere of government are accountable to it

– to the National Assembly and

b.To maintain oversight of

1.The exercise of national executive authority

and

2.Any organ of state.”

So in short there is an oversight constitutional obligation
and there is a constitutional obligation resting on the
National Assembly to ensure that the executive in all its
10 components is accountable to it.

Now I presume there is no difference between you
and I on those principles?

CHAIRPERSON: Mr President when you agree with him or
do not agree better that you articulate whether you agree
so that it will be recorded. When you nod it is not
recorded.

PRESIDENT RAMAPHOSA: Okay. So my nod then not
recorded?

CHAIRPERSON: No.

20 **PRESIDENT RAMAPHOSA:** I agree.

ADV FREUND SC: So the first point that flows from that I
want to put for you – put to you to check that you agree
with me is that the obligation to hold the executive account
– to account to vest in the National Assembly it does not
vest only in the ANC’s party’s structures. I see you nod.

PRESIDENT RAMAPHOSA: Yes I agree.

ADV FREUND SC: And secondly that the executive is accountable to the National Assembly and not merely not to the governing party. Again I presume you agree?

PRESIDENT RAMAPHOSA: Yes I agree.

ADV FREUND SC: Now can I take you to the – to the other bundle – Bundle 2 of your – of your material to page 564. You should find there a copy of a court judgment. Is that correct?

10 **PRESIDENT RAMAPHOSA:** Yes.

ADV FREUND SC: Now Mr President that is the reported judgment of the Constitutional Court in what is commonly ...

CHAIRPERSON: What is the page number?

ADV FREUND SC: 564.

CHAIRPERSON: Okay.

ADV FREUND SC: And Chair if I can indicate that my intention this morning is to move backwards and forwards between Bundle 1 and Bundle 2.

20 **CHAIRPERSON:** Okay that is fine.

ADV FREUND SC: That is the judgment of the Constitutional Court on the Nkandla issue. You will remember the Public Protector's Investigation Report on the Nkandla expenditure. You will recall that Parliament reacted in a particular way. The mezzo found its way to

the Constitutional Court in a case brought by the EFF and others and the judgment as you will see was handed down on the 31st of March 2016. You will see that on page 564 but you can take it from me that is what it says.

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: Now if I take you to page 576 you will see at paragraph 95 that the Constitutional Court dealt there with it might be called the second issue that was before the court.

10 The first issue was the issue about whether the Public Protector's Reports are binding and have to be adhered to unless reviewed.

 But there was the second issue and it is the second issue that is relevant for present purposes and that was whether Parliament itself had failed – and when I say Parliament I am particularly referring to the National Assembly – whether the National Assembly had failed in its oversight obligations of a type that we have just been discussing and in short the court found that it had failed.

20 It was in breach of its constitutional duties.

 And what I want to draw to your attention in paragraph 95 is that what the court says is this:

 “That because the Public Protector's Report implicated the Head of State or the Head of the Executive it was this factor that made it

and I now quote “A high priority matter that required urgent attention of and investigation by the National Assembly it ought therefore to have triggered into operation the National Assembly whose obligation to scrutinise and oversee executive action and to hold the President accountable.”

Now that is a matter of record but the question
10 which arises from that and where again I am assuming that we are not going to be in any dispute between you and myself is that I want to know whether you accept this proposition.

Do you accept that where there is information in the public domain which if true appears to implicate a President – any President in conduct which is allegedly unconstitutional, allegedly illegal, allegedly improper conduct if that sort of information is in the public domain do you – in relation to the President do you accept that the
20 National Assembly is obliged by the constitution to do what it can firstly to establish whether there is any merit in those obligations and secondly if it finds that there is to take appropriate action?

PRESIDENT RAMAPHOSA: Yes I do.

ADV FREUND SC: And presumably you would accept that

that same principle which we have said applies to the President must apply equally to Ministers, other senior representatives of the government, other senior officials and SOE's and the like the principle must be the same?

PRESIDENT RAMAPHOSA: Indeed I do agree.

ADV FREUND SC: And of course Mr President you would be aware having been a member of Parliament, having been sworn in as a President you know the oath of office that is taken – let us focus firstly on the – on every
10 member of Parliament and it includes this I am quoting from Schedule 2 Item 4 in the Constitution

“I and I leave out some words will obey, observe, uphold and maintain the constitution and all other law of the Republic.”

You are familiar with that?

PRESIDENT RAMAPHOSA: I am familiar with it.

ADV FREUND SC: And indeed when one looks at the oath of office the former President took, that you took there are
20 words to identical effect to the words I have just quoted?

PRESIDENT RAMAPHOSA: Indeed.

ADV FREUND SC: And I presume it goes without saying that you would fully endorse and accept that that is binding on the members of Parliament, it is binding on the Presidents, effect must be given to that oath.

PRESIDENT RAMAPHOSA: Pretty obviously.

ADV FREUND SC: Now what may be less of yes and what I want to examine is this. Do you accept that in its relationship with and in its instructions to its MP's in Parliament the ANC as a political party is obliged also to respect those oaths of office that we have just discussed?

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: Now I want to move on to a related but slightly different feature of the constitution. Both the
10 constitution and the rules of Parliament and that is the powers of Parliament and in particular the powers through committee inquiries.

PRESIDENT RAMAPHOSA: Yes

ADV FREUND SC: Now you will know I am sure but let me read it into the record. The Section 56 of the constitution says this:

20 “The National Assembly or any of its committees may – and I leave out some words – summon any person to appear before it to give evidence on oath or affirmation or to produce documents.”

It is built into our constitutional design that Parliament and its committees have those powers and I presume you are fully aware of that.

PRESIDENT RAMAPHOSA: Huh-uh.

ADV FREUND SC: And similarly if I can draw your attention and perhaps I could take you to the second bundle at page 584.

PRESIDENT RAMAPHOSA: I must say these documents are well arranged Chairperson.

CHAIRPERSON: Oh.

PRESIDENT RAMAPHOSA: By your – by your staff.

CHAIRPERSON: Thank you Mr President.

PRESIDENT RAMAPHOSA: I want to compliment them.

10 **CHAIRPERSON:** Thank you very much Mr President.

PRESIDENT RAMAPHOSA: I may want to steal them to come and work for us.

CHAIRPERSON: Please wait let us finish the commission's work first.

PRESIDENT RAMAPHOSA: Yes I have got it.

ADV FREUND SC: Mr President at page 584 what you should have in front of you is an extract from the Rules of the National Assembly as they stood in their 8th edition which was applicable until March of 2016. Do you have
20 their Rule 138 page 584?

PRESIDENT RAMAPHOSA: No 584

ADV FREUND SC: Bundle 2? The other bundle sorry.

PRESIDENT RAMAPHOSA: I am on Bundle 1 sorry.

ADV FREUND SC: Not at all. Just for clarity and to remind you Mr President Bundle 1 is really..

PRESIDENT RAMAPHOSA: Yes, no.

ADV FREUND SC: Your submission and the document you provided and Bundle 2 is really the documents the commission has put together. So I am now in Bundle 2.

PRESIDENT RAMAPHOSA: Indeed I have got it.

ADV FREUND SC: At page 584 you have the extract from the Rules of the National Assembly. And you will see there at Rule 138.

PRESIDENT RAMAPHOSA: Yes.

10 **ADV FREUND SC:** And for the purposes of performing its functions a committee may subject to the constitution, legislation and other provisions of these rules and resolutions of the assembly.

a. Summon any person to appear before it to give evidence on oath or affirmation or to produce documents which is precisely what we saw in the constitution and then

b. Conduct public hearings.

So you would have been aware presumably that
20 committees of Parliament have this power.

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: And just for the sake of completeness if you go to page 586 you will see that Rule 167 of the 9th Edition of the Rules which – and the reason why I focus on this is because the very moment at which the rules

changed was a moment of deep crisis as we are going to see in a moment. May of 2016 or March of 2016 and you will see that although the rules changed they do not change in any relevant respect. So if we look at Rule 167a and Rule 167c you will see that they are absolutely identically worded to the provisions as they were so both before and after the rule amendment the power to compel oral testimony, the power to compel the production of documents and the right to conduct public hearing is just
10 indisputable. Everybody knows that those powers exist. You accept that?

PRESIDENT RAMAPHOSA: Ja.

ADV FREUND SC: Now moving on from the as it were legal background to the factual background I presume that you accept that there have been indeed some instances in South Africa of effective Parliamentary Oversight through Portfolio Committee Inquiries and I would suggest that we focus right at the outset on the investigation by the Portfolio Committee on Public Enterprises in relation to
20 Eskom. You aware of that and do you accept it was a successful exercise?

PRESIDENT RAMAPHOSA: Indeed.

ADV FREUND SC: And as regards that I just want to as it were sketch a bit of a timeline. It was in May of 2017 that according to Ms Zukiswa Ranto's affidavit – evidence

before this commission the – that committee took a decision to conduct its Eskom inquiry it was really flowing from the allegations in relation to Mr Brian Molefe, allegations in respect of the Eskom board, they sought and were furnished resources that they needed and evidence leader, there is an additional budget they produced their interim report in March and April 2018, they finalised their report in November 2018 and then what I want to point out is what they conclude.

10 They concluded amongst many other things but probably the key sentence is this that it was patently clear that there was undue influence by private individuals and companies over the appointment of the Eskom board members as well as procurement decisions.

 That was as it were the bottom line of what they found and that of course was an allegation that had first been made many years earlier. You accept all of that?

PRESIDENT RAMAPHOSA: (Inaudible).

ADV FREUND SC: Now another example of which I am
20 aware but frankly possibly the only other example of which I am aware was the ad-hoc committee's inquiry into the SABC board and that was appointed by the National Assembly in November 2016 and it reported in February 2017.

 And that too was widely welcomed as a – as an

instance of effective Parliamentary Oversight and I presume that you would agree with that assessment?

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: So if we take those two examples do we also agree that an inquiry by a Parliamentary Committee whether it is an Ad-hoc Committee like the SABC's committee or whether it is a Portfolio Committee like in the PCPE Eskom inquiry is potentially at least an effective tool for Parliamentary Oversight when there is
10 information in the public domain that suggests that there are reasonable grounds for concern about the conduct or performance of members of the executive or other organs of state. It is potentially an effective tool for dealing with that sort of allegation. Do we agree on that?

PRESIDENT RAMAPHOSA: I would agree.

ADV FREUND SC: Now if I can take you to Bundle 1 your own affidavit at page 166 at paragraph 166 it is page 73.

CHAIRPERSON: What is that page number?

ADV FREUND SC: Page 173 in Volume 1.

20 **CHAIRPERSON:** Thank you.

ADV FREUND SC: Paragraph 166. Volume 1 is your own affidavit and it is page 166 – page 73.

PRESIDENT RAMAPHOSA: Yes I thought so. I thought so. Yes.

ADV FREUND SC: Now this comes in a portion of your

affidavit in which you have sketched in some detail how allegations of alleged undue influence by the Gupta family allegations of alleged state capture, allegations of corruption had come to the attention of the senior structures of the African National Congress and you deal in your affidavit and Mr Pretorius later today I am sure will deal with this in a lot more detail and really directly relevant to my line of evidence but you deal with the discussions that took place within the NEC, the questions
10 of how do we address these problems and particularly the questions of what implications if any this should have of the position of the then sitting President.

But in paragraph 166 having sketched that background and having referred to certain attempts that were made you say this:

“Although the ANC as an organisation did not have direct evidence of state capture activities at the time they were being perpetrated and did not have the
20 investigative capacity to probe the various allegations it is necessary to address.”

And you can – want to deal with certain other issues. But the point you yourself make and it seems with respect to be a correct point is that the ANC does not have as an organisation the investigative capacity to probe

allegations of this type. That is your own position as I understand it, correct?

PRESIDENT RAMAPHOSA: Indeed.

ADV FREUND SC: But would you accept that precisely that investigative capacity that you point out that the ANC as a party did not have but Parliament did have – Parliament had it through the provisions that we have just discussed this morning, you accept that?

PRESIDENT RAMAPHOSA: I would.

10 **ADV FREUND SC:** Alright let me move on. Can I take you to Bundle 2 page 409.

PRESIDENT RAMAPHOSA: What page is that?

ADV FREUND SC: 409.

PRESIDENT RAMAPHOSA: Okay.

ADV FREUND SC: Oh sorry my mistake it is 593 – 593. 409 was its pagination in a different (inaudible). 593.

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: Now...

CHAIRPERSON: 593?

20 **ADV FREUND SC:** 593 Chair.

CHAIRPERSON: Okay alright.

ADV FREUND SC: You will see Mr President that this is dated – it is issued as we see at the foot of the page by the Parliament of the Republic of South Africa. It is headed The Parliamentary Investigation into Alleged State

Capture emails. It is dated as I said the 19th of June 2017 and let us just look at the first paragraph.

In the light of the recent accusations of State Capture linked to alleged emails involving a number of Ministers and if I can just pause in parenthesis that it would appear must be a reference to what has come to be known as the Gupta Leaks. So it says:

10 “In the light of these emails involving a
 number of Ministers Parliamentary
 Committees have been directed to urgently
 probe the allegations and report back to the
 National Assembly.”

 And it makes reference in the second paragraph
towards the end of the second paragraph to the
constitution the enshrined oversight function of Parliament
and it says these committees must ensure immediate
engagement with the concerned Ministers to ensure that
Parliament gets to the bottom of the allegations and it says
that these committees must report their recommendations
20 to the House urgently and again expresses Parliament’s
constitutional obligations when there are allegations of this
type in the public domain.

 Now can I ask you Mr President when you first
became aware that this instruction had been issued or was
to be issued?

PRESIDENT RAMAPHOSA: The question is when did I first become aware?

ADV FREUND SC: Yes in other words were you aware of this before it was issued? Did you learn of it after? Did you only learn of it long after? I am trying to understand what you personally knew in relation to this set of investigations which we have come to refer to in this inquiry as the Frolick Inquiry. Because Mr Frolick the then Chair of Chairs issued a number of letters as reflected in this – in
10 this report to four chairs of four committees said please do these investigations. So my question to you is when for the first time did you become aware either that this was going to be happening or that it had already been decided and it was already underway?

PRESIDENT RAMAPHOSA: Well Chairperson once these Gupta Leak emails came out it became clear to many of us that there needed to be a response of one sort or another. The ANC itself without having the investigative powers clearly knew that it would need to rely to get to the bottom
20 of this on a number of other structures and indeed Parliament would be one of those so when the Chair of Chairs Cedric Frolick MP issued this; this in our view would have been in line with what Parliament needed to do at that time because a flood of evidence was now becoming evident and available. Personally whether I became aware

of the move by Frolick I would not be able to put my finger on but once this instruction is noted and letter had been issued, I was quite relaxed and happy that this process had started.

ADV FREUND SC: Alright. Now, Mr Frolick testified that Mr Jackson Nthembo was particularly supportive of this exercise. I presume you can confirm that?

PRESIDENT RAMAPHOSA: Yes, I can confirm that.

ADV FREUND SC: That was you, Mr President because
10 although Mr Nthembo has furnished an affidavit, he, of course unfortunately, passed away. So he has never testified before us. So I need to try and ask, as it were, indirectly things that I would have otherwise would have asked Mr Nthembo.

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: Mr Frolick also testified as follows. He said:

20 “Later in 2017, I think it was in October or in November, the then Deputy President, who is now the President of the country, came to the Caucus to reinforce the importance of parliamentary committees to conduct these types of, be it inquiry or investigation or whatever...”

Do you accept that that evidence of Mr Frolick is

factually correct?

PRESIDENT RAMAPHOSA: It is factually correct.

ADV FREUND SC: Perhaps you could explain to us what happened, why you went to the Caucus, what happened in the Caucus that he is referring to?

PRESIDENT RAMAPHOSA: I guess I would start it off with the processes that the ANC had decided that it should embark upon and those would go back the 53rd Conference of the ANC which would have been – which was held in
10 2012 when I was elected Deputy President where the ANC took a decision that we now needed to get our parliamentary structures to be more activist, to be more alert when it comes to the issue of oversight, to exercise more accountability or to demand more accountability on the Executive, whether it be at national level or provincial and indeed even lower than that.

Now I must confess that it took a while within the African National Congress for this type of initiative to take route and it was during this period that the activism of
20 parliamentary colleagues started moving forward in a much more demonstratable way and I remember very clearly that I had occasion to address Caucus and insisted that our parliamentary committees must now move ahead with greater vigour on the issue of oversight.

And this, in a way, was also prompted what was

coming out in the open about this issue of state capture that we needed to go to the bottom of. So the events that happened activated this decision that had, in some ways, remained latent and it now was being activated and our committees became more activists and as we had said, we wanted an activist type of Parliament and that is what happened then. I addressed Caucus to that effect and that then started or further went on with this train of activism events that started unfolding.

10 **ADV FREUND SC:** I did hear you correctly. You say it was the 2012 NEC?

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: That specifically made such a decision as you described?

PRESIDENT RAMAPHOSA: Yes, it was the National Conference.

ADV FREUND SC: The National Conference?

PRESIDENT RAMAPHOSA: Yes, sir.

ADV FREUND SC: So when you say the National
20 Conference - I am sorry, I said NEC. Of course, that is wrong.

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: It is the ...[intervenes]

CHAIRPERSON: ...conference.

ADV FREUND SC: ...the elected conference.

[Parties intervening each other – unclear]

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: Alright.

PRESIDENT RAMAPHOSA: National Conference.

ADV FREUND SC: And from that time – in fact, I think we have that document. I think it is at Bundle 1, page 140 and the following.

PRESIDENT RAMAPHOSA: 140, did you say?

ADV FREUND SC: 140 and following.

10 **PRESIDENT RAMAPHOSA**: Yes.

ADV FREUND SC: And you will find the resolutions from 150 and following. Mr President, I had not anticipated the answer you gave me about the 2012 Conference. So, I have not read through this document but I am just wondering if you are in a position to point out to us perhaps now or perhaps later you have had a moment where we will find in this – in these ...[intervenes]

PRESIDENT RAMAPHOSA: Yes.

20 **ADV FREUND SC**: ...conference resolutions what you are talking about. Perhaps that is an unfair question.

PRESIDENT RAMAPHOSA: [laughs]

ADV FREUND SC: But I should find it somewhere in these ...[intervenes]

PRESIDENT RAMAPHOSA: It is not unfair. I should know but this morning I woke up on the other side of the bed.

So...

ADV FREUND SC: [laughs]

CHAIRPERSON: [laughs] Well ...[intervenes]

ADV FREUND SC: We can come back to that.

CHAIRPERSON: Well... Ja, I think we can come back.

Your junior ...[intervenes]

ADV FREUND SC: ...activity ...[intervenes]

CHAIRPERSON: ...can have a look at the resolutions.

Ja.

10 **PRESIDENT RAMAPHOSA:** Ja. But it is there. It is there
...[intervenes]

CHAIRPERSON: Ja.

ADV FREUND SC: Now, Mr President. If we can step
back a little?

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: And focus on your own personal role.

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: You were, as I understand it, Deputy
President of the Republic from the 25th of May 2014 and
20 you remained in that capacity until your appointment as
President on the 15th of February 2018. Is that correct?

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: And as Deputy President of the
Republic, you performed several different roles of
relevance to this topic, the topic of parliamentary

oversight. One of those is that you were appointed as the Leader of Government Business in Parliament. Is that correct?

PRESIDENT RAMAPHOSA: H'm?

ADV FREUND SC: Now, if you could just briefly describe to us so we have some understanding of what that role entails and particularly what that role entails in relation to the question of oversight by Parliament over the Executive and accountability by the Executive to Parliament?

10 **PRESIDENT RAMAPHOSA:** The role of the Leader of Government Business, it is really the facilitation of the link between the Executive and Parliament, two distinct bodies, obviously observing the separation of powers but more specifically to ensure that the Executive works, one, according to the rules of Parliament, the Executive responds to questions from Parliament, from parliamentarians in the form of written questions, in the form of appearing in Parliament, answering questions whenever.

20 And attend, whenever they are asked in attendance in Parliament, and ensuring that members of the Executive observe or fulfil, rather, their duties as members of Parliament. And also to work together with the heads of Parliament, specifically the Speaker, Deputy Speaker as well as the Chair of the House, of the NCOP,

as we call it. And ensure that there is harmony in the working of all these structures. Now that is largely the role that the Leader of Government Business plays.

And indeed, to also ensure that - it is not so much to supervise, it is not to supervise activities of Parliament. It is to play that link between the two because Parliament is independent. It is a distinct organ of the state and the Executive is also. So, the Leader of Government Business plays that very delicate role between
10 the two just to ensure that there is that harmony.

And sometimes, even parliamentarians tend to want to exaggerate the role of the Leader of Government Business and it is not, and as Deputy President, you really work also under the leadership of their president who links the Executive. So in some ways, your role much as it would appear like it is expansive. It is also a role that is constricted in terms of your role as Deputy President working together with the President.

CHAIRPERSON: Is it largely a facilitation role?

20 **PRESIDENT RAMAPHOSA:** It is largely that.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: Ja.

CHAIRPERSON: To make sure the smooth functioning of both the Executive and Parliament.

PRESIDENT RAMAPHOSA: It is not an Executive role.

CHAIRPERSON: Ja.

PRESIDENT RAMAPHOSA: And I see it now that, you know. I play the role of President that the Deputy President plays that role and I am able now to look at it from an advantage point of view and see how that role spans itself out.

CHAIRPERSON: H'm, h'm.

PRESIDENT RAMAPHOSA: And of course, I should add that to the extent that it is an Executive role in those
10 inverted commas. It is where, as the Leader of Government Business, you are able to exert pressure on, for instance, towards ministers, if I can call them that, to answer questions. There are occasions when the Leader of Government Business will be quite precipitous in Cabinet in insisting that members of the Executive must answer questions and you know pull them on the carpet and even meet them and say you have got fulfil your obligations. So the role is a little behind the scenes to some extent.

20 **CHAIRPERSON:** Okay.

ADV FREUND SC: And I presume, it follows from what you have said, that where instances arose, and this Commission has heard of quite a few instances, where ministers were due to attend meetings in portfolio committees and simply did not turn up.

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: That would be part of the LOGB business to try and address and rectify that sort of problem?

PRESIDENT RAMAPHOSA: Correct.

ADV FREUND SC: Can I take you back now to Bundle 1, page 177? I think we found the paragraphs we were looking for. Your bundle, Bundle 1, page 177.

PRESIDENT RAMAPHOSA: Yes.

10 **ADV FREUND SC:** And just to get your bearings.

PRESIDENT RAMAPHOSA: Indeed.

ADV FREUND SC: You will see that document starts at 157 and we are now dealing with the part that seems to be the part you had in mind.

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: In strengthening the legislature.

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: Is that the resolution you had in mind?

20 **PRESIDENT RAMAPHOSA:** That is the resolution I had in mind.

ADV FREUND SC: And I see, what it says amongst ...[intervenes]

CHAIRPERSON: I am sorry, Mr Freund. What is the paragraph?

ADV FREUND SC: It is paragraph 12 under the heading,

Strengthening of the Legislatures, at page 177.

CHAIRPERSON: Yes?

ADV FREUND SC: And there are various sub-resolutions of 12.2 and I am just going to focus on several of those.

CHAIRPERSON: Oh, okay. No, no it is fine. I can see paragraph 12.2.1.

ADV FREUND SC: And if I then take you to 12.2.3, it says:

10 “The legislature’s oversight model and
 capacity should be improved...”

 That is, presumably, one of the decisions made at this conference?

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: And if I can just digress on that. In 2009, I am not sure if you know this but I imagine you do, the so-called Oversight and Accountability Model, the OVAC model was adopted by Parliament but that referred quite a bit of evidence in this Commission that good suggestions apparently adopted in 2009 had to this day not
20 yet been implemented.

PRESIDENT RAMAPHOSA: H’m.

ADV FREUND SC: And I think that what I am seeing here is that at the 2012 ANC Conference that problem was recognised. It was said it should be addressed. Am I understanding that correctly?

PRESIDENT RAMAPHOSA: You are.

ADV FREUND SC: And is there anything else you would like to refer me to, to support the proposition that you made that this conference made a deliberate decision that there should be more vigorous parliamentary oversight over the Executive, more vigorous holding the Executive to account?

PRESIDENT RAMAPHOSA: Without referring to any specific document, I would say that, if I can call it a
10 political speak of this and the interpretation that was overlaid on 12.2.3 where we say improve the capacity of our oversight, meant that we needed to have our Parliament and legislatures to be more activist. To be much more – to improve their oversight role. And you – I could refer you to a number of speeches that were also given by a number of leaders including myself about activating, if you like, the activism of our parliamentary structures on the question of oversight. So it was recognised that this was one of the weak areas.

20 **CHAIRPERSON:** H'm.

PRESIDENT RAMAPHOSA: And that is why one of the paragraphs then refer to:

“The legislature should play a more effective role in shaping the national agenda...”

CHAIRPERSON: Well, actually, Mr President. Paragraph

12.2.1 makes the point you made quite early in your answer to Mr Freund's question that:

“There should be a more activist people centred model of legislatures should be developed...”

PRESIDENT RAMAPHOSA: Precisely the point.

CHAIRPERSON: Yes, yes.

PRESIDENT RAMAPHOSA: Yes, Chairperson.

CHAIRPERSON: Yes.

10 **PRESIDENT RAMAPHOSA**: If you read from that and the interpretation, that was also put in various speeches that were made following that conference. It reinforced this activist role that we wanted our legislatures to play because there had been a realisation that it was lagging and lagging behind and it, therefore, for Parliament needed to be - and in political speak in the ANC, we always say, that Parliament was a sight of activism, it was a sight of struggle.

20 So we needed to have parliamentarians who would be more active particularly on oversight. So it was recognised. I should immediately add that it did take some time to take effect and to be fully activated and it took the better part of three years but when it did start happening ...[intervenes]

CHAIRPERSON: Well, I think five years Mr President.

PRESIDENT RAMAPHOSA: Well, I would say four.

CHAIRPERSON: [laughs]

PRESIDENT RAMAPHOSA: [laughs] Give some change.
I would say four years.

CHAIRPERSON: [laughs] Oh, yes.

PRESIDENT RAMAPHOSA: I was being a more ambitious
when I said three. [laughs]

CHAIRPERSON: Well, you are the President of the ANC.
[laughs]

10 **PRESIDENT RAMAPHOSA:** [laughs] It did take up four
years before it was fully activated.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: And as I said, Chairperson. It
was actually brought to full effect by the events that were
happening. The Gupta leak emails just really were a flood
of evidence that required that Parliament which had an
investigative and an oversight role should actually start
doing its work.

20 **CHAIRPERSON:** H'm. I want to put my understanding of
paragraph 12.2.1, Mr President and I would like you to say
whether you agree with my interpretation of it. My
interpretation of it – and let me say what it says firstly.

“There should be a more activist people
centred model of legislatures should be
developed...”

My understanding of it, is that two features of this paragraph is that the ANC wanted to see more activism on the part of legislations including Parliament but two, people centred model seems to suggest to me that this resolution was saying, those who are in Parliament must put people first. Is my interpretation in accordance with yours?

PRESIDENT RAMAPHOSA: Absolutely. But it could also that the people centred approach would also mean that we
10 should also be willing and be prepared to work with non-parliamentary structures.

CHAIRPERSON: Yes. No, no I – ja.

PRESIDENT RAMAPHOSA: To listen to them.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: To hear their views.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: And that is hearing the views of the people.

CHAIRPERSON: Yes. No, not it does not exclude
20 ...[intervenes]

PRESIDENT RAMAPHOSA: It does not exclude ...[intervenes]

CHAIRPERSON: ...hearing other people.

PRESIDENT RAMAPHOSA: That is right.

CHAIRPERSON: Okay.

PRESIDENT RAMAPHOSA: Ja.

CHAIRPERSON: Mr Freund.

ADV FREUND SC: Thank you, Chair. Mr President, can I refer you to Bundle 2 at page 602?

CHAIRPERSON: What is the page on bundle 2?

ADV FREUND SC: 602 in Bundle 2.

CHAIRPERSON: 602...

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: That should be headed, The Political
10 Committee. You have the right document?

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: Alright. Now, Mr President, we have heard very little in these proceedings about the Political Committee. This document, I simply downloaded it a couple of nights ago from the ANC's website under Parliament, under Caucus. You go through and this is what I find and we have printed it out and it tells us the following:

20 "The ANC Political Committee is responsible for the overall political guidance of the organisation's parliamentary Caucus and the Office of the Chief..."

That is presumable the Office of the Chief Whip?

PRESIDENT RAMAPHOSA: Chief Whip, yes.

ADV FREUND SC: Alright.

“Amongst its chief responsibilities, the committee provides strategic direction to Caucus on macro political matters within the institution...”

Now I presume that is what we see in this document. This is correct, is it?

PRESIDENT RAMAPHOSA: It is correct.

ADV FREUND SC: And it says on the second paragraph that:

10 “The Political Committee is a sub-committee of the NEC...”

Is that also correct?

PRESIDENT RAMAPHOSA: It is correct.

ADV FREUND SC: And then it states:

“The members of the Political Committee, [it states as] member number one, Cyril Ramaphosa, Chairperson...”

20 And it then gives another ten names. I do not know if that is still correct or if this is an out of date document, whether this referred to the period when you Deputy President or whether it still applies when you were President?

PRESIDENT RAMAPHOSA: No, it does not apply today. The Political Committee is chaired by the Deputy President of the ANC and its responsibility is as is set out in this

page that you have referred to. So right now, David Mabuza is the Head of the Political Committee and all the other members would be, in terms of their titles, would be the Speaker, it would be the Chief Whip, and it would be the Chair of NCOP and so forth. And the others would then be brought in as per their members of the National Executive. So it is the sub-committee of the National Executive Committee.

ADV FREUND SC: And this particularly constituted
10 membership of the Political Committee that we see on this page. Would you be able to tell us what period this would have been referring – this would have been the composition of the Political Committee?

PRESIDENT RAMAPHOSA: It would be from the time I became a member of the National Assembly. That would be 2014.

ADV FREUND SC: Indeed.

PRESIDENT RAMAPHOSA: H'm.

ADV FREUND SC: And would that have remained the
20 case until you became President?

PRESIDENT RAMAPHOSA: That would have remained the case until I became President.

ADV FREUND SC: So, Naledi Pandor, Baleka Mbete, Thandi Modise and all the other names that we read there, they collective for that period compromised of the Political

Committee?

PRESIDENT RAMAPHOSA: Indeed.

ADV FREUND SC: Now, I just want to read to you something Mr Frolick said. I think it is really saying the same thing as what we read here but I just want to put it to you. He says:

10 “The Political Committee is an internal ANC structure consisting of members of Parliament and members of the Executive who have been deployed by the ANC to serve on that structure.

That structure is usually chaired and convened by the Deputy President...”

Then I leave out something and he continues:

20 “The function of the Political Committee is to give guidance and oversee the work of the deployees of the African National Congress in the National Assembly and also in Parliament...”

And he says:

“...also to deal with any situation that may occur and may require further guidance...”

Would you accept that?

PRESIDENT RAMAPHOSA: Indeed.

ADV FREUND SC: Now, you were not, I do not think, in

Parliament at the time, that you will recall that there was a SCOPA Inquiry into the arms deal quite some years ago and there was some considerable controversy about whether that committee had been enabled to do what it thought was appropriate. And I read recently at work, by an academic commentator – it is not in the bundle but I am quoting from Christie van der Westhuizen, Working Democracy, Perspective on South Africa’s Parliament at 20 Years. And she says this.

10

She says:

“The Political Committee was formed after SCOPA’s inquiry in 2000 into the arms deal with “parenting intention to exert direct control over ANC and...”

Do you think there is any fairness in that?

Would you like to comment on that view?

PRESIDENT RAMAPHOSA: I think that is fanciful

because – I guess that is her position or the author’s position but what I do know is that it did become necessary

20

to have a sub-committee of the ANC to give general guidance to members of the ANC in Parliament where a fairly senior leader of the ANC in the form of a Deputy President and not the President would lead this structure and be able to report back to the National Executive Committee.

Now Parliament being what we characterise as a sight of struggle is seen by the ANC as a very important forum, really, where we need to give guidance on an ongoing basis, and we are involved in whose activities we need to get involved. It could not just be left without any form of giving guidance and that to me is the correct political posture to take in this regard.

ADV FREUND SC: Thank you. If I could ask you to turn to the next page in the same bundle, Bundle 2 at page 10 604? This is the linked document from the same website of the ANC that is headed ANC Parliamentary Caucus. Do you have that?

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: Now, I am not going to read into the record the whole – the detail there explains how the Parliamentary Caucus works but I want to draw your attention to the fourth paragraph, that is the one that starts with the Principle Tasks and the last sentence of that fourth paragraph, it reads as follows:

20 “The ANC Caucus carries out the above functions under the supervision of the Political Committee...”

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: Would that be a fair description?

PRESIDENT RAMAPHOSA: It is.

ADV FREUND SC: Now, the Political Committee in the period 2014, 2015, 2016. Did it meet regularly?

PRESIDENT RAMAPHOSA: Yes, it did.

ADV FREUND SC: Could you give us some sort of insight into sort of how regularly, typically it would meet?

PRESIDENT RAMAPHOSA: Oh ...[intervenes]

ADV FREUND SC: Or is this monthly ...[intervenes]

PRESIDENT RAMAPHOSA: I would say ...[intervenes]

ADV FREUND SC: ...half-yearly? I have got no sense.

10 **PRESIDENT RAMAPHOSA:** No, at the very least, it would meet monthly.

ADV FREUND SC: At the least it would meet monthly?

PRESIDENT RAMAPHOSA: Ja.

ADV FREUND SC: So ...[intervenes]

PRESIDENT RAMAPHOSA: At times whenever there were issues that needed to be address it would be convened. So it did not meet annually or six-monthly. It would meet a little bit more regularly and certainly not weekly but I would say, at the very least, once a month.

20 **ADV FREUND SC:** So, therefore, if we want to understand where does the direction of the caucus come from on controversial issues of the day, it is fair to look to the political committee.

PRESIDENT RAMAPHOSA: Yes, it would be fair you looked at because there are a number of layers as well.

The Chief Whip plays a critical role in the work and the affairs of the political committee but the Chief Whip also plays another role in the affairs of parliament as well so in a way they have a dual role and sometimes caucus meet without the political committee having discussed various matters, caucus having to deal with current matters, contemporary matters on an ongoing basis in relation to legislation, the budget and everything else.

ADV FREUND SC: And you have told us a moment ago
10 that although you cannot be specific and exact, the committee – the political committee would meet probably no less than monthly. Would you normally attend? I mean, I am sure there might have been exceptions but was it the normal practice for you as Chair of the committee to be present at those meetings?

PRESIDENT RAMAPHOSA: Yes, I would normally attend
but certainly not every meeting. Some meetings would take place in my absence and a member of the committee would be delineated to chair the meetings of the political
20 committee.

ADV FREUND SC: And if you miss meetings was there some process of minutes or something like that where you could keep yourself abreast of what might have happened in your absence?

PRESIDENT RAMAPHOSA: Ja, I mean it was a committee

so it had minutes and I would be, you know, kept abreast.

ADV FREUND SC: Yes, alright. I want to move to a different topic. Sorry, just one last question on this line. You told us earlier that in October or November 2017, as Mr Frolick described, you went to address the caucus in support of these portfolio committee inquiries. Can I ask you, in what capacity you did that, was that as chair of the political committee, what were you – what capacity were you speaking in the caucus on that occasion?

10 **PRESIDENT RAMAPHOSA:** Well, it would have almost – well, as chair of the political committee certainly because that was my official role in relation to the caucus, yes.

ADV FREUND SC: Yes. Now I want to go back a little earlier, we are going to come to the debate about whether it was three years or five years or whatever. This is the question that interests me.

CHAIRPERSON: But well, Mr President, I think you will probably need to think about whether it is not five years because even Mr Mantashe, when he testified here, he did
20 say the ANC is very slow to do things. Did he really say that? We will play the recording.

ADV FREUND SC: Mr President, can I take you to bundle 2, page 606?

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: I am sorry, what is the page number?

ADV FREUND SC: 606.

CHAIRPERSON: Okay.

ADV FREUND SC: Bundle 2. This is a newspaper report that I also discussed with Mr Mantashe a few days ago. There are of course many hundreds of news articles that we could focus on but this one I choose to illustrate an issue. I would like us just to look at and understand what is being reported in the Sunday Times on the 27 February 2011 under a heading – and I am speaking from memory, I
10 might be wrong, but I think this was the banner headline on the front page of the Sunday Times:

“Ministers ‘shiver’ when summoned to family’s home.”

And I just draw your attention to some of the allegations in this report.

PRESIDENT RAMAPHOSA: They shiver when they are summoned to whose home?

ADV FREUND SC: It says family’s home.

PRESIDENT RAMAPHOSA: Oh, family’s home.

20 **ADV FREUND SC:** And the family, when one reads the article, is the Gupta family’s home.

PRESIDENT RAMAPHOSA: Oh, okay.

ADV FREUND SC: That is the allegation.

PRESIDENT RAMAPHOSA: Oh, okay.

ADV FREUND SC: That is the allegation.

PRESIDENT RAMAPHOSA: Okay.

ADV FREUND SC: If you go down to about the fifth paragraph you will see there is a paragraph that starts:

“A member of the working committee...”

Do you see that?

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC:

“A member of the working committee who attended the most recent meeting...”

10 This is presumably the National Working Committee which is the, as I understand it, the most senior day-to-day structure of the African National Congress.

“A member of the working committee who attended the most recent meeting said:

‘The concern is that these people (the Guptas) now have influence in the appointment of CEOs and Chairmen of state owned entities which then means the ANC has lost its way and its influence in these crucial deployments.’”

20 It says two paragraphs further down:

“The Gupta brothers, Atul, Ajay and Rajesh, also known as Tony are said to wield so much power that they often summoned cabinet ministers and senior government officials to their family compound in Saxonwold, Johannesburg.”

And it continues:

“Other accusations levelled at the Guptas are that they telephoned at least three deputy ministers and told them that they were to be promoted days before Zuma announced his cabinet reshuffle; phoned several ministers to assure them that their jobs were secure ahead of Zuma’s announcement; bragged about their influence, telling one ANC Premier that he was fortunate they went to his office to see him, as many other public officials had to meet them at the Gupta’s home; pressured several top officials at the government communications’ section and directors of communication at various departments; placed advertisements in their newspaper at the New Age.”

10

And then in the middle of the page:

“A member of the working committee claimed ministers feared the family believing they had too much influence over Zuma, ‘people are scared of them and they are called to their house all the time’. The Guptas are known to be the President’s people and that is why even ministers shiver. Another top ANC leader said you must see the way they treat ministers.”

20

Now, Mr President, I understand this is merely a report in

the Sunday Times but it is a report purporting to quote off the record very senior ANC personnel making very serious allegations. Do you accept, Mr President, that if those allegations were true, a matter yet to be determined certainly at that time and perhaps still by this Commission, but if those allegations were true, they reveal a subversion of our constitutional order. I see you nod?

PRESIDENT RAMAPHOSA: I nod, yes. Yes indeed, I mean, if these were true, they would be because our
10 constitutional architecture is such that things like the appointment of ministers, deputy ministers, should be the sole preserve of the President and there should really be no one who goes around offering people positions like that and telling him that you will be fired, you will be this and that and that. No, it would be subversion.

ADV FREUND SC: And they same when we look at the section dealing with the SOEs. You remember I read you the passage:

20 “The concern is that these people now have influence in the appointment of CEOs and chairmen of state owned entities and influenced those deployments.”

That too would be a subversion of our constitution on legal order.

PRESIDENT RAMAPHOSA: Precisely, that too would be a

subversion particularly coming from people who have no real role either in the executive or even in the party and that, to me, would be unbecoming.

ADV FREUND SC: Now we have agreed this morning that when there are allegations that implicate a senior executive, parliament has a constitutional duty to get to the bottom, to investigate those allegations and to act appropriately in accordance with what emerges, with the benefit of hindsight at least. And do you agree that then
10 parliament should have been starting to investigate the veracity or otherwise of these allegations?

PRESIDENT RAMAPHOSA: I do agree that parliament has a role and when it comes to allegations of this nature, I would say it is the governing party that should activate its own processes and I guess where it fails, it then needs to yes, rely on parliamentary processes or structures. That would need to go beyond just newspaper article, they would need to have much more substantive information which is why the Gupta emails saga presented much more
20 weighty information that needed to be followed up, so it was no longer just an allegation, there was real substance with documents and what amounted – or adhered to the real evidence that could be followed through.

So whilst I agree that yes, parliament structures should – they need to do so based on more substantive

information such as they did when they started their activist process.

ADV FREUND SC: Yes but, Mr President, as you well know, the Gupta Leaks were more than five years after this.

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: So for more than five years these allegations – and this is one example and I am sure you were aware that there were literally hundreds of articles.

10 **PRESIDENT RAMAPHOSA:** Yes.

ADV FREUND SC: Making allegations of this character. For more than five years, I want to put to you, parliament, as a matter of fact, did not investigate, hold inquiries or do what was appropriate to investigate the veracity of these facts. Do you accept that?

PRESIDENT RAMAPHOSA: I accept that and I concede that and it is for that reason that in 2012, the decision that I referred you to which you gladly showed me the relevant passages of the resolutions of – was then taken because,
20 Chairperson, it was realised that we now need to activate another arm to go into this much more deeply than the ANC itself could and that was the parliamentary process and yes, as you said earlier, there was a dropping of the ball, if I may say so, at that level. That will be conceded.

ADV FREUND SC: And just to get certainty, I assume that

the conference to which you have referred, the 2012 conference, like all conferences, as I recall, take place in December, so it would have been December 2012 that that resolution was taken.

PRESIDENT RAMAPHOSA: Indeed.

ADV FREUND SC: Now in your affidavit at page 41 in bundle 1.

PRESIDENT RAMAPHOSA: 48 you say?

ADV FREUND SC: 41 I said.

10 **PRESIDENT RAMAPHOSA:** Got it.

ADV FREUND SC: Just before I ask you about that, there was a question I omitted to ask. When the Sunday Times report appeared and other reports in the Mail and Guardian, Business Day, various other media, the then Secretary General Mr Gwede Mantashe issued a statement, he said these allegations are simply racist. Do you agree with the benefit of hindsight there was no basis for that response?

20 **PRESIDENT RAMAPHOSA:** Yes, with the benefit of hindsight I think all of us would agree that our reading and interpretation of a whole lot of things that happened then was blinded by the events of the time and that is why, Chairperson, I will comment the role of the media. The media has played a phenomenal role in investigating state capture and bringing it to light and continuously reporting

on it and at times, as politicians, we do not always believe what the media writes because we look at what they write through a particular prism or lens but in this regard I have to commend them, the media, that is, for the role – phenomenal role that they have played and I would say they played a patriotic role and possibly I have never ever said patriotic role and I am prepared to say it now, that they have been patriotic in the way that they have followed all these matters through and they often make us very
10 uncomfortable as politicians but in this case, we will applaud.

CHAIRPERSON: Well, I must just say, Mr President, for what it is worth, I think I have said it before, I too think that the media played a very important role and facilitated to a very large extent, because of their investigation, the work of this Commission. There is a lot of assistance that this Commission in its investigations found in material that was unearthed by the media in their own investigations, in their articles, so there is no doubt that they have really
20 played an very important role.

PRESIDENT RAMAPHOSA: If I may add, Chairperson, that is why when they are targeted with threats, sometimes when they are attacked physically and sometimes when they are harmed and sometimes killed, it is an affront against democracy and what our country

stands for and I have read in one of the affidavits that one journalist, Adriaan Basson, was threatened to a point where he needed to pen down an affidavit detailing the threat that he was subjected to as he was investigating, trying to ferret corruption and unlawful contracts that had been awarded. So it is important for our country to stand firm in defence of a human right that is enshrined in our constitution about the freedom of the press and upholding the right of journalists to do their work and to report on these types of matters however uncomfortable it might make us feel.

CHAIRPERSON: Mr Freund?

ADV FREUND SC: Thank you, Chair. Mr President, I had referred you to page 41, I had in mind paragraph 93. I do not want to unduly belabour this point and I think you have touched on this paragraph yesterday with Mr Pretorius, but you will recall this is the incident where Minister Fikile Mbalula according to other evidence before the Commission, there was quite an outburst at this NEC meeting and amongst the things that he said at the time was that he had been told by the Guptas, I think some two weeks or so before his appointment as minister that he was to appointed as minister. You say in your affidavit yes, that is quite right, I recall the incident. You say – and I am sure it is quite right, the ANC did not really act in response

to that but you also said that:

“For me the statement did not at the time prompt any specific concerns about the capture of the state.”

Now I would just like to re-examine that statement in the light of the very article we have just looked at, the Sunday Times article which preceded it. It preceded it by three or four months. That was one of the core allegations made in that article, not specifically by name with reference to that
10 specific minister, but now you have a minister standing up in an NEC, I do not know if he was standing up or sitting down, but certainly expressing his view forcefully. Surely this must have been of very much greater concern and really ought to have elicited quite a different reaction given what was already being alleged in the public domain then to really just make the point well, it did not raise any specific concerns at the time.

PRESIDENT RAMAPHOSA: Yes indeed and to quite a number of it did not raise at the time the concern that it
20 should have evoked in us when one looks at it with the benefit of hindsight and that one is prepared to concede it did not and when one looks back at, including even the article that you are referring to, you will almost kick yourself in the foot and say these were the signs that we needed to pay attention to, the lights were flashing amber

and we should have been more alert at looking at them, but we did not at the time.

ADV FREUND SC: Now, Mr President, if I can refer you to another article at page 609 in bundle 2.

CHAIRPERSON: What page?

ADV FREUND SC: Page 609 in bundle 2. We are now in 2013, in May of 2013 and three paragraphs from the bottom of page 609, Mr Mantashe is reported by The Star as saying this – not saying this, it is reported:

10 “Mantashe allegedly went so far as to tell some ministers to have the backbone and to refuse to take instructions from the Guptas.”

If you think back to that time were the members of the political committee already of the view that there was a problem of ministers taking instructions from the Guptas and the need for them to backbone to resist such instructions?

PRESIDENT RAMAPHOSA: Well, this was 2013, I was not yet a member of parliament again.

20 **ADV FREUND SC:** Ah, correct.

PRESIDENT RAMAPHOSA: I had been elected President – Deputy President, rather, but I was not yet in parliament.

CHAIRPERSON: Of the ANC?

PRESIDENT RAMAPHOSA: Yes, Deputy President of the ANC.

CHAIRPERSON: Deputy President of the ANC, yes.

PRESIDENT RAMAPHOSA: I was not yet a member of parliament and so could not have been Chair of the political committee.

CHAIRPERSON: But of course just for the sake of completeness, being Deputy President of the ANC obviously you would have been a member of the NEC.

PRESIDENT RAMAPHOSA: Yes, I was a member of the NEC, indeed.

10 **ADV FREUND SC:** I think the point you make is a fair point, that you were not on that political committee in 2013 and therefore, certain questions that I would otherwise have asked I will not ask but I want to fast-forward now. We were in 2011, we were in 2013, I want to fast-forward to February of 2016.

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: And can I take you to page 612, bundle 2? This is an article reporting in some detail on what you yourself was saying publicly in February of 2016.

20 The article starts as follows:

“Deputy President Cyril Ramaphosa says the ongoing review into the performance of state owned enterprises will go a long way into rooting out the capture of government institutions by politically connected individuals for personal gain.”

Now I presume you are fairly quoted in saying that?

PRESIDENT RAMAPHOSA: Indeed.

ADV FREUND SC: And I presume it seems to be a matter of logic that what that necessarily implies is that by February 2016 you personally were of the view that there was a need to root out the capture of government institutions by politically connected individuals for their personal gain.

PRESIDENT RAMAPHOSA: Yes, I agree with that.

10 **ADV FREUND SC:** And then you will recall that in March of 2016 a minister or Deputy Minister Mcebisi Jonas made a public statement and his statement included, that according to him, the Guptas represented that they could have been appointed as the Finance Minister and that they offered him a huge bribe if he would do their bidding, if appointed. I am sure that came to your attention at the time when that statement was made.

PRESIDENT RAMAPHOSA: Indeed.

20 **ADV FREUND SC:** Now did you or the political committee in March of 2016 have any reason to doubt the credibility of Mr Jonas when he made those allegations?

PRESIDENT RAMAPHOSA: No, I personally did not doubt the credibility thereof but ...[intervenes]

ADV FREUND SC: And – sorry, I interrupted you.

PRESIDENT RAMAPHOSA: But we sat in a process

through the ANC itself through the Secretary General's office to engage with Mcebisi Jonas so that we could go to the bottom of it.

ADV FREUND SC: Now that is where I think the tension between your views and the questions I am putting now starts to emerge because if I hear you, I hear you to be saying the proper way to deal with this is to deal with this internally through the party structures.

PRESIDENT RAMAPHOSA: H'm.

10 **ADV FREUND SC:** And I want to put to you for your comment that there is nothing wrong with that happening, of course the party is entitled internally to address its own internal affairs.

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: But when allegations of this type – and of course it was not just an allegation, of the Hogan's allegations, Mentor's allegations and lot so other allegations were made at that time. When allegations of that type were made, was it not incumbent on the political
20 committee, recognising what we recognised at the outset of your evidence this morning, to see to it that the National Assembly probe these inquiries and investigate it?

PRESIDENT RAMAPHOSA: Fair enough, I think we obviously initially wanted to get to the bottom of this through the party structure and that does not mean that we

did not believe that it could not be better done but as you will have seen, it may well have taken a number of months but it was then when the parliamentary structures became activated to look into these matters.

When we realised that the party structures had their limitations, serious limitations, even Secretary General at the time did say there is just no way we can investigate this matter and get to bottom of it and the best way would be through the structures that we are part of in parliament
10 to go into this matter. I would not immediately say whether this one was then referred for such an investigation, I think the accumulation of all these matters then prompted, I would say again, the activation of the resolution that we took, that we now needed to have a much more activist parliament that would look into these matters and that is when a flurry of activity then commenced starting off, as the late Jackson Mthembu says in his affidavit, and he says that was the turning point when some of these committees then started their work of looking closely into
20 all these matters. And a turning point had to be reached because it was just a flood and a flurry of all these, so – but that is how it happened.

ADV FREUND SC: Thank you. Can I ask you please to go to page 619 in volume 2?

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: There you will find a letter, about which quite a lot of evidence has been led already, from Natasha Mazzone, the shadow Minister of Public Enterprises, she was the then chairperson of the portfolio committee on Public Enterprises, page 619, are you with me? Page 619 in Bundle 2 it should be a letter ...[intervenes]

CHAIRPERSON: This is the bundle that had the article that we just talked about, page 619, black numbers.

10 **PRESIDENT RAMAPHOSA:** 619, oh, I am looking at 618 sorry about that.

ADV FREUND SC: Not at all.

PRESIDENT RAMAPHOSA: Ja, yes.

ADV FREUND SC: That you will see is the letter dated the 14th of March 2016, which is very much the period we just been talking about addressed by the Shadow Minister of Public Enterprises, Natasha Mazzone, to the Chairperson of the Portfolio Committee on Public Enterprises, requesting that the Portfolio Committee on
20 Public Enterprises conducts a full Parliamentary inquiry into the capture of SOE's by the Gupta's, it refers to a number of allegations of undue influence that had been raised in relationship with Gupta's involvement in a number of State owned enterprises.

And asks that the Gupta's be summoned to appear

that, amongst others Minister Gigaba being summoned to appear that SOE's and Chairpersons of the largest SOE's be summoned to appear, and the evidence says that the committee, because of the view taken by the African National Congress members of Parliament refused to conduct that inquiry.

Now, my first question to you is this with the benefit of hindsight, do you agree that that was ill advised and it would have been far better had they exceeded to that
10 request?

PRESIDENT RAMAPHOSA: Yes, it was ill advised as it turns out, this mistake, this error was then corrected as we moved forward, as set out in late Jackson Mthembu's affidavit, where he says these committees started being very active, but at the time, I would say it was ill advised.

ADV FREUND SC: Now, Mr President, this would have been a measure of great sensitivity, I assume, whether or not at that time in our history, a Portfolio Committee should or should not accede to a request for a public inquiry of
20 the type we seeing here. Did this matter come before the Political Committee for guidance?

PRESIDENT RAMAPHOSA: Not in that direct manner, it did not come to the Political Committee in that direct manner. What obviously was being discussed on an ongoing basis was these concerns that were continuously

being raised, and to find a way of having to deal with them.

And also, to find a way we would have discussed a way of empowering our Portfolio Committees to be able to take up the issues and in many ways, because the ANC was the leading party in Parliament, it needed to be activated by the ANC as well and when it was, then I would not want to say all hell broke loose but that is when the process really started in earnest.

ADV FREUND SC: Can I refer you Mr President, to the
10 article at page 621 in the same bundle.

PRESIDENT RAMAPHOSA: Yes, 621, yes.

ADV FREUND SC: You will see it is an article dated the 8th, if I read it correctly, the 8th sorry it is the 29th of March 2016, a week or two after that request that we just looked at from Ms Mazzone and it is dealing with the ANC's response to that request under the headline, ANC:

“DA’s claims of support for Gupta probe is delusional.”

And then in the second paragraph, you will see that,
20 according to a statement issued by the African National Congress:

“The DA Chief Whips ridiculous claims in the media that the ANC Chief Whip, Jackson Mthembu has agreed the DA’s opportunistic proposal for Parliament to institute an investigation into the

alleged State Capture by the Gupta family are imaginary and baseless.”

This is the ANC in a statement attributed to the office of the party's Chief Whip, and then if I can take you to the next page, the 3rd last paragraph, starting with the ANC:

“The ANC said only a delusional misapprehension would interpret this clear assertion on Parliamentary debates to mean that the ANC chief whip supports the DA’s proposal for Parliamentary investigation into alleged State influenced by the Gupta family.”

Now, Mr President, this must call into question the commitment that you say was expressed in the preceding national conference about the need to utilise Parliament as an instrument for oversight.

Again, with the benefit of hindsight, is this not an entirely regrettable stance that was adopted by the African National Congress in relation to Parliamentary oversight?

PRESIDENT RAMAPHOSA: Well, I think these types of responses should be seen within the context of the fulcrum of contestation between various political parties in Parliament and revolve around when an issue is raised.

How it is raised, who raises it, but as you can see, there was an interaction between the then Chief Whip of the ANC, late Mthembu and representatives of the other

party and their discussion could have led to something which the two of them could have had an understanding around it.

But in the end, as matters were evolving there was that contestation, but I think what we should be grateful for is that our democracy much as it is a young democracy and a recent democracy at that it is developing, it is growing and maturing, maturing to a point where now in 2016/2017, we started seeing a see change on matters like these
10 where issues that had been raised were now being properly and fully entertained, and so the process was developing and growing.

ADV FREUND SC: Mr President, can I refer you to page 624, please in Bundle 2. Now, this is the beginning of an extract, where you will see it is from Hansard and it relates to allegations of State Capture by certain individuals and there alleged undue influence of the government and we have the whole Hansard quote.

But if I can then take you what is really pertinent,
20 which is at page 654.

PRESIDENT RAMAPHOSA: 654?

ADV FREUND SC: 654.

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: There you will see that one Mr Maimane of the Democratic Alliance moves a motion in the

House on the floor of the National Assembly, do you have it?

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: And the motion is that the House,

1. notes the allegations of State Capture by certain individuals and their alleged undue influence over the government;
2. Establishes an *ad hoc* Committee in terms of Rule 2531A.

10 The committee,

2A Investigate the alleged capture of State resources and undue influence over the government.

B recommend measures in line with the assembly's oversight constitutional mandate to prevent such incidents from occurring.”

And then it goes on to propose how this should be constituted. Now it is a matter of record that the ANC caucus voted against this motion and what I have not
20 specifically referred you to is what appears on the next page, at page 655.

There you will see that a counter motion was proposed, and the counter motion was far from Parliament appointing an *ad hoc* Committee to investigate.

What the African National Congress proposed was

the following, to be replaced with the following:

2:

“Refers all such allegations of State Capture to the SA Police Service or Chapter Nine Institutions for investigation including the Public Protector.”

3:

“Notes that all parties and individual members of Parliament with evidence of such alleged State Capture should make available such evidence to the
10 Police Service or Chapter Nine Institution.”

And 4:

“Further notes that such investigations by either Police Service or a Chapter Nine Institution should culminate in prosecution of all individuals or companies engaged in such State Capture if such is proved as a criminal activity.”

Now, that seems to be in line with aligning of evidence in your affidavit about the approach adopted by the NEC. The NEC’s approach was, as I understand it, on the one
20 hand, there was in March of 2016, a proposal that if persons with information of relevance, would please come to the officers of the African National Congress, presumably to the Secretary General's office, they can bring them information or to go to the Police or other institutions.

But what seems absolutely clear, I want to put to you for comment, is that there was a very determined resistance and unwillingness that Parliament should exercise what you have said this morning was its duty, in the face of these sorts of accusations, a complete unwillingness to enable Parliament to investigate and exercise oversight, again, with the benefit of hindsight, do you accept that is fair?

PRESIDENT RAMAPHOSA: Let me put it this way, I think,
10 at the time Chairperson, the thinking would clearly have been, which of the structures we have got, we have in the State that would have a greater effectiveness of investigating these matters and coming to a conclusion that prosecutorial processes should commence. And at this stage, rather than say it was distance as such to have these matters investigated, I would say no.

It was thought at the time that the other institutions the Public Protector, the Police, would possibly have a much better grip on all these matters because they would
20 go way beyond maybe what Parliament can do, they would immediately if they find fault have prosecutorial powers.

But if you look at it with hindsight, I would say the two would not be mutually exclusive and if anything, both checks could easily have been followed. The Parliamentary process, as well as another more effective

investigative process.

So I would not say it was a cop out, I think it was then the alternative motion that was being put on the table was let us get this done more effectively to the extent that it could.

ADV FREUND SC: Can I refer you please, Mr President, back to your affidavit in Bundle 1 at page 52.

PRESIDENT RAMAPHOSA: Oh, Bundle 1.

ADV FREUND SC: Bundle 1.

10 **PRESIDENT RAMAPHOSA:** Yes, indeed, I apologise for that.

ADV FREUND SC: Not at all.

PRESIDENT RAMAPHOSA: I am looking at the wrong bundle, yes.

ADV FREUND SC: You will recall this is in your own affidavit, paragraph 125. You say:

20 “It is clear from Mr Mthembu’s account, and you are referring there to the affidavit he submitted to the Commission, that the determination of 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 implementation of the decisions taken by the ANC’s constitutional structures, especially at NEC to ensure proper investigation into these allegations.”

Now, what I want to put to you for comment, is this we will come in a moment with further committee's investigations and how successful they were or were not.

But what I want to put to you at the moment for comment is that it is simply not correct as a matter of fact, that prior to the further clatters Parliament, the ANC in Parliament in response to evidence of wrongdoing that was accumulating was determined in Parliament to probe these allegations. The true fact of the matter is; it was
10 determined not to probe them in Parliament. Is that not correct?

PRESIDENT RAMAPHOSA: Well, I would not say so that it was not determined to probe them in Parliament, I would say it was determined to have them probed. I mean, initially there was inertia, there was not much movement that we will concede and when it became clear that the evidence was just accumulating. Initially, the thinking was, investigate them through your law enforcement agencies or your chapter - one of your Chapter Nine Institutions and in
20 the end, the Parliamentary process or the Parliamentary track was then activated, go ahead.

I think where you could say there was fault Chairperson was the delay in having it done and I would be the first to concede that, that there was a delay, which should have been done a lot earlier.

CHAIRPERSON: May I should say at this stage Mr President, because I wanted to say it but I was going to say it later because Mr Freund has got a certain amount of time to use, and I want him to use it.

I was going to ask you exactly that, whether the delay in acting both in respect of the ANC as a party and in respect of Parliament and maybe one should focus both in regard of the fact that the majority of MP's are ANC. Whether the delay was not was not acceptable particularly
10 for me, quite a platform what was coming out in the media, but also taking that into account after the Waterkloof landing.

That the ANC and Parliament took a number of years after 2013, the Waterkloof landing was in end of April 2013, that they took another three years or so – June 2017, that is now the Portfolio Committee has to start being active. It seems to me to be a delay that is difficult to accept you know, and we also factor the same in regard to the ANC to say, with what Mr Fikile Mbalula had said at
20 the NEC meeting in 2011, with what was in the media after that certainly the ANC ought to have done something much earlier than it did to say something needs to be done.

This is this is something that needs to be done urgently. I do not know whether you want to comment on that Mr President, I just think 2017 was too far and there

seems to have been enough that had happened for the ANC and Portfolio Committees and Parliament to have acted much earlier and if they had done so, it may well be that some of the damage that happened in the meantime may have been avoided.

PRESIDENT RAMAPHOSA: Chairperson, I did say in my opening statement that I am not here to make any excuses.

CHAIRPERSON: Yes, you did Mr President.

PRESIDENT RAMAPHOSA: And I also said that I am not
10 here to defend the indefensible. I also said that, yes, I am also here to explain.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: Some of the lapses that happened and what I can say is that, yes, you are absolutely right, Chairperson, DCJ, in saying that the delay to reaction to all this was not a correct way to handle matters and I will concede to that, and I did also say that in my opening statement that because we are a political
20 organism, and there are continuous debates and contestations and even in society, and in the ANC, a contestation on the existence of State Capture, continued for quite a while.

And I guess it will continue, right until you present your report, because there are those in the nation who deny that there was State Capture and indeed, in many

sectors of society and organisations the same obtains, as it does in the ANC as well. So that amount of contestation about matters of this nature could in many ways have led also to the delayed reaction.

And these contestations do take place, as I said without bemoaning the point in various organisations. What we should be grateful for Deputy Chief Justice is that we have now arrived as the African National Congress, the point where, as I said, the majority, majority of members of
10 the African National Congress agreed that State Capture is something that militates against the interests of our people at a social and economic level, and it also weakens our own organisation, as it gives rise to all manner of challenges like factionalism and divisions.

But what is good is that we are now here. Many other leaders of the ANC have appeared here.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: And so am I and to agree with you that delay did not serve our country well.

20 **CHAIRPERSON:** Yes.

PRESIDENT RAMAPHOSA: But we are here to take corrective measures and say we have got a country that belongs to all of us, let us work together to build this country going forward.

CHAIRPERSON: Thank you, Mr Freund.

ADV FREUND SC: Thank you, Mr President. I have very little time remaining so certain issues I would have covered with you I am going to leave but there are two aspects that I would like to wrap up with. The first is if I could refer you to page 74 in Bundle 1.

PRESIDENT RAMAPHOSA: Of Bundle 1, 74.

ADV FREUND SC: Your own affidavit.

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: You yourself make the point and with
10 respect correctly, we say this, this is paragraph 167.2 at
page 74:

“The ability of any organisation, but especially a political formation to act on allegations of malfeasance relies not only on its formal rules and procedures, but also on the balance of power within its structures.”

The question I want to ask you is whether you accept and if you do accept if you could elaborate a little that precisely this factor, the balance of power within ANC
20 structures, actually, is the true explanation for the delays that you now say, of the benefit of hindsight regrettable?

PRESIDENT RAMAPHOSA: Yes, I would say so, this is precisely the point I was making to you, Chairperson that there has been contestation, in terms of even understanding what State Capture is, is it the capture of

the judiciary? Is it the capture of the executive? Is it the capture of which arm of the State?

So those contestations have ensued, and the preponderance of views now in the African National Congress, is that, there has been a major problem and as I said, yesterday, has been a massive system failure and we need to correct what has happened in the past and chart a new path, a completely different path of our country and correct the wrongs of the past.

10 I think that is generally accepted and that is the balance of understanding, the balance of conviction, and the balance of conscience as well. That I am also addressing here.

ADV FREUND SC: Mr President finally, I want to turn to a very controversial question, which has been much debated before the Commission and precisely because it has been much debated I will leave it in the hands of the Chair, to what extent he wishes me to pursue this. But it is the question of party discipline, and party instructions in
20 relation to questions such as the votes of no confidence, which is part of a bigger question, and the bigger question, which you address in your affidavit, and will be part of the record should of course be taken into consideration by the Commission.

But the bigger question is, whether having regard to

the oath of office of MP's...[intervene]

PRESIDENT RAMAPHOSA: Towards, sorry?

ADV FREUND SC: To the oath of office taken by MP's which we debated right at the outset, there are issues on which the party must accept that whatever views it would prefer its MP's to take there comes a point at which the duty of the member is to act in accordance with the members own understanding of the constitutional obligations and where necessary, to vote, as for example,
10 Dr Makhosi Khoza did on the vote of no confidence.

Now, as I read your affidavit you are a little equivocal but if I have to say, where do you finally come down, I think you have come down on the point of view that an ANC MP, must simply accept party discipline and do as told. And what I want to explore with you is whether I understand you correctly, or whether you accept that there comes a point that there must be an exception to that rule.

PRESIDENT RAMAPHOSA: Our political system is granted by our Constitution is that of a party system under
20 where representatives that are elected by our people vote to represent their party. That is our system, they do not go and represent themselves and their jacket.

That being said, though, they do take an oath, as each member of Parliament goes into their position and the oath that they take places the Constitution and the country

and the nation first and we accept that but in order for the party to put a member in Parliament, they do not put themselves there.

Notwithstanding the decisions of the Constitutional Court recently, they are transported, as it were, by the party to be in Parliament and the party functions as a collective on all matters, we – that is why we have a caucus and this happens all over the world. We have adopted a Westminster system you know has the caucus
10 system as well where members of parliament of a particular party will meet on their own, collectively take decisions on how to approach certain issues that are debated in parliament. So there is a party line on all issues, even where there is a single member who will propose the bill, the party basically coalesces around behind that member.

Given that that is the case, the party itself will insist on party discipline and insist that we vote together, but that vote is also inspired or based on discussions that happen in the party, there are study groups where people
20 study issues very intricately and there are party discussions in the party itself and in the caucus so that informs the understanding and indeed the conscience of members to vote as they would.

However, there are matters Chairperson where the individual conscience of a member would be such that it

would compel them to act and vote in a particular way and that too needs to be discussed. It needs to be put on the table.

In our past we have had votes on issues such as termination of pregnancy where certain members have had strong religious views that are based on religious affiliation and those have had to be discussed, and in those cases an allowance has been made that your religious affiliation and your conscience needs to be given consideration and that
10 is brought to bear on what needs to happen.

But in the main I must say with the current political dispensation we have it is the party line that is followed and followed all over the world. We, it was of great interest to watch what was happening in the United States recently, where and I do not know whether they have a caucus system like we have in their congress and senate, where members voted slightly differently from the party line and that led to a lot of ostracisation and a whole lot of other challenges that some of those members have.

20 Because there is a down side to doing things like that, but when your conscience drives you I guess you are prepared to take the downside. So whilst you may argue that I am equivocal, I am a party person. So I am a party animal because and have to be because I am the president of the ANC.

If I am to be faltered, let me be faltered on that. But I do however open a window to look at issues of conscience that drive particular individuals who want to bark the trend, who want to go against what a party might well want, and that is often exceptional.

It is not often the rule by and large members of a party, certainly the members of the ANC will always want to go along with the party rules, but I think former secretary general Mantashe addresses this quite pointedly in his
10 affidavit, because on a matter which Mr Freund refers to of a vote of no confidence, where anyone outside would say you know, vote as you wish.

He argues that you have got to look very, very closely at the consequences of that action because you need to look at if you vote to you know remove and we have done that within the party ourselves, we remove a president through a vote of no confidence.

What then ensues because when you do that, you are actually imploding the executive. You are imploding it
20 and you have got to do all manner of things to reconstitute that and members then had to ask themselves is that what we want, and certainly if that is the desire which is collectively agreed to, then that is what should be opted for.

But we are actually saying you need to analyse the

situation very carefully so that we just do not run blindly into something that is emotionally charged. I hope that helps you.

ADV FREUND SC: Ja, thank you Mr President. Chair, I think my time is up and unless there is anything you would like me to pursue further.

CHAIRPERSON: No, that is fine. I know that you cannot be with us for a long time, as I understand the position. I do want to take this issue further with the president after
10 the tea break. I thought he would. I definitely want to. So if you are still around.

ADV FREUND SC: I am certainly here Mr Chairperson.

CHAIRPERSON: Okay, alright. So I think let us take the tea adjournment and then we can take it further. Okay, it is twenty past eleven. Let us take the tea break. We will resume at twenty five to twelve. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay so I will have some – few questions
20 for the President in regard to the last question you raised Mr Freund and his answer.

Now Mr President from what you have said it is quite clear that you accept that it is very important that Parliament should perform its functions of oversight properly and should hold the executive accountable.

You agree? Ja.

PRESIDENT RAMAPHOSA: My apologies I do agree.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: What you have just (inaudible).

CHAIRPERSON: Yes and of course you referred also to one of the resolutions of the National Conference of the ANC in 2012 in terms of which the conference resolved that you know Parliament should be more active which you explained includes performing its oversight functions as I understand it properly.

10

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: That's alright.

PRESIDENT RAMAPHOSA: Chairperson.

CHAIRPERSON: And you would accept too would you not that the provisions relating to the vote of no confidence in the constitution constitute part of the mechanisms that the constitution makes available to Parliament in order to hold the executive accountable.

PRESIDENT RAMAPHOSA: I have – I accept and I agree.

20 **CHAIRPERSON:** Yes. Would you also accept that the oath of office to which Mr Freund referred earlier on means that the members of Parliament have got to put the interests of the people of South Africa first?

PRESIDENT RAMAPHOSA: I accept and I agree to that.

CHAIRPERSON: You agree to that?

PRESIDENT RAMAPHOSA: Ja.

CHAIRPERSON: Now when there is a motion of no confidence placed before members of Parliament my understanding is this and I just want you to comment whether you agree with my understanding.

My understanding is that what each member of Parliament is called upon to do is to ask himself the question or herself the question do I still have confidence in this President?

10 **PRESIDENT RAMAPHOSA:** Yes.

CHAIRPERSON: You agree?

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: Yes. Now

PRESIDENT RAMAPHOSA: Or do we collectively have confidence?

CHAIRPERSON: Well

PRESIDENT RAMAPHOSA: (Speaking in vernacular).

CHAIRPERSON: Mr President. So now if that is the correct question that each member of Parliament is called upon to
20 answer is the position not that when his or her political party instructs her or him to vote in a particular way irrespective of what her position is as to whether she still has confidence in this President or not is that not that should not be right? Because she has taken an oath this is a constitutional obligation that the constitution contemplates he or she

should perform – she thinks I have lost confidence in this President. It is not in the interest of the people of South Africa that he or she should continue to be President. He or she is taking the country somewhere else. That is what she or he believes so if the party says no, no, no vote a different way is that not acceptable in the constitutional framework that we are talking about within her oath of office and within the context of the question that he or she is called upon to answer?

10 **PRESIDENT RAMAPHOSA:** Yes Chairperson it is a controversial issue and there is a tension between.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: And let me say we are not the only ones who are postulating or thinking about this – this matter. We are not the only ones in the world even your oldest democracies are at this point in time deliberating over these types of matters.

The constitution obviously looks and in a way there is a bit of a schizophrenic type of relationship that – because
20 the constitution has given rise to a party system in our constitution but at the same time in terms of our con – the very same constitution in terms of what the Constitutional Court decided recently about the freedom of every person to exercise their own political rights has actually said you stand as an individual.

But we also have a constitution where a member takes as I was saying earlier their oath as an individual and pledging their loyalty to the...

CHAIRPERSON: Their country

PRESIDENT RAMAPHOSA: Republic and to the constitution. So there is a tension that is created there. But political parties by their nature have what you could call a herd mentality so like cattle they move together as a herd. So that being the case we do say and I do say that there is
10 always an exception for one or two or a few members of the herd to hold different views but the general rule of thumb in a party system is that you go along the party 00:07:26 or party line. And in exceptional circumstances for instance where there is a major risk to democracy where it is clear that the conscience of a particular or particular members is driving them towards saying we have got to defend democracy and one of the ways we can defend democracy is to go against what the herd who believes should be the direction. So I would argue yes that is allowable but it is an
20 exception because the general rule of thumb is party discipline and if you look even at our current parties and in – you will find that even other parties in our system are much more disciplinarian than the ANC where if you violate party rules you get dismissed and get fired instantly without even a hearing and the ANC has tended to have a slightly more

liberal type of approach to this.

Also with a view of saying we want to herd everyone in the same direction. So in exceptional circumstances where democracy is at risk or where there is a real conscientious member who believes that my religion, my certain beliefs are propelling me to go in a different direction it is a matter that should be discussed and this being a party system it is allowable that it should be discussed, it should be understood and then in the end the party leadership will say we will
10 allow that. And they would then be free to vote in whatever way.

So whilst I tend to follow more to what is party discipline there is the other if you like liberal side of me that says you – you can actually have an exception where conscientiousness as well as a risk to democracy has to be
00:10:06 attention. That is what I would say.

CHAIRPERSON: Of course the position would be most of the time I guess that whoever is President of the country because the vote no confidence is directed I think ...

20 **PRESIDENT RAMAPHOSA:** At the President you mean?

CHAIRPERSON: At the President.

PRESIDENT RAMAPHOSA: Ja.

CHAIRPERSON: Ja. The President of the country will I think almost always be ...

PRESIDENT RAMAPHOSA: The victim.

CHAIRPERSON: The – ja – or the target – or the target. But also the – the President of the country is likely to be most of the time the President of the majority party.

PRESIDENT RAMAPHOSA: Indeed.

CHAIRPERSON: And he is – he or she is President of the majority party because he or she enjoys majority support in the party. And if she or he enjoys majority support in the party he or she is likely to enjoy majority support among members of Parliament of that party in Parliament.

10 **PRESIDENT RAMAPHOSA:** Indeed.

CHAIRPERSON: And if that is so it may well be that the issue of a vote of no confidence – I mean the mechanism of accountability of the vote of no confidence which is meant to keep the President on his or her toes will be rendered ineffective if the President will know that there is no way Parliament can pass a vote of no confidence in me because my party will never allow that. What do you say to that?

PRESIDENT RAMAPHOSA: Well I think any President should want to serve the people and the country knowing
20 that they enjoy the support of the Parliament if not the entire Parliament the majority of the members of the Parliament which elects him or her into that position. And if they no longer enjoy that support of the majority of the Parliamentarians then they should accept that they have lost it and be willing to being subjected to that type of vote of no

confidence because it basically means that they would be saying well you –you have basically failed to – to lead government. However if amongst that majority of the members there are a few who would hold a different view but then the majority still retains then I would say they should not have any fear. And those few would be all – some of those would then have articulated their concerns about the confidence that they still have in that President. So in other words the debate would have had to have ensued in the

10 majority party where it would have had to be clear to the President that I no longer have the support because those who are in Parliament are then really representatives of the entire body of the party itself.

CHAIRPERSON: Of course Mr President the approach that you take that the ANC takes because I think Mr Mantashe also took the same line means in effect and I would like you to comment on this – means in effect that before a President of the country can be voted out of office through a motion of no confidence the majority party should have lost confidence

20 in him on its or – in him or her on its own.

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: In which case probably it might not need to go through that process even to just use its own structures and processes to recall him.

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: And if that is so the question arises why do we then need these provisions of the constitution about a vote of no confidence in the President of the country if everything will be dictated by the majority party can be dictated by the majority party outside of Parliament.

PRESIDENT RAMAPHOSA: No. I hold a different view.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: Chairperson.

CHAIRPERSON: Yes.

10 **PRESIDENT RAMAPHOSA:** Because we need checks and balances.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: The check and balance that is embedded in our constitution is a strong enough sword of Damascus which hangs over the head of a President. But the other important check and balances in the party itself where the party system – well the party will go through a number of processes and I think that it where the strength of our constitutional structure or architecture rests that it does not
20 necessarily just revolve around an individual it resolves around a collection of people who will apply their minds and sometimes you could argue well maybe they could be brainwashed or they could all be captured or whatever there is that risk but in the main the check and balance is that it will be in the party. We have had in our history two

situations where we have had Presidents removed or recalled rather not removed but recalled by their own party. A very painful process – deeply painful and that brought divisions in the governing party that almost tore the governing party apart but it was an important check and balance which in many ways if it had cascaded all the way through to Parliament would have really even divided the party down the middle and maybe that is not that and decisions were then taken in the party itself.

10 So I do not think we should ever see political parties as alien entities they are part of our constitutional architecture and they have very good checks and balances. Sometimes they fail but for the most part there would be you know good checks and balances that can put the brakes on a runaway vehicle that is going to crash.

 But then again it does not mean that that dilutes the efficacy of the construct that we have in the constitution that provides for a vote of no confidence in a President because when the wheels have come off in the party itself you do
20 need that check and balance in the constitution of the country where you would be able to – to have the type of outcome that you are talking about.

CHAIRPERSON: Well let me just say this in case it is misunderstood.

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: I think what I am saying would apply to even opposition parties I think that – that is now if it is correct to say in the context of a vote of no confidence is the individual who must make up his or her mind about whether he or she has lost confidence in the President and bearing in mind their oath of office so that even with the opposition parties it would – if it is not right for the majority party to give an instruction it would not be right for the opposition party to say you are instructed in effect to vote in support of
10 the vote of no confidence. So – so it would apply both – or both sides. It is a question of whether it is correct and of course we know that there was the secret ballot judgment of the constitutional court which dealt with some of these issues and obviously we will have – we all have to have due regard to what it said. But I agree that it is not an easy subject. It is controversial in the context of party – the kind of system that we have but obviously faced with what this commission is investigating it would be failing in its duty if it did not look as deep as possible into saying what are the
20 things that made these things happen?

Because one the questions we posed to Parliament was the mechanisms of oversight and of holding the executive accountable that you have are they adequate? Were they adequate or for the purposes to which they have been put in place? Were they used you know? And of

course when you come to the vote of no confidence the evidence emerged that well sometimes the majority party gave instruction to members of Parliament to say though shalt not vote that way or to this way. And the question arises whether what that does to what the – is that what the constitution contemplated? Is that the right thing constitutionally or not? But I think you have put your views Mr President so – so I do not know whether you want to say anything before I (speaking over one another).

10 **PRESIDENT RAMAPHOSA:** I do.

CHAIRPERSON: Yes, ja.

PRESIDENT RAMAPHOSA: I do because it is interesting that you also talk about opposition parties because opposition parties here also have that same herd mentality and when they vote they vote as a block. Even when they walk out of Parliament they walk out as a block – as a herd of cattle. You just see one of them walking out and they all follow. And that is in a way that is another check and balance because what it does it shows disapproval that they
20 want to display of whatever and sometimes when the Presiding Officers rule that one of them should walk out they all walk out – so it is a very controversial issue.

CHAIRPERSON: It is yes.

PRESIDENT RAMAPHOSA: It really is and ...

CHAIRPERSON: No it is very controversial and yes. Mr

Freund.

ADV FREUND SC: Thank you Chair. I have no further questions.

CHAIRPERSON: Okay thank you. Thank you Mr Freund.

PRESIDENT RAMAPHOSA: Thank you.

ADV FREUND SC: Thank you Mr President.

PRESIDENT RAMAPHOSA: Thank you.

CHAIRPERSON: Mr Pretorius.

PRESIDENT RAMAPHOSA: Can I go home now?

10 **CHAIRPERSON:** It is too early Mr President. Too early. Mr Pretorius will toyi toyi if you leave now.

ADV PRETORIUS SC: Thank you Chair. Morning Mr President.

PRESIDENT RAMAPHOSA: Morning Mr Pretorius.

ADV PRETORIUS SC: We stopped yesterday at the issue of party funding and we were dealing with the funding relationship at least between BOSASA on the one hand and the African National Congress on the other.

20 By way of background between 2007 and 2009 there were a number of press articles about corruption involving BOSASA and the administration at least.

There was a SIU investigation that received a lot of publicity and in 2009 charges were contemplated. For some reason nothing happened for over ten years and that reason has been explored fully or virtually fully in evidence and the

Chair will make his findings in regard to that.

In 2015 Ms Dudu Myeni handed copies of the investigation file to Mr Angelo Agrizzi that evidence as we regard it stands and at least the former President it was probable that he knew of it because she was there on the foundation of the former President's defences.

There were several meetings between Mr Watson and the leadership of the ANC and finally in the media the relationship between Mr Gavin Watson and the party –
10 leadership in the ANC was manifest. There was that War Room at the elections you will know about that that was financed by BOSASA operations and it was no secret.

In those circumstances it is difficult to accept that vigilant members of the ANC would not have been aware firstly of the fact that BOSASA was helping the African National Congress through donations and benefits.

And secondly that the company involved BOSASA was the recipient of large contracts under dubious circumstances from government. That being so how – how
20 could it happen and the facts are there – how could it happen and that is the second question – broad question that we ask that the party continued to receive benefits from and be financed by BOSASA?

PRESIDENT RAMAPHOSA: I think it is a valid question – a very, very valid question and one should have been aware at

an earlier stage about all this. I went to the election centre which BOSASA have to finance during the election campaign and even then it never really I must be honest occurred to me firstly that they were bank rolling or they were financing in full that whole centre for – on behalf of the ANC.

The Treasury General as well as colleagues or comrades who ran the elections knew and I must say it never really fully occurred to me.

So with hindsight as they say hindsight is the
 10 00:28:18 signs one would say we should have been more alert particularly to those reports that had emerged a lot earlier because during the course of all this I mean there was almost like a nine year – ten year period after they had occurred according to my own recollection so there had been a lapse. Ordinarily I think I said in my evidence – my opening statement we would not knowingly – knowingly and intentionally accept donations from companies or donors with – who had been involved in criminal activity and all that so that should be regarded as a major lapse in our part
 20 particularly it had been proven that they had obtained their contracts unlawfully.

ADV PRETORIUS SC: That is viewed at hindsight but looking at what was happening at the time I am not sure that hindsight is an accounting for what happened. It is an explanation one can shot – shut the door on it and one can

resolve not to do so in the future and that is being the trend of the evidence thus far and I am going to deal with that issue in due course.

PRESIDENT RAMAPHOSA: Ja.

ADV PRETORIUS SC: But it is difficult to avoid the conclusion on the facts that in the circumstances the ANC received donations from BOSASA and BOSASA officials, board members, leaders in BOSASA in circumstances which was such that required a proper investigation and
10 that the principle that it would not knowingly accept donations in these circumstances, was in fact a breach because people knew, the President of the time knew.

PRESIDENT RAMAPHOSA: Yes. Yes, Chairperson.

CHAIRPERSON: H'm.

ADV PRETORIUS SC: And is it not correct, and this theme would come up later, that the reason why there was no reporting of this particular receipt of donations was that, in fact, the President was in control of the party, the then President?

20 **PRESIDENT RAMAPHOSA:** Yes, certainly the President plays a very key-role in the life the party it leads or she leads the party and provides leadership and gives direction. That is so.

ADV PRETORIUS SC: Now we have been accused in the media, Mr President, of having kept blindsided(?) [laughs]

PRESIDENT RAMAPHOSA: [laughs]

ADV PRETORIUS SC: It certainly will not remain on today. [laughs]

PRESIDENT RAMAPHOSA: [laughs]

ADV PRETORIUS SC: And perhaps it is important for the public to understand, Chair. This is a commission of inquiry. It is not a trial. We are not here to panel beat the answers in accordance with any particular view. This is an opportunity for you, Mr President, to say and you have said
10 what you think. Good or bad. Whatever the public might think about it, this is your opportunity to say it.

Nevertheless, there are certain things that we do have to raise which we will raise today and the one is the CR17 Donation from BOSASA operations into the FNB account. Now this has been dealt with by – I have gave you for, and yesterday, just an opportunity to explain to the public and the Commission what happened.

PRESIDENT RAMAPHOSA: Well, there are two aspects to this. The one aspect is. The donation that was solicited
20 by one of my colleagues into the funds of CR17 Campaign. Now the campaign managers had taken a conscious decision that they would not involve me at all in the fundraising process.

They had also taken a conscious decision to say they would not want me to even know who would give

money to the campaign because they wanted to almost create a wall that those people who give money should never really think that there is anything that they will get in return. That if I knew that there could be that compromise.

So they took a conscious decision and they told me that that is what we have decided. We – you are the candidate, we are the campaign managers, and we are building a wall and we are going to make sure you do not know where the money will come from. We would,
10 however, as it – when time went on, we will, however, want money from you.

They solicited money directly from me which I gladly gave and it was put in account and I never knew. Up to today I do not know how those funds had been managed. I did meet some of the people who gave money, at dinners or whatever to explain precisely what we were seeking to achieve by my candidature and that is where it ended.

So, when one of my colleagues then approached,
20 I think one of the Watson brothers, whom he knew from long ago because he was a comrade before he passed away, a comrade in the ANC structures, UDF structures and all that, to give money, he seems to have said: I want you to give money personally from your own money and not... It seems like he made that distinction from your own

purse and not from the company itself. So that is what I believe he seems to have done.

So, of course, as the story, you know, was made public, it seems like it came from BOSASA. I do not quite remember the finer detail. I think it came from him or one of his companies or accounts. And I think the Public Protector and the legal processes looked into all that. So that is the one aspect that had to do with monies that had to do with anything BOSASA related even though I think
10 the money never really came from there.

So I was far away from the finances that financed the CR17 Campaign for the reasons that I have articulated that the managers did not want me to know so that I should never be beholden to any of the people who gave money to the campaign. And as it turned out, we had by – maybe by osmosis in the ANC arrived at a situation where there are formal campaigns that are now mounted for people to be elected to positions.

It never used to be like that in the past and we
20 still demean the fact the we have now arrived at a campaign style type of contestation for leadership which is regrettable but that is where we are and I will remark on this in a little while. The other part was how the campaign managers then went ahead to raise money for the campaign.

It has been said a billion rand was raised. It was never a billion rand. I am told that the money that was raised was some R 300 million or so but never a billion but I do not know the full facts because they have neutrally decided to keep it away from me. And the money, what was it used for? There is a legend that goes around that the money was used to buy homes and far from it.

And I said to my comrades right in the beginning, I never want to be part of a campaign that is
10 going to descent into all these deviant part of behaviours that we talk about in the ANC about vote buying. And I even said I would rather lose the race rather than have votes bought.

So what was the money used for? It was used to transport people, to hire venues, and actually I got really surprised that it has become so expensive to have all these things, like, meetings, bussing people, feeding people, the paraphernalia T-shirts, caps and so forth that have been given out for the campaign.

20 And I think people who run campaigns will know that yes there is a cost to all of that. As it turns out, there is still a debt that still has to be paid in a number of forms and ways after that campaign that happened in 2017. So money was used for that.

And I guess one of the key-issues and

challenges is that the people who were running the campaign were so methodical. They recorded everything in black and white. They recorded who was given money, what was it for, and some of the money was deposited into people's account to pass onto to others, to people in the regions and people all over.

And most of that money was then distributed or advanced towards a meeting, to hire a venue, for people to travel, for airtime, and all those types of things. So when
10 it came to – people often talk about these accounts that are locked up or where the courts decided and that had nothing to do with me because I did not block from all that.

And the comrades who ran the campaign have been quite, almost in ensuring that that is held to themselves and I never get involved in all that. But be that it may. That is now being deliberated by the courts and in some ways quite a bit of the information of who gave monies is known.

Those who have taken the matter to court know
20 who gave the money and the money that was given was also donated by a number of people. And many people, as they give money, the old dispensation before the new law about political funding takes place. They gave money on the understanding that we want – we do not want it to be publicised that we had given money for a political

campaign.

So they wanted their own identity, to be kept out of the media and it was on that condition which the campaign managers agreed. They said: Okay, of course, you are giving money and we will keep your information confidential to ourselves. As it has always been the case with a number of monies that are given to political parties. Political parties by their very nature go around asking for donations and I think it will not be surprising for them to
10 hear that other donors do not want their information to be known but this is now a subject of a major court battle.

But in the end, Chairperson, there was nothing sinister, I must say, about the CR17 Campaign. Nothing underhand. People will always say and fear that those who gave money wanted something in return. I will never allow that and I would also say – and because I do not know, that to me is a safeguard, you know, how much so and so gave and all that because they kept it away from me.

I should say so that I never been seen to be
20 economic with the truth. Some of the people who gave money I got to know because some of them would tell me that: I had given money. And how much they had given, I do not know. So I should never be heard to be saying I do not know or some of them I know but I would say the majority I do not know until today.

And I have to say: No, we agreed at the beginning of the campaign that we are not going to tell you and we are sticking to that. And there are like three or four people who are the key principles of this. They are like the able bodied people who refuse to even come out with the information. So that is how CR17 went and beyond that there were lots of court cases.

The Public Protector got involved because – I should explain this when some of the money was given, particularly by Mr Watson, it went one from account to another and that was his own arrangement having been asked by one of my colleagues to give money and even that colleague never told me, by the way, that he asked for money from Watson and he moved the money from one account to the other.

And it sounded then to the Public Protector that that was money laundering and there was no such money laundering. And that is what I can say about the CR17 Campaign saga, if I can call it that. And then there have been calls by other people to say: Well, we should also look at other campaigns. Let us look at other campaigns. And I have often said: Comrades, it is enough. Look at the CR17. It is enough. Let us put this behind us.

I have said that because soon after this whole story broke out, I went to the NEC and I said to the NEC I

would like us as the ANC now to start regulating how internal leadership contents are managed in the ANC because we do not have such rules. I should hasten to add that in 2012 – no, after I think the Polokwane Conference, an attempt was made to regulate this and there was ...[intervenes]

CHAIRPERSON: The Mangaung Conference or the Polokwane Conference?

PRESIDENT RAMAPHOSA: I think it was ...[intervenes]

10 **CHAIRPERSON:** [Indistinct]

PRESIDENT RAMAPHOSA: ...2012. Ja, 2012.

CHAIRPERSON: 2012 was Mangaung, I think.

PRESIDENT RAMAPHOSA: It was Mangaung. Yes, yes.

CHAIRPERSON: H'm.

PRESIDENT RAMAPHOSA: You see, Chief Deputy Justice, you know so much. [laughs]

CHAIRPERSON: [laughs]

20 **PRESIDENT RAMAPHOSA:** It was at the Mangaung Conference where a constitutional provision was drafted and the NEC was instructed, in one way or another, to finalise this and that constitutional provision never saw its way into the constitution. Until today, we do not know how it happened, why it happened, and some journalists have written about it.

And that provisions was going to be saying, we

need to regulate how these contests are run and funded and it basically said there should be no fundraising, there should be no this and that and that. So that was never regulated and that is why these campaigns and almost on their own – there were seven campaigns for leadership for president leading up to Nasrec or to the 54th Conference. And they were all somehow funded.

They were all somehow managed in way or another which in a way, you know, shows that a new era
10 has arrived in the ANC but it needs to be regulated. So I was the first to go to the NEC and said: In the light of what we have been through and in the light of what I personally have been through it is important that we should regulate the running of these campaigns.

We should regulate the funding thereof, the management of the campaigns, how much money should be given, if any, and there should be accountability. After each campaign there should be full accountability of money that was given, what it was used for, where it came from
20 and so forth.

So this issue, Mr Pretorius, that you also glassed together with political party funding, originates largely from the ANC. The first issue about political party funding was first discussed in the ANC in – at – was it 2012? Or even earlier. I think it was in Polokwane which

was – would have been the earlier conference, the 50th Conference or the 51st Conference.

We discussed it then and said we need to regulate party political funding. The law that we know have originated from discussions in the ANC and similarly this provision that I am calling for regulate political party funding for internal contents.

It is something that we will discuss and come for a more sensible conclusion around it, so that we never
10 have any doubt that conferences were bought as there had been a doubt about my election that my election was bought which is absolutely untrue, completely devoid from any truth whatsoever and I am prepared to lay out everything. Thank you very much.

ADV PRETORIUS SC: You referred to litigation, President, and we know that matters related to the Public Protector were before court and the high court was given your full explanation under oath and its comment was that that explanation was both honest and reasonable. That is
20 a matter of public record. You recall that?

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: But two issues arise out of your answer. Well, three perhaps. And I think you have answered the three issue now. Is that the principles which applied to party funding should also apply to individual

campaigns within a party.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: Is that acceptable?

PRESIDENT RAMAPHOSA: It is acceptable to me. Yes.

ADV PRETORIUS SC: Alright. The second issue is that, if those principles applied to internal contest, party contest, then the public... Well, first of all the recipient of the donation should note that fireball is perhaps not the best idea in those circumstances. And secondly, and perhaps more importantly, the electorate, the ANC electorate and the people out there who may be affected in the sense of public officials are now – their careers are at stake. They should also know that is an acceptable principle.

PRESIDENT RAMAPHOSA: Yes, I would accept that and the reasons I would is that. You know, there needs also to be a limitation. A limitation of how much should be given even as we raise money because to avoid a situation where you could have huge amounts coming from one donor, because that will give rise to a sense and a suspicion that they need to be given pre-eminence in any relationship. So if there is a limit and everybody know that this is the limit that everybody could...

Like, now we have created a limit that R 15 million is the most that can be given. So it basically

means that there can be no donor who could give much more than that. Of course it is to the disadvantage of political parties but that is how our democratic system should work because that adds to transparency, openness and also confidence. It gives people confidence in that regard. So I would agree to that.

ADV PRETORIUS SC: Similarly, to the BOSASA acts and history and its relation to the ANC, there had been an admission by ANC Treasurer General, Zweli Mkhize, that
10 the Guptas also donated money to the ANC over the years.

PRESIDENT RAMAPHOSA: Yes, the then Treasurer General has admitted to that fact.

ADV PRETORIUS SC: And there can be no doubt that the conduct of the Guptas have also received visibility in the media and elsewhere. There can be no doubt that any donation from the Guptas should have been investigated.

PRESIDENT RAMAPHOSA: Yes, I would say so too.

ADV PRETORIUS SC: There was, in fact, an allegation that was made to the Treasurer General that the Guptas
20 the bill for the ANC's 2012 Conference in Mangaung. Is that correct?

PRESIDENT RAMAPHOSA: I have heard of this allegation, yes.

ADV PRETORIUS SC: Do you know whether it is correct?

PRESIDENT RAMAPHOSA: No, I do not.

ADV PRETORIUS SC: Alright. The point about that and the point about the BOSASA donations is that surely there was enough information current against the principle that the ANC would never knowingly accept donations that were the proceeds criminal conduct but there should have been an internal investigation. Is that right? Both in relation to BOSASA investigations and in relation to Gupta donations.

PRESIDENT RAMAPHOSA: Yes, I would concede that there should have been, possibly, an internal examination.

10 I do not know to the extent to which an investigation would have been possible but an examination because investigation conjures up in one's mind an idea that you will subpoena this document. You will get this and that and being a political party, I know the limitations, even of the powers of the Secretary General to subpoena documentation and evidence. So there should have been an examination.

ADV PRETORIUS SC: Could it have been outsourced?

PRESIDENT RAMAPHOSA: Pardon?

20 **ADV PRETORIUS SC:** It could have been outsourced the investigation.

PRESIDENT RAMAPHOSA: Well, that is a thought. It could certainly have been outsourced, yes.

ADV PRETORIUS SC: Okay. To move on to a different topic in regard to party funding. I raised the issue

yesterday, Mr President, with you about the – what I understood then to be two affidavits. It is in fact one affidavit which was provided to your team overnight. That, to put it briefly, the affidavit is some 170 pages.

You make some very strong allegations but to put it very briefly and given the restrictions of time. Ambassadors appointed by the President because the President appoints ambassadors, were required to sign debit forms to – in order to pay monthly contributions to
10 the ANC. Do you know of that?

PRESIDENT RAMAPHOSA: Well, let me say I know of this in a different guide. I did not have the benefit of going through the 177 pages for my bedtime reading last night. So I did not go through that but let me say. Those who would have received that would have received that as per their membership of the African National Congress.

Now as ANC members right from 1994, we took the view that we are a party that is strapped for money and we need to scour all over to find the money and one of the
20 best ways was to ask those who are members of the ANC to sign a levy form that they agree that the banks should tunnel money from their salaries or their accounts to the ANC.

Now when I was in business, as a member of the ANC, I did that as well. I signed a levy form and every

month the money was docked from my account to the ANC coffers as per ANC member. Now that happens to many people. And those that it gets to be known are, you know, active in places where the ANC knows that you are getting a salary. In the private sector – when I was in the private sector, I paid or in the public sector.

For instance, today every member of Parliament representing the ANC legislature and local government, we pay levies to the ANC so that we can boost the coffers of
10 the ANC. And the same would happen if you are an ANC member, if you are, let us say, the chair or the CEO of one of the entities or if you are an ANC member. I know when I was Secretary General I used to solicit members who were in the private sector to sign levy forms.

Just anyone I knew would be a member of the ANC I would say: Sign the levy form and give money. And because you are in the private sector, give more money which is exactly what happened to me. Whereas others would be given five thousand or two-and-a-half thousand, I
20 would be giving ten to fifteen thousand because presumably one would be earning more.

So it is in that context that I would say, you know, even ambassadors who are ANC members would – they do not do it because they are appointed as ambassadors. They do it because they are ANC members.

ADV PRETORIUS SC: Thank you. Mr Malloy, as I understand it, does say – or Ambassador Malloy does say that this contribution required by the ANC is paid by even those who are not members of the ANC as a reciprocal obligation for being appointed to ambassadorship in the first place. Do you know anything about that?

PRESIDENT RAMAPHOSA: No, I do not know anything about that, I would have a huge question mark around that.

ADV PRETORIUS SC: Alright, something that perhaps
10 may be investigated.

PRESIDENT RAMAPHOSA: Ja.

ADV PRETORIUS SC: The practice of donations to the parties, does it apply to all persons deployed into public office?

PRESIDENT RAMAPHOSA: Yes, it does. I am afraid it does. As I said, every member of representing the ANC at local, provincial and national level does give money to the ANC.

ADV PRETORIUS SC: There is a third aspect to the
20 funding relationship that the ANC has with members or even non-members. There has been evidence of the Free State asbestos scheme, you would have known about that, where to put it in very broad terms and subject obviously to certain qualifications, a contract was awarded to Blackhead Consulting, a firm owned by Mr Edwin Sodi. Its

tender value was approximately R255 million, a subcontractor for R50 million, it was again subcontracted for approximately R20 million and there was still profit left for the second subcontractor to take over. Mr Sodi then, to the knowledge, it must be, of those who granted the contract, officials in the Free State, made a large profit and from that profit made several substantial donations to the ANC.

Now that is a matter of record and also a matter of
10 criminal charges now. Two aspects arise. One, it is evidence of the very patronage practice that has been identified by the ANC and spoken about by the ANC and we will deal with that in due course.

But is it not a concerning practice or pattern that proceeds of procurement, state procurement, go to private companies associated with and known to persons who are members of the ANC or might be members of the ANC and then come back to the party? In other words, the proceeds of procurement, around which there is a question mark,
20 come to the party as donations. Is that not an important issue that requires consideration?

PRESIDENT RAMAPHOSA: Well, I think in the way you have qualified this by saying around which there is a question mark, that certainly should be a matter that makes us take a second look at this and say should this be

happening?

However, I should say - and the backdrop to this is that we now have legislation that is going to regulate donations. I should, however, say that there is inherently nothing wrong if – in the past there would have been nothing if a business entity then donated money which money was not given in return for anything, for any favours. If a business entity, whatever business it does, as long as it is not illegal, unlawful, gives money and does not
10 want anything in return, in my book is patently nothing wrong.

There is everything wrong – everything wrong if that business wants something in return, that we want you to favour us when it comes to a procurement or a service that we need to provide and all that. So that, in my book, should not be allowed.

But, Chairperson, we now have a revolution underway which in many ways is going to save our democracy in that donations that now have to be made
20 have to be accounted for. If a political party receives a donation it has to be kept at a particular amount and it must be accounted for in the books and the IEC is going to be rigorous when it comes to this and I would expect that our other agencies would also be wide awake when it comes to this.

So one is not able to comment fully on the asbestos case because it is a subject of legal processes, so one leaves that as it is but in terms of the question that you have qualified, I would say yes.

ADV PRETORIUS SC: Right. The next source of political party funding is the use of state resources for political party activities. We have evidence that Telkom sponsored an ANC conference, Mr Montana and Mr Molefe, albeit that they were on either side of a fence, spoke about PRASA
10 providing facilities, transport and other support for the ANC. Again, pressures of time, surely that cannot be accepted?

PRESIDENT RAMAPHOSA: I would agree that that should not happen because those are public monies and it creates a problem when monies that are meant are to be managed by one of our state institutions are then utilised for party political funding.

Now you could say if the situation were to allow – if they were going to give money right across to all parties
20 that will be different, but I do not think that too should be allowed because the monies that aid PRASA and Eskom and all these others have to be used for developmental purposes, develop infrastructure, develop everything they do for the majority of the people.

So the Party Political Funding Act comes in handy

here as well because it will help us to prevent these sorts of things from happening.

ADV PRETORIUS SC: The Political Party Funding Act, I am told by our research team, that it was passed by parliament in 2018 and signed into law by yourself, Mr President, in January 2019 but promulgated in April this year. Why was there that delay? Were the political pressures involved.

PRESIDENT RAMAPHOSA: You know, all things like
10 these have to properly and fully discussed and fully embraced and as, you know, Mr Mantashe said, you know, things in political organisations take a long time to happen. That is precisely what happened here as well.

Whilst it was the ANC conference that decided – and if my recollection is correct, it decided at its 50th conference that there should be regulation of party political funding and the process leading up to where it is finally, to where the President was able to set a date for the commencement of the Act has been fraught with a lot of
20 discussion and some of it, just to give you a flavour, is that even the political parties in parliament themselves had great challenges with this law because once the ANC had discussed and once it was introduced by some of - ja, into parliament, we found that political parties were not ready. Simply put, they were not ready for this to come into effect.

When they started looking at their balance sheets where they get money from, they realised that unless the fiscus is able to, you know, give sufficient money to fuel their own democratic processes, it was going to be difficult to have money, sufficient money and even their donors would balk at the idea of being - their information, that they have given money be known by everyone.

So whilst it is good for democracy, in the end it is going to be very difficult for political parties for their
 10 funding purposes. So it took a while. It took quite a while. Debates internal to many of the political parties and even in the ANC and finally we have arrived where we are and in the end the President had to say we have got to sign this bill and it must come into effect and that is the journey that we have travelled and with the maturing of our democracy, some of these things take a while, they take some time to happen but I would say even – there is a saying in Afrikaans which I now – *die agteros kom ook in die kraal*, even the slowest ox does come into the kraal, so I would
 20 say that exactly what has happened.

ADV PRETORIUS SC: It was a very slow ox, it seems.

PRESIDENT RAMAPHOSA: It was a slow ox.

ADV PRETORIUS SC: There is one other aspect in relation to party funding that we can probably better deal with when you return, Mr President, but on the principle

that secrecy should never be utilised to trump or cover up criminality, that principle is expressed in a regulation which ironically is itself secret but that we may come to in due course.

The State Security Agency, there has been evidence that money has been used, state money, taxpayer money, has been used in funding political activities. That is a matter that I would like to deal with next time but for the moment simply to ask you to comment.

10 There has also been evidence that the CR17 campaign was disrupted to funds supplied by the SSA. Do you know anything about it? That would be entirely criminal ...(intervenes)

PRESIDENT RAMAPHOSA: That is was disrupted?

ADV PRETORIUS SC: Yes. Well, the precise manner of disruption is not entirely clear but the reports were that the regalia that was being provided to your supporters was interfered with, let me put it that way. You know of that?

PRESIDENT RAMAPHOSA: No, I do not know about that.

20 **ADV PRETORIUS SC:** Alright. Perhaps we will get further information in that regard. But do you know of any circumstances where State Security funds have been used in relation to party activities?

PRESIDENT RAMAPHOSA: I have heard but I have no evidence that yes, they have been utilised but I have no

evidence.

ADV PRETORIUS SC: We will deal more comprehensively with the State Security evidence but it does seem that many of these issues require proper outsourced and empowered investigation and I know that will be put to you and it seems without much [indistinct – dropping voice]

Then there is one other issue that has arisen in papers clearly submitted by yourself and that is the issue of branches and vote buying but I would like to deal with
10 that later, if I may.

If I may go back to another issue briefly, hopefully. We discussed yesterday the eye of the needle document, that 2001 document which was a very important document in the history of the African National Congress, as I understand it. There was in 2020 a review of this document and it appears in your own bundle at page 449, bundle 1, 449.

PRESIDENT RAMAPHOSA: 549?

ADV PRETORIUS SC: 449.

20 **CHAIRPERSON:** Did you say bundle 1 or bundle 2?

ADV PRETORIUS SC: Bundle 1, 449.

CHAIRPERSON: Okay.

PRESIDENT RAMAPHOSA: Yes. I try to be like you.

ADV PRETORIUS SC: That document is a review of the eye of the needle document, do I understand it correctly?

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: It says many things but it does say in its 2020 review – and we have put on record the problems highlighted in 2001 in the document but something deeper has gone wrong.

“Deviant behaviour is finding protection and is thriving inside the ANC liberation alliance.”

Now the proposition has already been put and it may be put again ...[intervenes]

10 **PRESIDENT RAMAPHOSA:** Where were you reading?

ADV PRETORIUS SC: If I may just get it for you, page 450.

PRESIDENT RAMAPHOSA: Okay.

ADV PRETORIUS SC: Paragraph 14, bottom of the first column.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC:

20 “It is now acknowledged that something deeper has gone wrong in the movement. Deviant behaviour is finding protection and is thriving inside the ANC-led liberation alliance. It is perhaps the fact that the document is dealing with a needle and not the needle, it is the size of the needle.”

And then it goes into a series of analogies. If one goes to the first paragraph, to put that statement in its context, the

introduction reads in paragraph 1 on page 449:

“It has been 30 years since the unbanning of the ANC, it has been 26 years since the democratic breakthrough, it has more than 19 years since through the eye of a needle choosing the best cadres to lead transformation document was produced. In these years the ANC has grown in membership and yet the qualities of its cadres is fast diminishing.”

10 Now we do not have time, unfortunately, but it would be instructive to go through the various statements made by various presidents, amongst others, over the intervening years between 2001 and 2020 and I will come to your own documents shortly but it seems that the problems not only generally but in particular patronage corruption and the like, factionalism were always present throughout these years.

They had never been successfully dealt with and the language as indeed got stronger but South Africa looks
20 to the party which governs the levers of power, which govern the people of South Africa for some change and the question arises what is new? But before we get there, may I just go to the – there is a document on page 581, paragraph 8 of the bundle 1. This is the 52nd national conference report, the Polokwane conference of 2007.

PRESIDENT RAMAPHOSA: What page are you on?

ADV PRETORIUS SC: I am on page 580.

PRESIDENT RAMAPHOSA: Oh, 580.

ADV PRETORIUS SC: Of bundle 1.

PRESIDENT RAMAPHOSA: Yes, I indeed. Yes.

ADV PRETORIUS SC: If you would just bear with me a moment?

PRESIDENT RAMAPHOSA: Of course.

ADV PRETORIUS SC: In paragraph – I am sorry, that is
10 my notes, that is my error. Paragraph 8 on page 581, now
this is 2007, it reads:

“Our accumulated weaknesses include inability to
effectively deal with new tendencies arising from
being a ruling party such as social distance,
patronage, careerism, corruption and abuse of
powers, ineffective management of the interface
between the movement and the stage, a flawed
approach to membership, recruitment decline, and
ideological depth amongst cadres and a lack of
20 institutional resources to give practical effect to the
movement’s leadership role.”

Quite a strong and stark repetition of the issues facing the
ANC over the years, this is 2007. What is interesting
about it is that a reference is made to new tendencies but
these were not really new, were they? Were they – did

they arise somehow in 2007?

PRESIDENT RAMAPHOSA: No, I would agree that they were not new tendencies but they have been evolving and evolving around the number of eras that we have been through, one of those being, as you read in one of the paragraphs, that being a governing party has given rise to a number of opportunities to be in government, their access to resources, be able to dispense patronage, to be in control of, if you like, procurement, resources and
10 opportunities and that is – well, that started in 1994 but as time went on, we got used to being the incumbent. Incumbency then gave rise to a whole number of deviant behaviours which we have acknowledged openly that this, in many ways, is a source of our problems and we have got to navigate our way around or – well, out of these type of problems that we now have.

So in 2007 this would not have been new but I guess if you are asking – we have always known that these are the challenges and the problems and are you able to
20 get yourself out of all these challenges? I guess that is your question.

ADV PRETORIUS SC: Well, perhaps we can deal with that after the long adjournment. I do want to get to three statements that you made in August 2020, a month in which you must have been angry, your blood pressure must

have been very high. But we will get to them in due course.

PRESIDENT RAMAPHOSA: Okay.

CHAIRPERSON: Okay, it is six minutes past one, let us take the lunch adjournment and we will resume at five past two. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Before we continue let us have a
10 common understanding about what time we will adjourn this afternoon. Yesterday we spoke about the possibility of going up to five if necessary but later on we decided to start at nine, one hour earlier but I think we did not have clarification whether - because we started at nine we will stop at four, whether if necessary we could still go to five. Maybe – Mr President what is your situation?

PRESIDENT RAMAPHOSA: I am at your service
Chairperson.

CHAIRPERSON: Yes, okay. Okay, no thank you, thank
20 you. Okay Mr Pretorius so we see how it goes but the President is able to go up to five if we need to, ja.

ADV PRETORIUS SC: Thanks Chair, I did negotiate ten past five with his office.

CHAIRPERSON: [laughing] No that is alright, okay.
Okay let us continue.

ADV PRETORIUS SC: Thank you. Mr President would you look at what is known as the Diagnostic Report of July 2017, you will recognise that document. It is in Bundle 1 at page 836, or that is certainly the passage I would like to refer to. For the record the first page of the document is on page 821. It is a document prepared I understand for the National Policy.

CHAIRPERSON: I am sorry Mr Pretorius, you said 835, but I think you said another page after that.

10 **ADV PRETORIUS SC:** Yes, the document begins at page 821.

CHAIRPERSON: Yes, you want us to go to that page?

ADV PRETORIUS SC: Yes, please it is a document dated July 2017. It is known as a Diagnostic Report and it was prepared for the, is it the July 2017 conference, is that correct? If you go to page 836 and you refer to this report, Mr President in paragraph 131 of your own statement, that is on page 58, Bundle 1 and it is the date of the statement that is important, as well as, of course, the content. It

20 reads:

“The public outcry about the influence of the Gupta family has led to investigations by both the office of the Public Protector and the South African Council of Churches, serious allegations were made against a number of the leaders of the ANC. Instead of

dealing with the reality facing the movement, a defence was developed by using the real threats we face as a movement. A narrative was developed to link any discomfort with the influence of the Gupta family to the regime change agenda. While it must be acknowledged, that regime change is a real threat, that needs to be analysed and a strategy to defend the country and the movement needs to be developed. This cannot be used as a response to the perception or reality of corruption both objective and subjective factors in this regard, need to be understood.”

And then in paragraph 6.5:

“Another defence that has been bandied out is the one that counter pose as the behaviour of this family to (white) monopoly capital. White monopoly capital is invented as if it is a new phenomenon instead of affirming that its defeat is at the heart of the revolution and the essence of NDR.”

And then in the middle of paragraph 6.6, five lines down the statement is made that:

“Society on the other front expects the ANC to take a stand against corruption by taking serious action or being seen to do so.”

It seems that this document, Mr President, and the short

passages I have referred to indicate what you have referred to as internal contestation, that there was within the governing party - and I think it is no secret an internal context and back there is a period through which the ruling or governing party went during the period under review.

It seems here that what you refer to as the line being drawn at its origins, the most recent line being drawn but had been drawn many times over 20 years, is that correct?

10 **PRESIDENT RAMAPHOSA:** Yes.

ADV PRETORIUS SC: Then if you go to the December 2015, NASREC 54th Conference Report, that is in Bundle 1, page 256 you refer to it as well, in paragraph 133 and following of your own statement, and many of these statements that I have put to you in fairness have not been discovered by us they are in your own statement.

Page 256 of Bundle 1.

PRESIDENT RAMAPHOSA: Yes.

20 **ADV PRETORIUS SC:** There is on that page a resolution that was taken at the conference and I would just like if I may to refer to certain parts of that resolution. It is resolution headed ANC credibility and integrity dealing with corruption. The first bullet reads:

“An increase in corruption, factionalism, dishonesty, and other negative practices that seriously threaten

the goals and support of the ANC.”

Again, the phrase an increase in corruption, it is not the first time it's been used, we pointed it out this morning.

The third bullet:

“That corruption robs our people of billions that could be used for their benefit.”

The fifth bullet:

10 “That current leadership structures seem helpless to arrest these practices, either because they lack the means or the will or are themselves held hostage by them.”

Now, I understand, Mr President, that you are here as a party leader, and what is said and how it is said is important in relation to, let me say, how the party responds to issues and strategies going forward, no one is blind to that fact.

But what is being referred to there, is it correct to assume that one is talking about the hold that previous leadership had over the party?

20 **PRESIDENT RAMAPHOSA:** Yes, the leadership is to be seen as a continual that leadership of the ANC and this is what in large measure distinguishes us from other organisations that the leadership that we have would have been in place for quite a while, though it continues.

But I think what we have is that we are now having

to respond to precisely some of the challenges that we face, which you articulated in the noting part on 256. Where we say there is an increase in corruption, factionalism, that seriously threatens the goals and support of the ANC that the leadership right now that has had to draw a line is responding to precisely to the increase in corruption, factionalism and that this problem is not going away, it is continuing to entrench itself by increasing.

Therefore, it requires a drastic action that should
 10 be taken because it is resulting in less and less support for the ANC, weakening the ANC, dividing the ANC and simply making the ANC less of a modern party by lack of renewing itself, because it is a living organism, it needs to continue renewing itself and it remains merry bound and therefore it needs to change and this is what has led to realigning the set.

ADV PRETORIUS SC: This is...[intervene]

CHAIRPERSON: I am sorry, Mr Pretorius. When I see
 20 this part of the report, Mr President, I am reminded of the fact that earlier this morning when Mr Freund was leading your evidence and questioning you on Parliamentary oversight, there was a time where he made the proposition that it seemed that the Portfolio Committees I think he was talking about that did not have the will or were unwilling to do the necessary to deal with these allegations of the

Gupta's, there influence on government and so on.

But it is interesting that in this report, one of the things that is said is, well, maybe the current leadership does not have the means, but maybe does not have the will. Maybe they are themselves held hostage by these challenges.

So maybe Mr Freund might not have been too far from what the ANC itself was talking about, this is 2017 August, I think and I think he was talking about the period
10 in 2016 here if I am not mistaken.

ADV PRETORIUS SC: And this is a resolution of the conference.

CHAIRPERSON: Yes, so it seems to me that he might not have been far from what the ANC itself were - after analysing the situation came to.

PRESIDENT RAMAPHOSA: Yes, if you do read this noting part, the ANC is being very honest with its – it is being very realistic.

CHAIRPERSON: Yes, yes.

20 **PRESIDENT RAMAPHOSA:** And it goes even further and this is precisely what we have experienced, sadly, where it also says that, at times, we do things that are not according to ANC, or government policies or not legal or constitutional, and wait for Courts to correct our actions and that is the sad part that this conference was talking

about. But it goes on to resolve what now needs to be done, which is precisely what we are now working on towards.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: So just to put that in its context in relation to a statement you made yesterday, that this is about drawing a line in the sand that the - what was recognised in this resolution, on the face of it are two things.

10 Firstly, that corruption had increased and quite simply had become intolerable with the ANC.

But secondly, that current leadership was unable to deal with it, something new had to happen, is that correct?

We will deal with this the next time around but whilst we are here, Clause 7 of the resolution reads;

“ANC deploys to cabinet especially finance, police and justice to strengthen the State capacity to successfully investigate and prosecute corruption and account for any failure to do so.”

20 There has been, let me put it, overwhelming evidence before the Commission over the last three years that law enforcement agencies over the period under review were weakened, is that a fair statement?

PRESIDENT RAMAPHOSA: Indeed they were weakened.

ADV PRETORIUS SC: But we will deal with that insofar

as is necessary in the next session.

PRESIDENT RAMAPHOSA: Indeed.

ADV PRETORIUS SC: A third statement was made in January 2018 and this is again in reference to the drawing of the line, it appears in Bundle 1 at page 152 and in your own statement, at paragraph 143, you yourself refer to the statement, if I could ask you to turn to page 862, please.

PRESIDENT RAMAPHOSA: I seem to have made life very easy for you.

10 **ADV PRETORIUS SC:** As it appears from page 852 this is a statement of the National Executive Committee of 8 January 2018.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: And if I could take you to page 862.

PRESIDENT RAMAPHOSA: Yes, that is where I am.

ADV PRETORIUS SC: It is a very clear statement is made again, which accords with your description of drawing a line in the sand in the 4th paragraph:

20 “We shall confront corruption and State Capture in all the forms and manifestations that these scourges assume. This includes the immediate establishment of a Commission of inquiry into State Capture, the investigation and prosecution of those responsible will be given top priority mechanisms

for the appointment of individuals to senior government positions, State owned entities and law enforcement agencies will be strengthened to improve transparency, prevent undue influence, and ensure adequate vetting of candidates.”

And a lot more is said in the same vein, about that renewal, the drawing of the line in the sand and the move forward. But if we could, then fast forward to August 2020 by all accounts a difficult month for you, Mr President you will remember, but if we could go to Bundle 1, page 934 and you deal with this in paragraph 147 of your statement.

This is a statement of the NEC of August 2020.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: It is an ANC statement on the outcomes of the National Executive Committee meeting and on page 934, under the head corruption drawing a line it reads:

“The ANC is outraged and deeply embarrassed by recent allegations that some including its own leaders and members have sought to benefit unlawfully from the devastating suffering and impoverishment caused by the COVID-19 pandemic. These developments caused us collectively to dip our heads in shame and to humble ourselves before the people. We acknowledge the justifiable public

outrage caused by the depravity and heartlessness played by some elements in government, our organisation and the private sector. We unequivocally condemn all forms of corruption, dishonesty and State Capture involving the public and private sectors including collusion, price fixing, tender fraud, bribery, illicit financial flows, illegal imports and misuse of tax havens. We will comprehensively fight corruption combining both prevention and punishment. Those who loot public resources must face the full might of the law.”

And then over the page:

“The moral standing of the ANC has been severely damaged by the conduct of some of its members who in fact do not deserve to be in our ranks. We are committed to draw a clear line.”

This is another drawing of the line;

“Between our organisation and those who steal from the people thereby subverting the very essence and reason for the ANC’s existence as a servant to the people.”

The next paragraph reads:

“The meeting recognise that the NEC was clearly mandated at the 54th National Conference to deal decisively with corruption, and to restore the

integrity and values of the ANC. This is a responsibility that cannot defer, outsource, or avoid.”

And that is the page at which the term outsourcing was used as being something that could no longer to be done. If I may just refer to, two other statements, before asking the questions that we need to, if you go to Bundle 1, page 940. This is also dealt with in your statement at paragraph 148. This is a letter to the members of the African National
10 Congress if I understand it correctly dated 23 August 2020 and authored by yourself, is that correct?

This is the well-known statement, which has caused some controversy. If one goes to page 942, it reads two thirds the way down the page, well, let us deal a little more thoroughly with it on page 942 under the heading we need to take responsibility, it reads:

“As the inheritors of the legacy of Lathuli, Thambo
and Mandela, we must be honest with our people
and ourselves. We must acknowledge that our
20 movement the African National Congress has been
and remains deeply implicated in South Africa's
corruption problem. We have to be sensitive to the
concerns that are being raised by our people about
our role as a movement in corruption.”

Certain further statements are made, but further down the

page the statement is made:

“Today the ANC and its leaders stand accused of corruption. The ANC may not stand alone in the dock but it does stand as accused number one. This is the stark reality that we must now confront.”

And then if we go finally to the Presidential newsletter of August 2020 at page 560. Sorry, that is the wrong page, Bundle 2 I am afraid sorry I have misled you, Bundle 2, page 560. This is a newsletter...[intervene]

10 **CHAIRPERSON:** Hang on, Mr Pretorius I am still waiting for my bundle.

ADV PRETORIUS SC: I am sorry.

CHAIRPERSON: What is the page Mr Pretorius?

ADV PRETORIUS SC: 560.

CHAIRPERSON: Okay, I am there.

ADV PRETORIUS SC: It reads, this is a communication from yourself, Mr President, to the nation in your capacity as President of the nation but it is appropriate to deal with it now:

20 “Dear fellow South Africans corruption during a national disaster is a particularly heinous type of crime and perpetrators are going to be dealt with decisively and harshly.”

And then a few paragraphs down before the next heading:

“Attempting to profit from a disaster that is claiming

the lives of our people every day is the action of scavengers, it is like a pack of hyenas circling wounded prey.”

And then an issue that I would like to raise later, Mr President over the page under the head multidisciplinary approach, you say:

10 “Experience here and in many other countries shows that a multi-disciplinary approach to tackling the commission of alleged criminality is needed for the fight against corruption to be successful. A broad range of investigative and prosecutorial capability need to be brought together under one roof.”

And that is one issue regarding the way forward that perhaps we can canvass later. But for the present, this is perhaps the strongest language used in the history of 20 years of identifying corruption, corrupt activity and undertaking for the nation as a whole to deal with it decisively.

20 In other words - and we have seen it before from 2001 and perhaps before that too, in fact, before that too, many lines have been drawn in the sand. It has been drawn in the sand repeatedly, the language, particularly under your Presidency, has got stronger and less equivocal.

But the question remains in 2018 the line was drawn, in 2020 the nation refused, what is it about corruption and how can it be explained that despite the statements and let us accept that those statements were made with seriousness. What is it about our society that in 2020 you have to say what you have say about circling hyenas when that line has been drawn decisively so many times before?

PRESIDENT RAMAPHOSA: Chairperson I do state it quite
10 clearly in my both opening statement and in my main statement that over the periods, including the period under review, there has been recognition of malaise of corruption in the ANC, and what I said earlier, before the break about this issue of incumbency that we got into government, and we were robed with the powers of the State and ability to manage resources, dispense patronage and all that.

And we have accepted and admitted in the past that that has resulted in a number of deviant type behaviours and having recognised this over time we have said we need
20 to act against it. And with the elapse of time, we have seen the price that is being paid by the people as a whole, as they are deprived of good service delivery, because the resources are being diverted, have been plundered. We have realised that at an economic level, it is having a dent against our economy and at a social level it is also

having a serious impact. But over and above that it is also having an impact on the ANC itself because it results in the breakdown of party discipline, the breakdown of party morality and the disregard of our principles and what that leads to is the ANC becomes less attractive to ordinary citizens and we should support it, we should join it and finally it leads to election loss or diminishing support that we can see and with this in mind, we decided that we need to plug those holes so that the ANC can renew itself and regenerate itself, because if we do not we are just on a one way ticket to oblivion really, to defeat the poles and we therefore need to do something, and either two people would have taken less, paid less regard to the impact that it has on the ANC itself and on our electoral position.

This time around, that realisation is there, that we have got to change direction and do it at the pain if you like, you knowing that we could lose support and we have seen the decline of our electoral support going down continuously.

20 So all these measures and initiatives and solutions have to be embarked upon so that the ANC rids itself of those who may well be having other intentions on the resources of public.

CHAIRPERSON: Well, it seems to me Mr President that because of the influence that the ANC has in society and

because it is the majority party in parliament, the government is its government. It has a very important role to play in where the country is going, and if one looks at the types of issue that the commission is investigating, one can see that whatever it is that the ANC may say we did, did not do.

Simply to the point. That is why corruption has reached the levels that it has reached. That is why we hear the kind of evidence that the commission has been
10 hearing. So to the extent that the ANC wishes to be part or to even play an important role because it must I think, in changing the situation in the country on these matters, it cannot do so it seems to me and you may comment on this, by looking at those things that are comfortable for it to change.

It cannot make a meaningful impact. It cannot make a serious contribution for making a meaningful impact on corruption and issues of State Capture unless it confronts issues that are painful to confront, and say to
20 change things we will have to deal, we have to do certain things that we are not comfortable to do.

So as you prepare to come back later, because even though you will be dealing with matters wearing your cap as president of the country, there will still be ... there is still some homework to do as president of the party as

we discussed yesterday.

It is going to be important to really look at what are those really important things that may need to be looked at.

MR RAMAPHOSA: That is so true and we have gone through the period of retro - what is it?

CHAIRPERSON: Introspection.

MR RAMAPHOSA: Introspection, of introspection Chairperson, and in part the reason we then decided that
10 we are going to advocate seriously advocate for the establishment of this commission, whilst there was doubt and whilst there was even talk that this commission could tear the ANC apart, we were brave enough, courageous enough to say this is a necessary process that we must go through as part of our own renewal process.

It is almost akin to this legend that is spread around of an eagle. An eagle that has reached its old age, as it were and finds that it can no longer catch its preys and feed itself. There is a legend that when that time comes, it
20 withdraws and goes to the highest peak of the mountains and whilst there, it goes through a very painful process of shedding its claws.

Of plucking out its feathers. They argue that, and it is a legend I think, that it bleeds. It goes through pain and suffering and after it has plucked its feathers and taken out

its claws, they grow back and it emerges with new feathers, new claws and it then starts to fly off and it soars and goes even higher and then it functions a lot better.

So this commission is a cathartic moment for the ANC, I must say. It is a very difficult period for the ANC to go through because whether people like it or not, the ANC is the governing party and it has a dominant presence in the life of this country.

10 It has got to renew itself and this is what has brought us here, and our presence here and our support for the commission and our participation, is that whole process of plucking out our claws and pulling out our feathers, so that we may come out of this process new, as part of the renewal process.

20 So this is what we are doing. Not that it was doubted, it was feared, it was contested. But in the end this is where we are and we have got to go through this process and beyond your report we should be able to fully renew ourselves and deal with the matters that brought us here.

CHAIRPERSON: Thank you. Mr Pretorius?

ADV PRETORIUS SC: The Chair has raised the issue a number of times and we have, and in fairness you have Mr President, and that is to pry over and above introspection which is aimed at the future, but in retrospection to look at

the past, to try and understand that things that did happen within the party actually happened in order to inform the way forward, and is there not, although this is succinctly stated, and it is in a sense carefully stated.

It is never the less quite clear and firm and it is noting part of the resolution of the 54th national conference which says current leadership structures seem helpless to arrest these practices. Either because they lack the means or the wealth or are themselves held hostage by them.

10 In other words the practices of corruption and State Capture. Is there not a need to look at that statement more carefully, to dissect it, to understand why this conference got to where it was, who made the decision?

MR RAMAPHOSA: Conference made that it was the noting statement and conference being a conference of more than 5000 delegates from branches, the predominant views that are expressed at conference are from ordinary members who are representing the branches of the ANC.

20 As conference reflected on this, it did correctly say we seem to be helpless and the leaders seem to be helpless as well, and it is either they lack the will or they themselves are captured in one way or another but that is conference noting and noting with a measure of sadness that this is where we are.

Are you helpless, are you do you lack the political

will. So it is a proper analytical observation by delegates at the conference and I agree with that, but would say it is not true that the entire leadership is captured and it was an observation by the delegates.

In a way the proper interpretation of that resolution means to me that proof to us as delegates that you, the leaders, you have the political will and you are not captured and you are going to do something about this. So for me that is the flip side of the coin of that noting
10 statement.

So we then have as a leadership to prove to the membership that no, as leaders who were then elected at that conference, we are not and that is why we fully embrace the decision that was taken at the conference that we will, we will have this commission established, purported and we will appear before it to come and testify, because we are now involved in a new process.

ADV PRETORIUS SC: The concern remains and perhaps it does not bear repeating more than once more. But this
20 statement was made, quite starkly made in 2017. Three years later or almost three years later you used the language of the heinous of accused number one in the dock.

Is there a concern that the observer might have that although the will is there, the means will be, the

achievements and the methods are not?

MR RAMAPHOSA: I would argue that the contrary is true now. The will is there, we are all for instance the conference having taken the decision, the national executive committee having endorsed that decision. Also as clearly exemplified through the letter that I send to members of the ANC, particularly after the Covid procurement debacle.

The NEC endorsed the fact that we now need to
10 draw a line. We have got to underscore what we have been saying with now action and that is precisely where we are headed to now, because we do not want to keep talking about this forever and a day.

We now need to be seen to be taking action. So the will is there, the political will is there unquestionably. Secondly, the means are also articulated in the same resolution that those who are in charge of certain key organs of state, like finance, like the police and all that must act, and which is precisely what is now happening.

20 You referred earlier to a multi-disciplinary organ or entity that should investigate and opt to prosecuting criminality. This is unprecedented. It is happening for the first time where we have all these disciplines working together, but we will talk about that I guess in the next session.

So the means are being found, the will is there, and there is clearly proving that where there may have been doubt that action is not being taken because people were either not having the will or the means of themselves captured with disproving.

CHAIRPERSON: I think the resolution or the noting in the resolution was new leadership.

MR RAMAPHOSA: Yes.

CHAIRPERSON: We think some of you are held hostage,
10 are captured.

MR RAMAPHOSA: Yes sir.

CHAIRPERSON: Not all of you, but some do not have the will.

MR RAMAPHOSA: Yes sir.

CHAIRPERSON: Some have the will but there is no, they do not have the means, but some of you are captured. Okay.

MR RAMAPHOSA: That is the noting part.

CHAIRPERSON: Ja, that is the noting part.

20 **ADV PRETORIUS SC:** Mr President, if we could move briefly to another topic. Since the line was drawn in the sand, the most recent 2017, 2018 line.

MR RAMAPHOSA: Yes.

ADV PRETORIUS SC: The question that the Chair would be interested in, in order to assist him to formulate his own

recommendation, would be what has the ANC done, tried to do, what has been successful, what has not been successful and if I could assist in that analysis Mr President.

As I understand it, for corrupt activities within the party, there are two categories of recourse. The one is internal discipline or referral to the integrity committee, and the other is an external consequence or outcome and that is criminal prosecution.

10 Are records kept within the ANC of internal disciplinary proceedings and internal criminal prosecutions? Is there a record?

MR RAMAPHOSA: Chairperson, there would be a record of internal disciplinary proceedings, because the disciplinary proceedings are quite formal. I used to be the Chairperson of the national disciplinary committee of appeal and we kept formal records.

20 There was nothing that was loose and informal. So they would be there. They would be scattered all over because discipline starts right at the bottom, right through to the top. The criminal prosecutions, I would doubt if we would have such a record, because it is a much more state formal process which I am sure if we sought to find it, we would find it.

ADV PRETORIUS SC: We may follow that up in due

course Mr President, but for the moment can I ask you please to go to page 38 of your own affidavit, paragraph 86. This is again in the category of recourse. Paragraph 86 reads:

10 “A recurring challenge in the management or organisational discipline is that in certain instances, the institution of disciplinary proceedings is dependent on a conviction in a court of law. This is particularly the case with respect to offences related to corruption and fraud. This has meant that the organisation has been unable to act against members facing serious charges or financial impropriety until the completion of court processes, which then often be lengthy.”

20 Now that statement can be understood in two senses. The first is that the ANC will only take disciplinary action once court proceedings have been concluded or conviction in a criminal court is itself a ground for disciplinary action in terms of the ANC constitution, but whichever way it is regarded, is there any necessary logic behind the reservation that one has to wait for criminal proceedings to be concluded before internal disciplinary proceedings can take place?

 Should they not, as our law allows, be

independently treated? Our law is quite clear that, well at least it is now, that internal disciplinary proceedings and voluntary organisations or companies or elsewhere [indistinct – dropping voice], there is no right to remain silent. You may remain silent and suffer the consequences and still be disciplined.

I do not want to get into detail and argue the law with you. But there is no need, there is no necessary legal barrier to internal disciplinary proceedings being instituted
10 and completed before criminal conviction.

MR RAMAPHOSA: Yes, I think Chairperson the difficulty has always been a person is charged and then at the same time simultaneously they are disciplined. They stand trial and the disciplinary process has been done and concluded and then they are found not guilty.

In the former state law enforcement. So what do you then do? Do you go back and undo, for instance if the charge was theft in the ANC and the charge is theft in the state, what do you then do when they are found not guilty,
20 and where we have sort to deal with it, is to say if you have been charged of a serious crime that has to do with corruption and so forth you should step aside and you are then given an opportunity to go and clear your name, while having stepped aside. Go clear your name, and having done that, then the disciplinary process in the ANC can

then ensue.

Unless of course you could be charged with the charge of bringing the ANC into disrepute by having stolen a chicken, stolen money or whatever, that will be a different matter, but people will always want to link the two.

So we thought that the safest route is actually to say people should step aside, which were provided for in our resolution.

10 **CHAIRPERSON:** Well, ja. Why should it only be ANC which has got this problem? Of course Mr President, with your trade union background you know that in the workplace for instance, if an employee is alleged to have done something that is a criminal offence, the employer is not going to wait for the criminal, for the police to investigate and for him to be convicted.

The employer will convene a disciplinary hearing, come to a conclusion and if the police get involved and there is a criminal case, that is a different process
20 governed by Criminal Procedure Act and the criminal law, but the employer is done.

If the employee is aggrieved by the employer's decision, there are forums where to go to. There are processes where to go to and challenge it, and sometimes the decision in a criminal court and the decision in a

disciplinary inquiry would be different, but the standards are different too.

They are applied to the determine the guilt and so on. I mean, within government too, government departments. I know that the government departments are notorious for keeping people's suspensions for a long time.

MR RAMAPHOSA: They do that even to judges.

CHAIRPERSON: Well, judges have got certain processes that are compulsory, but the government departments have
10 got no processes that are compulsory for them to wait. So and I do not think that those delays are because they are waiting for criminal force, but they have got those delays, but they do not need to have those delays.

So the proposition is that is not a good ground. Every organisation you know, has its own rules. You cannot let somebody who you believe has done something completely unacceptable to your organisation, not be disciplined by the organisation because if you are going to wait until the outcome of a criminal case, which might
20 finish in three years and then there might be an appeal which might take another three years.

By the time the process is finished, how can you still say you are going to have a disciplinary hearing? So it is like you just wait for the courts and when you can deal with the matters yourselves. So the proposition would be

that the organisation would need to reconsider that because I do not think anybody else follows that route.

MR RAMAPHOSA: I think Chairperson, a political organisation is very different of say a company and a non-governmental organisation of another sort. This is an organisation that is composed of very active members who take views and positions, and who when they have a sense that they are being treated unfairly, respond.

They can either go to court, disrupt your
10 organisational purpose, processes and all that, and this is what we have thought would be fitting for us as the ANC, because it has not really been the practice to say if you are charged you must step aside.

It has not been the practice. I know that in many organisations, including the private sector, that is the norm that if you are charged, you immediately step aside and some even do it voluntarily, because they fear that they will compromise the image and the integrity of the organisation.

20 So they step aside, and could also sometimes argue that allow me space, I will take a leave of absence to clear my name and of course the hopes on the organisation itself, whether they are going to prefer charges against that type of person.

So for us it has been a major, major step for the

ANC to take, that when charged you have got to step aside and when serious allegations, you have got to go to the integrity commission and explain yourself. Now this is a new way of dealing with issues that have to do with wrongdoing, and it needs space and time to be allowed, it needs the space and time so that this new process which will eventually emerge as a culture should – should mature in the organisation

I would argue that you know suddenly changing it
10 before it is tried and tested would lead to a lot of confusion hither to people have always argued that innocent until proven guilty and they have always said I stay where I am, come hell or high water and yet it has an impact – a very negative impact on the integrity of the organisation.

ADV PRETORIUS SC: Ja.

CHAIRPERSON: Mr Pretorius.

ADV PRETORIUS SC: Thank you. There is a great deal of academic writing which I am not going to refer to this is not an academic occasion that says that in relation to corruption
20 a systemic approach should be adopted and it is not enough simply to say well if someone does wrong we must discipline or charge in a criminal court for whatever it is.

You yourself have mentioned and the resolution of the 54th National Conference spoke about weakening of law enforcement agencies. That we can deal with if we have

time next time around.

PRESIDENT RAMAPHOSA: For sure.

ADV PRETORIUS SC: But I would like to raise it insofar as appointments and dismissals are concerned because that is a topic we have dealt with here today and yesterday.

The constitution makes it very clear that the head of the NPA the NDPP National Director of Public Prosecutions has a term of ten years and it has emphasised in that judgment that that is very important because it goes to the
10 independence and security of tenure of the office.

It is an interesting fact that since 1994 or since the establishment of the NPA not one NDPP has lasted his or her full term. What – and you have already taken certain steps but perhaps these should be clarified not only in relation to the NPA but other law enforcement agencies what steps have been taken or considered by the ANC in relation to appointment of the heads of the law enforcement agencies and their security of tenure and how they should be selected and how they should be appointed?

20 I am not going to ask you to account for the evidence led – it has been given over a long period of time before the Chair about appointments and dismissals and the period under review by the commission but to look at it and we all understand that this is the contributing factor as the resolution does. What steps in relation to appointments has

– have been considered?

PRESIDENT RAMAPHOSA: None – none have been considered. When I initiated the process of appointing the current head of the NPA it was like unchartered territory, unchartered waters and one did that precisely we wanted to have a very transparent process – a process which everyone in the country would have confidence in which would go through a number of candidates who would be interviewed by a selection committee which I appointed at the time it was
10 headed by former Minister Jeff Radebe who is well experienced and well 00:04:26 in doing this and he helped considerably well in getting us to arrive at this point and he was very, very scrupulous in going through a myriad of applications that we received. So that – that was a very good process whether we will do it with – for others is a matter that one would still need to consider.

So in the ANC itself know it has not been including the tenure.

ADV PRETORIUS SC: And appointments to the civil service
20 clearly that is a matter that concerns the ANC as a party has referred but also may be dealt with through legislation and elsewhere as we have – yourself pointed out. But is there any step that can be taken to isolate appointments and dismissals from patronage policy or is that too general a question to be fair at this stage?

PRESIDENT RAMAPHOSA: No it is not too general a question. We mean to put into effect what we have said that we need to move away from the politics of patronage. We need to exercise fairness, openness and equity.

Now those are generally accepted principles of doing things and there is nothing wrong with approaching the appointment of people in that way. So – and that – that saves you from an attack on the issue of patronage that so and so was appointed because they are going to be news of
10 this and that purpose or nepotism and what have you.

So – so those are principles that I would want to see observed as well.

ADV PRETORIUS SC: Has any consideration then arising from your answer been given to precluding party officials or government employees from doing business with the state that has been met?

PRESIDENT RAMAPHOSA: Yes that has been mentioned and when it comes to the government officials as it is clearly stated in our regulations and in our law that it is prohibited.
20 You have got to declare your interest upfront when it comes to even public representatives who are in the executive positions like ministers that too is prohibited and you have got to declare your interests as well.

The one that has to do with the party officials who may not be employed in government that is under discussion.

We have got strong views on both sides. There are people who argue that what is wrong with me as a party official doing business without me and others who hold a strong view that once you are a party official you and your close relatives should not find yourself doing business with (inaudible). So the latter is still in discussion.

ADV PRETORIUS SC: Then has any thought been given to legislation specifically directed at governing executive employment and board appointments of state owned
10 entities? I know they are covered in certain 00:08:55 of legislation?

PRESIDENT RAMAPHOSA: What was the question?

ADV PRETORIUS SC: Appointment of senior executives and board appointments in state owned entities need consideration given to directed legislation?

PRESIDENT RAMAPHOSA: Well that falls under the rubric that I spoke about that there are some really key top positions that we would still want to have well-appointed and for the rest it should really depend on the entity itself as to
20 who it appoints. We should never find ourselves bothering about the employment of the janitor of – to the building where the state owned enterprise operates or the sweeper or you now secretary or director. So we would only want to focus on those who have a bearing whose appointment rather has a bearing on the general direction of the company

or the entity.

With regards to legislation and of course I mean any legislation that would enhance good governance, good leadership and everything that is good is – should always be welcomed and the state owned enterprise counsel which is the presidential state owned enterprise counsel is ceased with this matter if I can use a parochial term like that so and it is dealing with this and we should be able to get really good outcomes and in fact there are already drafts that is
10 going to be addressed in precisely this.

ADV PRETORIUS SC: The two further topics that perhaps could be dealt with in the next round Mr President and the first is the draft national implementation framework or its professionalization of public service.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: I am sure that would be of great interest to the Chair.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: And the second is procurement
20 reform and what is envisaged in relation to that legislation that it might – well that is on the table.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: At present. I may then move to another topic please. It is a topic related to party financing in a way or the allocation of party finances. In your

statement at page – to the annexure to your statement in the alliance summit declaration page 750 of Bundle 1 there is talk of 00:11:55 vote buying.

CHAIRPERSON: What page did you say it is?

ADV PRETORIUS SC: 750 Chair.

CHAIRPERSON: Thank you.

ADV PRETORIUS SC: This is a statement made by the former President in 2015 he says:

PRESIDENT RAMAPHOSA: Which page is it?

10 **ADV PRETORIUS SC:** The statement begins at page 748.

PRESIDENT RAMAPHOSA: 48?

ADV PRETORIUS SC: I want to if I may Mr President refer to page 750.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: The last paragraph reads:

20 “Among other things we have identified the debilitating effect of money politics. Many comrades gave concrete examples of how some of us participate in the practice of buying other comrades to vote for us.”

And then on page 753 the last few paragraphs read:

“I want to talk briefly on the challenges we are having on the membership system especially how we have approached it as primarily a technical matter. Virtually all

comrades talked about this. Comrades have talked about instances where the membership system is abused, manipulated and subverted. We have talked about people being given money and wined and dined in exclusive hotels. In other words comrades here know who has been given money by whom, when, how. The question is whether we reported this to the relevant structures, what has been done about it? Does a list exist of cases that are being investigated and what progress has been made? The officials and the national working committee should give urgent attention to this.”

Now just by way of introduction it is – would be obvious to any close observer that the practice of buying votes is a very important part of the circle of patronage politics in other words a person is put in an important position cumulates well is able then to buy membership of the ruling party and that if anything is a – I do not suppose it is a matter of – that could even be debated but I will say it anyway that the complete distortion of the constitution democratic 00:15:10 system and the (inaudible) association and the like but do you have any comment on that practice as it occurred, to what extent has it occurred, what has been

done to stop that practice?

PRESIDENT RAMAPHOSA: Well we have spoken about this practice of the usage of money and the usage of compromising comrades through money, vote buying, yes even wining and dining and just spreading money around. And when it comes to distorting our membership system which former President speaks about here steps have been taken to – to streamline our membership systems so that it is not made subject to manipulation or to being hijacked by
10 those who may want to just buy a membership for others or pay membership for others.

It is – it is now digital, it is almost human free in terms of the way it functions, so that outside human free it depends on the member you have to do work through various other identity items or devices so it frees us from manipulation so that helps a lot and what former President is talking about here is absolutely to the point.

The one about wining and dining and handing out money and all that it is much more difficult to deal with I
20 guess because it happens in the shadows, dark corners and those type of places. In the end you need to more broadly guard against you know those who would be brought into various positions for patronage purposes and this is where we will work very hard to uphold the values and principles of the ANC so that those who may get into the grip of such

people should be minimised to a large extent.

ADV PRETORIUS SC: You yourself Mr President – sorry had you finished?

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: You yourself raised the issue in quite clear terms in paragraph 167.3 of your statement at page 74 of Bundle 1 if I can read it to you?

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC:

10 “The ANC has recognised the erosion over
time of its organisational integrity. This
process as had been manipulated to advance
the material interest of certain members and
associated private companies and
individuals. This manifests itself and weak
and pliable branches vote buying and gate
keeping where certain potential members are
deliberately prevented from joining or
participating factionalism and even open
20 conflict this provides fertile ground for state
capture and corruption.”

We have spoken about the patronage circle where it compounds itself like compound interest to the patron obtaining resources favours and money to be able to cement his or her position through these processes. Do you have

any comment on that articulation of the issue?

PRESIDENT RAMAPHOSA: No, no, no, no comment except to say yes and I agree entirely those are ills that you want to get rid of in the ANC. It will take time but the will and the means are certainly there to ensure that we – we rid the organisation of such ills.

ADV PRETORIUS SC: And it is in effect those branch members who elect senior officials in the party who have a great influence on the way the country is run and what happens in (inaudible) but also in effect the President. They elect the President of the ANC who becomes the President of the country so it is an enormous power in our democracy that can be so manipulated. It is a serious issue.

PRESIDENT RAMAPHOSA: It is a very serious issue and it is for that reason that the – we raise this issue because it is serious and we raise the level of consciousness and alertness against such deviant behaviour within our membership structure. So we – it is a process that we need to embark on and we have already started with that one (inaudible).

ADV PRETORIUS SC: In your ...

CHAIRPERSON: Mr Pretorius if we are going to go up to four maybe we can proceed up to four without an adjournment. If we are going to go to five maybe this might be the right time for a short adjournment?

ADV PRETORIUS SC: Chair I ...

PRESIDENT RAMAPHOSA: It depends on what you...

ADV PRETORIUS SC: I certainly do not want to be presumptuous.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: But I think it is for the President to ..

CHAIRPERSON: Hm?

ADV PRETORIUS SC: I – it just appears to me that it has been two long days and the President should be free to say
10 whether and when.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: So I can go home now?

ADV PRETORIUS SC: With my permission.

PRESIDENT RAMAPHOSA: I am just pulling your leg.

CHAIRPERSON: Well – maybe whatever the position is maybe let us take a ten minutes break whatever – whether it is going to be four or whatever let us take a ten minutes break.

PRESIDENT RAMAPHOSA: That is fine.

20 **CHAIRPERSON:** Okay.

PRESIDENT RAMAPHOSA: That is fine with me.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: The President is the only one who is

being questioned here, so maybe you are right to say we must find out whether his instance where he was earlier. They said we can go in – up to five. Is that still the position?

PRESIDENT RAMAPHOSA: Yes, that is the position.

CHAIRPERSON: Oh, okay. Thank you, Mr President. Mr Pretorius, I know that you are the only one standing, who has been standing for some time. [laughs] But I guess, if you still have issues to deal with, let us try and
10 go up to five because the President is making himself available.

ADV PRETORIUS SC: Yes, it will be until quarter to five because ...[intervenes]

CHAIRPERSON: That is fine.

ADV PRETORIUS SC: ..the President does have a closing statement he wishes to make.

CHAIRPERSON: Okay. No, that is fine.

ADV PRETORIUS SC: So if I may go for, say, an hour but I am not sure I will take that time.

20 **CHAIRPERSON**: Yes, ja.

ADV PRETORIUS SC: Because I intend to wrap up ...[intervenes]

CHAIRPERSON: Ja, the idea is just that we must use every minute we can, that we should use it. We still have issues to deal with ...[intervenes]

ADV PRETORIUS SC: Well ...[intervenes]

CHAIRPERSON: ...subject to ...[intervenes]

ADV PRETORIUS SC: ...where I fail you will...

CHAIRPERSON: H'm?

ADV PRETORIUS SC: I am sure if I stop early, you will fill the time.

CHAIRPERSON: [laughs] Okay alright.

ADV PRETORIUS SC: You have a section of your statement Mr President, that talks about your response to
10 the ANC allegations of state capture and you deal with that at paragraph 93, page 41 and following. The concept of state capture has been defined by yourself, I do not want to put words into your mouth in your statement, but how do you understand the concept of state capture? It is still something that the Chair will have to deal with in the fullness of time but perhaps you could assist him in that regard.

PRESIDENT RAMAPHOSA: Well, in our country the state or the concept of state capture, really, it is wrapped up
20 with corruption and it gained prominence as we were observing how certain interests positioned themselves to have control over, you know, state institutions in relation to the appointment of people to them, in relation to the resources of those institutions, and also how they had ensconce to themselves with political leaders who they

sought to, as it appeared, to want to influence and what we got to hear was how it manifested itself in the form of whisperings by those people about dispensing patronage, dispensing positions, appropriating government contracts in various state institutions as well.

And that smacked of unlawful involvement in those institutions and undermined the processes, the known and legal processes that those institutions were supposed to have. And it was represented through a family
10 who befriended certain people in government up to and including getting those people to claim that these our friends and they even underpinned what they were doing with ideological articulations that they were advancing the concept of black economic empowerment.

And as it involved, we started seeing how even that concept of black economic empowerment was being undermined and in fact eroded because they tendered also to monopolise and appropriate onto themselves nearly as many contracts as possible in the most lucrative ones that
20 pushed out your black economic players who by deemed of our own policies as government we should have been placing more emphasis on because they were previously disempowered and we needed to empower them.

So the capture was multifaceted and was so effective in that it was all pervasive. And it was in many

ways done in the most clever way because they tended to know which contracts will becoming available, where they will becoming available. But I guess, Chairperson, one will talk about that in the next session. So one should not carried away. So ...[intervenes]

CHAIRPERSON: No, no ...[intervenes]

PRESIDENT RAMAPHOSA: ...that is how I understood the matter of state capture.

CHAIRPERSON: That is fine. May I ask this question
10 because it crossed my mind earlier. I seem to read somewhere and maybe it was not true that one or more of the Gupta brothers were members of the ANC. Would you know that or is that something that you do not know?

PRESIDENT RAMAPHOSA: Chairperson, I have also heard that. I never saw the evidence or proof of that.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: Okay.

PRESIDENT RAMAPHOSA: Ja.

20 **CHAIRPERSON:** Okay, okay.

ADV PRETORIUS SC: There were certain signposts along the road of state capture history in the period under review or alleged state capture. As the Legal Team we must confine ourselves to the moment. The signs were quite clear. It deserves more attention but perhaps if we have

time in the next round we can deal with it in more detail but there was the address to the NEC by Mr Mbalula.

There was the Waterkloof landing and the response to the Waterkloof landing. I must say in that regard, it is a matter of some amazement but Mr Koloane, who clearly breached security, became an ambassador with a security clearance. Should that not cause huge outrage within the party?

PRESIDENT RAMAPHOSA: Well, it did raise eyebrows, 10 let me say. It raised quite a few eyebrows but it happened as it did and that is how it happened.

ADV PRETORIUS SC: I see your eyebrows are raised as far as they can go. [laughs]

PRESIDENT RAMAPHOSA: [laughs]

ADV PRETORIUS SC: But perhaps that belongs in the state portion. It is such an alarming event that I should not comment further but I could not resist mentioning it. Then there was the dismissal of Mr Nene and the appointment of Minister Van Rooyen and related to that 20 was the March 2006 revelation of Mr Jonas and you have dealt with that this morning but those issues gave rise to at least series of events that I think should be dealt with and to one observation that I would wish to put to you for your comment.

He says the events was the appointment of the

internal inquiry. We know that the internal inquiry that was mandated by the ANC NEC received one written response, eight people came forward with oral responses and there was, as it appears from your own bundle, at page 126 and following, a sense that these eight at least said they were prepared to make submissions to an independent body. How does one explain that? How does one explain, firstly, the failure of the internal inquiry?

Secondly, the sentiment that they would prefer to
10 testify before an independent body? And thirdly, the fact that the knowledge was within the ANC and it did not come out. What happened there? What was the explanation for that series of events?

PRESIDENT RAMAPHOSA: Chairperson, I guess the inquiry that was initiated by the Secretary General was a rather proper process to follow because he wanted as the Head of the SGO, that is the Secretary General's Office, to formulise the receipt of the complaints because one person had complaint publicly and we realised that it is much
20 bigger problem and let us elicit more of such and in the event, only one person was prepared to put that in writing.

I guess the others, I guess, for reasons best known to them, wanted a more formal a process which would be two things. Which would be able to conduct a thorough investigation and two, which would in some ways

also shield them so that they can speak freely because for a variety of reasons because some of these things are so sensitive.

People did not just want to talk about them freely and loosely. They wanted a more formalised process. And I think we should applaud them because in many ways those seven are the unsung heroes and heroines who helped us to get to this Commission because they basically said we are prepared to talk so long as there
10 can be a formal process.

That they then asked to realise that this is a much bigger problem. We now need to advocate for the establishment of a commission and that, in many ways, was the beginning processes of, in a way, demanding, advocating and calling for the establishment of your Commission, Chairperson. So I would say the realisation within the ANC was growing and growing and this is where we are now.

ADV PRETORIUS SC: Yes. Mr Mantashe had certain
20 comments to make about it. He said that, in fact, that because of the low numbers of submissions it would be a fruitless exercise for the ANC to investigate. He said: When they do not come forward to the ANC, the ANC will not force them. It does not mean that we are walking away from it but if you make allegations then you must be bold

enough to take the matter through.

Many did say that the discussion of the ANC on state capture is going to continue for a long time. So he did not see it as the end of the road, clearly. But you have commented on what it says about the eight members concerned and what their view was. Was that say about the ANC? Did they trust the ANC as it was constituted at that time and if they did not, why not?

PRESIDENT RAMAPHOSA: I guess they did not distrust
 10 the ANC. They were rather grateful that their inputs had been solicited because for them too it would have represented an opportunity, almost a valve to take out, you know, the tension and everything. But then again, knowing the limitations of a political organisation like the ANC in terms of investigating very fine allegations and all that, they felt that a more state sponsored or appointed entity would be better placed and would be able to add also credibility more publicly. And I think it is less about not trusting the ANC and more about wanting a formal process.

20 **ADV PRETORIUS SC:** Alright.

CHAIRPERSON: But also, Mr President, I must say that I have a feeling that there are many maybe current DG's, DDG's and past DG's and heads of departments who maybe members of the ANC who must have known a lot of things that should have been brought before the

Commission and who simply have not responded positively, both to my own cause or people in South Africa to come forward with information which I have made over the two-and-a-half years, as well as to the cause by the ANC itself to say its members must come forward and assist the Commission.

So one wonders what it is because there must be so many others. Those who have come forward who have testified, I think we applaud them but I think they are a
10 very small minority if one has to think of how many DG's and HOD's in provinces and so who must know quite a lot of things that happened.

PRESIDENT RAMAPHOSA: Chairperson, I think we need to look at the personal circumstances of people because the human element does kick in. Your Commission is a very highly publicised forum. It takes guts and courage for anyone to come here to testify and I am filled with awe as I have looked at the many people who have become before the Commission to testify. Others had to come, they have
20 been directed to come and some you have subpoenaed and others have volunteered. So it is not everyone who will be inclined in that way and who will have that type of courage ...[intervenes]

CHAIRPERSON: Ja.

PRESIDENT RAMAPHOSA: ...to have their testimony

...[intervenes]

CHAIRPERSON: H'm, ja.

PRESIDENT RAMAPHOSA: ... in public ...[intervenes]

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: ...and under the scrutiny of the media. And sometimes people may think it is career limiting.

CHAIRPERSON: H'm. I suspect so. [laughs]

PRESIDENT RAMAPHOSA: Its career - it could affect
10 their families, it could affect them personally and their
career prospects. So it is not easy, Chair, to come before
you. People come here trembling and fearful. So it is not
everyone who is brave enough to come here.

CHAIRPERSON: H'm. Thank you. Mr Pretorius.

ADV PRETORIUS SC: Thank you, Chair. Mr President,
there was over time in the period under review a series of
approaches to the ANC and to the ANC leadership, both
from within and from without the party, in relation to the
observation to state capture and I will ask you about your
20 own in due course and its manifestation and the frustration
amongst many but there was the memorandum from the
veterans. You will recall that. That was dealt with at page
517 of Bundle 02 for the record.

There was the letter from - Watts Foundations.
You will recall that. There was the memorandum from the

Director General. You will recall that. There was the inquiry conducted by the South African Council of Churches and there was, of course, the Public Protector Inquiry. In that context, I want to put to you if I may, and if I am taking it out of context, you will pull me up for it. Paragraph 103 on page 45 of your affidavit where you say:

10 “Another important development during this time was the decline in the ANC’s electoral support and the local government elections of August 2016.

The ...[indistinct] research at the time indicated that the issue of corruption was becoming an issue of greater concern amongst votes and that it was among the factors that contributed to the ANC’s weaker performance. This was one of the more direct ways, although not the only one, in which public opinion contributed to a shift in the ANC’s response to state capture...”

20 Let me repeat that last sentence:

“This was one of the more direct ways, although not the only one, in which public opinion contributed to a shift in the ANC’s response to state capture...”

Now you will recall, Mr President, our discussion

at the beginning of our evidence yesterday when we spoke about the leadership role of the party which you acknowledged. If an observer was to say to you what the ANC did here, was not to respond to the glaring signals of state capture and corruption in the period under review.

Even those various approaches made from within and without the party, did not seem to take hold until the truth of the loss of electoral support hit home and that was the reason the ANC reacted. In other words, not as leader
10 but as follower. What would you say to that observation?

PRESIDENT RAMAPHOSA: Well, it is true that it was the reaction of ordinary South Africans that was demonstrated through the electoral support that got the ANC to sit up and reflect on what corruption and state capture was doing to its fortunes. Even that issue alone was contested in the ANC. There were those who did not think so although they were the minority but the majority took heed and this became apparent leading to those elections with the various election surveys that the ANC does which is done
20 by nearly every political party.

Wherever we went and as we engaged with people, the number one issue that people were concerned about was corruption/state capture. They were most unhappy that their movement that they love so much seems to be so deeply emerged in corruption and things to have

been captured because as all these reports came out and particularly the emails issue it had a negative impact whether one likes it or not. A very, very negative impact, the integrity of the party, the image of the party was dented and that was reflected in the electoral returns.

So that in itself also had a huge impact on getting the ANC to then have the sense that it needed to do something because otherwise it would just be a continuant slide in its electoral fortunes. Ja.

10 **ADV PRETORIUS SC:** For yourself, Mr President, what were the signposts along the road or along the way of the path of state capture that first alerted you to the existence of something much more than corruption? What was it for you that alerted you to the fact that state capture was a phenomenon that needed to be dealt with?

PRESIDENT RAMAPHOSA: Should I answer you on that now or when I come back as President of the Republic?

ADV PRETORIUS SC: Maybe both but perhaps a summary ...[intervenes]

20 **PRESIDENT RAMAPHOSA:** [laughs]

ADV PRETORIUS SC: But if it is something you need to think about, we ...[intervenes]

PRESIDENT RAMAPHOSA: That is exactly what I wanted to plot out very, very clearly in ...[intervenes]

CHAIRPERSON: Ja.

PRESIDENT RAMAPHOSA: Because I want to look at the various markers for me that indicated where we were. And just like yesterday when I said, you asked me a very good and clear question: What is that we believe were indicators that things were going wrong and what should be done? Which is what I will undertake to focus more attention on when I return for the next session.

CHAIRPERSON: Ja, h'm.

ADV PRETORIUS SC: So if you also consider that there
10 were these markers and signals and approaches on the one hand.

PRESIDENT RAMAPHOSA: Ja.

ADV PRETORIUS SC: And then there were almost contemporaneously events that seemed to counter what ought to have been recognised, for example the closure of the bank accounts and the response of the ANC Cabinet and the pop sticks to that but maybe a matter that could be dealt with.

But if one looks at the timeline of warning
20 signals and actions taken and actions not taken and look, actually, at what was happening within government at the time, there is a call for an explanation which would take me to and I am happy to wait for the fuller explanation because after all the reason you have given two days of your time so far, Mr President, is to give a full explanation.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: A considered explanation and which is understandable.

PRESIDENT RAMAPHOSA: Let me say, the issues that you raised, what were the markers before me is contained in my statement which you have not seen yet. You have just ...[intervenes]

ADV PRETORIUS SC: Oh, you will ...[intervenes]

PRESIDENT RAMAPHOSA: ...the content. The full
10 statement is going to be handed in and it will deal with it. It is not a question of avoidance now. It is a question of seeking to do it systematically.

CHAIRPERSON: Ja.

PRESIDENT RAMAPHOSA: So that I do not do it on a piece-fully basis.

CHAIRPERSON: Ja, ja. No, that is fine.

ADV PRETORIUS SC: Alright. By way of summary, there are two issues that I would like to deal with. One is a summary on deployment just to put very clearly where the
20 Commission and the Legal Team stands on the evidence. The other is to outline, by way of summary, what we have discussed earlier but it seems clear that there is an acknowledgment by yourself on behalf of the party, Mr President, that there is no doubt that it is in the evidence that you have put out that corruption and state

capture was to a serious degree is acknowledged. No question about that issue. There may be a debate about the degree.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: And those issues will be dealt with by the Chair, finally, in reviewing two years' of evidence before the Commission. The second area and perhaps could be more systematically explored and that is how could these things happen, what was going on within the party that allowed these things to happen to the extent they did and we have certain clues and signs and resolutions and the like. And perhaps it will be up to the Chair to translate the careful political language and the rest of the issues...

PRESIDENT RAMAPHOSA: [laughs] Yes.

ADV PRETORIUS SC: ...into a more clearly directed language and I am sure the Chair will not shy away from that.

CHAIRPERSON: [laughs]

20 **PRESIDENT RAMAPHOSA**: [laughs]

ADV PRETORIUS SC: But it does, I think, a more systematic approach particularly in regard to the second round where we will... And the third thing is, the way forward in terms of the proposed legislation and reforms, procurement, deployment, appointments to support SOEs

and the like and perhaps that will be summarised the next time around but there is one gap that we have not dealt with and that is the consequences. We have closed the door gently on the past but we have not really spoken of who should be called to account and for what.

Now again that is up to the Chair to deal with, it is wrapped up with the question of law enforcement agencies but I certainly I think that – not that I think, certainly there is a view that accountability should be a priority in this
10 whole process, we cannot just shut the door gently on the past and perhaps apart from internal discipline, which we have dealt with, the question of accountability before law enforcement agencies, how that is going to be approach, what is to be done, whether it should be done or whether we should just leave the door, be shut gently, can be discussed in the next round because it is a matter of state governance, law enforcement agencies and the like.

And the final issue that perhaps should be closely explored – it is a sensitive issue but it is an issue that I
20 certainly think should be dealt with – those institutions of government whose job it was to alert government leadership of what was really happening, where were they? Were they disempowered? Were they misdirected? What happened there? That I think is an important element for understanding what happened, how it should have

happened or how it could have happened and why it was not detected a prevented earlier and I am talking particularly about State Security Agency in this case, but we can deal with next time.

CHAIRPERSON: You are done?

ADV PRETORIUS SC: Done. Well, yes, in more ways than one.

CHAIRPERSON: But you are done for now?

ADV PRETORIUS SC: Yes, Chair.

10 **CHAIRPERSON:** Is there an answer?

ADV PRETORIUS SC: Apart from the closing statement that the President wishes to make.

CHAIRPERSON: Ja. But you have not asked him a question that he still needs to answer, is that right?

PRESIDENT RAMAPHOSA: No.

CHAIRPERSON: Okay. Well, Mr President ...[intervenes]

ADV PRETORIUS SC: Certainly it has not been interpreted.

20 **CHAIRPERSON:** Well, let me ask you this – let me raise this issue with you, Mr President. The current electoral that we have does not give the people, the voters the right to choose or elect their President, that is the President of the country. It allows each political party that is taking part in elections to put up its own candidate and the voters have – or the voters know that if I vote for this party this

will be the – this candidate or their candidate will be the President. Now I cannot remember whether there is a requirement legally that each party must indicate who its presidential candidate is at the time of campaigning or not, probably it can change, I am not sure, but basically the voters cannot – do not elect the President, they vote for a party and effectively the majority party in parliament after the elections will get their own candidate to be voted as a President.

10 Now what do you say to the proposition that that system puts at least some voters in a predicament if the party that they would like to vote for and that they love puts up a candidate that they consider to be unsuitable to be president because they cannot say I am voting for the party but not for this person. If they vote for the party, they are taken to have voted for that candidate and yet they know they do not want this candidate because they do not think the candidate is suitable but that is the system, as it stands. What would you say to the proposition that
20 consideration should be given to changing that part of the system at least to enable the president of the country to be voted directly by the voters so that the system would be, if I want to vote for this party but I do not want their candidate because I think they have made a wrong choice but I see somebody else who is a good candidate, I can

vote for that person, I am not tied to this either party that I like or nothing. So, in other words, you give the power to the people to that extent.

Obviously each party could still say so and so is our candidate, presidential candidate, but when you come to the actual voting, a vote for the party is not necessarily a vote for that candidate, you can vote separately and in that way the president of the country comes directly from being voted by the people and in a way parties are encouraged to
10 put up candidates that are suitable because if they put up candidates that might not be suitable, the voters might not vote for them. Have you got some view on that?

PRESIDENT RAMAPHOSA: Lots of views, Chairperson. Lots and lots of views. It is a proposition that is quite complex and obviously requires a lot of time and maybe it goes to the origins of the constitutional construct because when we started off – and maybe it was a problem of learning from so many constitutions around the world that we ended up wanting to craft a different path and in
20 crafting a different path, we opted for the Westminster type of system but which is not, you know, full Westminster process because with Westminster, it is party-based but it is also constituency-based which is what obtains in say Lesotho, which is pure Westminster, which is what obtains in the UK, so we in a way opted for that but at the same

time we opted for no constituency at the national and provincial level but still went for constituency and proportional representation at the local level. And, if you like, would have said well, we wanted to attain certain objectives at the local level because we saw local government as being the level of government that matters most.

But at a national level what we were seeking to achieve as the unity of the nation, we did not want to go
10 for pure Westminster which would be based on winner takes all because if we had one that, we feared that a dominant party like the ANC would take too many seats and you would remain with too few parties or maybe a two party system as they have largely in a country like the UK. We wanted more representation, even smaller parties should feel that they are represented in the parliament of the people.

When it comes to the point that you are raising, which is the election of the president, I could say that we
20 are – possibly the one odd out on our continent because many countries on the African continent and indeed many other countries around the world who have a presidential system where people vote for a president, at the same time vote for the party and then it in some cases cascades further down to a constituency system and sometimes a

mixed system.

Now we did not consider that, we rather opted for a system where the party would be the one to be voted for through a proportional voting system and that even if it is not written in any regulation or law it is presumed and that is what has evolved through practice, that every party that will be running for elections will nominate the face of the campaign who, if they win, would presumably become the number one or sort of be the president.

10 Now clearly in our system, when people vote, they would know – and in the ANC constitution and systems it has been written clearly that the President of the ANC becomes the face of the campaign, so ANC members and I say supporters would know that the ANC President automatically becomes the candidate for the party. So that is known but it is not part of the national constitutional system.

20 So what you are saying, clearly it is a matter that we have never really subjected to debate within the ANC and largely because we have never really seen the need for it because when we go to the polls it is known who is going to be the face of the campaign as well as when we do win, who becomes the president.

Now I suppose what you are saying is based on the ability of the populace to either recall in one form, shape

or other and they would only be able to recall through another vote, another national vote, I presume, without being seen as being negative. We have been able to do that through international party processes where unfortunately, we have had to do President Zuma being recalled.. So I think it is a matter that can be discussed and one need to demonstrate its attractiveness.

CHAIRPERSON: Ja.

PRESIDENT RAMAPHOSA: What would be attractive with
10 it.

CHAIRPERSON: Yes, ja.

PRESIDENT RAMAPHOSA: You look at – let me for one moment – you look at for instance a pure presidential system as, I would say, operates in a few countries and the United States for me stands out where a President basically without so much hearty full party support, you know, amasses a machinery that propels a person. And then they then start acting as Lone Rangers, as it were, on a whole number of things. One would argue that is that
20 what we want? Do we want almost like an imperial type of political system where a president acts, you know, on a lone basis on many things or do you want a president who is – who operates on a collegiate basis with his other colleagues in the party, who is bound by party strictures, if I can put it that way, party rules, party policies, so that it is

never seen like it is an individual who propounds a policy and then acts on it on their own and yet in the system that we have, you will hardly ever find [indistinct] for the ANC, an ANC president who would just wake up one morning and just say we are going to build a wall from here to Beitbridge without having discussed it in the party. So one needs to consider things like that.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: Whether we want a sole-
10 acting president or we want a president who acts within the confines of the collegiate type of a forum where issues are properly discuss but, more importantly, where policy – where policy is properly discussed and where the president does not pronounce policy through Twitter, through Facebook where the president pronounces policy as it emerges from a collective discussion. So those are the issues that we would need to discuss.

CHAIRPERSON: Ja. No, no, that is fine. I now give you – or Mr Pretorius, you want to say something?

20 **ADV PRETORIUS SC:** There is perhaps once thing I should mention. In fact I intended to mention it and that was in relation to cadre deployment or deployment, that the topic is still live, Mr President. We have discussed your views which we put on one side of the spectrum, that it is recommendations only, we have discussed to a certain

extent the evidence on the other side of the spectrum, the hard definition of deployment, where it is a compulsory appointment in the hands of the committee and we have discussed a third category which was appointment principally by the former president and ministers in the period under review which may or may not have anything to do with the deployment committee.

There will be evidence that deals with the issues of appointments particularly to state institutions like National
10 Prosecuting Authority, law enforcement agencies as well as the state owned entities in which the issue will be canvassed further and after that there may be some issues to raise concerning whether the deployment committee should continue to exist, but that is a party decision, it is not our decision. And, if so, the form of regulation that might exist which might be within the province, Chair.

CHAIRPERSON: Okay, Mr Pretorius, there are two matters that have crossed my mind which the President needs to be asked questions on at some stage or another. The one
20 relates to a matter that could have been dealt with while he was appearing as President of the ANC but he can be asked next time because there are other matters relating to the party that he will still deal with when he comes back.

The other one falls under the session where he will be appearing as President of the country. The one is a

matter which was raised by – relates to evidence that was given by a witness here who complained that the President, while he was Deputy President, gave an instruction to an SOE that affected his employee in the SOE. So that clearly falls under the next session because that relates to government.

The other one relates to, as I see it, at least in part, when he was not in government, yes, and that is where a witness alleged that he was chairperson of a certain
10 company at a certain time and maybe he should not have played a certain role after he went into government so they will have to be dealt with in the next session. So I just thought ...[intervenes]

ADV PRETORIUS SC: Indeed, Chair. That is currently dealt with by one of the SOE evidence leaders.

CHAIRPERSON: Ja, not that is – I mean, the one clearly falls under the next session but the other one could be said to fall under when he appears as president of the party but can be dealt with the next time because there are
20 matters that fall under party that will still be dealt with.

ADV PRETORIUS SC: Yes, Chair, and there is one other matter that relates to the question that the President is going to consider and that is the warning signs along the path.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: And that relates to the President's affidavit filed with the Commission in 2019.

CHAIRPERSON: Yes, ja.

ADV PRETORIUS SC: And that will be raised then.

CHAIRPERSON: Ja. No, that is fine. Mr President, I now give you the opportunity to make the statement that you wish to make.

PRESIDENT RAMAPHOSA: No, thank you, Chairperson. It is really a statement to say thank you to the Commission
10 but maybe before doing so, I would just like to take a moment to reflect on one matter.

It is about the passing away of the first Mayor or Executive Mayor of Johannesburg who served the City from this building here. He passed away a few days ago at the age of 89 and that was Mr Isaac Mogase. And I do so to pay respect – may respect to him, to his memory as the first Mayor of Johannesburg and the fact that we are meeting here in a room where he worked. It is significant to mention his passing at this time because it was in this in
20 this very chamber that Mr Mogase so ably represented the people of this city but it is also a joy for me to pay my respects to him because I worked with him in 1990 when we were both together with Mama Albertina Sisulu, members of the Soweto People's Delegation led by Mr Isaac Mogase as we engaged with the then Transvaal

Provincial Administration to deal with the rent boycott in Soweto but also to deal with another important issue which was the transfer of the ownership of the houses to the people of Soweto. As you well know, in the past our people never owned their homes, they just rented forever and ever and part of the rent – the boycott of paying rent was largely around that and he led us very ably. So, for me, this is an opportunity to pay my respects to him particularly because we are here and to pay condolences
10 to his family.

But I would like, on behalf of the ANC to thank the Commission for allowing the organisation the space and the time to present our statement and to present ourselves to be questioned by you as well as by the evidence leaders to give an explanation of what happened. We hope that this testimony together with the testimony that has also been given by other leaders of the ANC who testified on behalf of the ANC will assist the Commission because our understanding is that this is not a trial, this is a
20 Commission of Inquiry and we have come here to assist you, Chairperson, so that you can form a clearer picture of the ANC's approach to corruption so that we can also explain our knowledge of and response to allegations of state capture.

I know that there are a number of other issues that

you will still need to put questions to me on as the President of the Republic and but you also hopefully have heard the measures that we have put in place to address some of the mishaps, the gaps and state capture itself so that we ensure that it never ever happens again and how we are addressing it with regard to our own organisational measures.

Now over the past two days we have traversed what I see as a number of matters. These are matters that have
10 been of public interest and of importance to your work as a Commission. Now due to the constraints of time we were not able, as clearly evidenced by the evidence leaders saying that they would have wanted to ask more questions, but we have been able in the past two days to cover quite a lot of ground and I hope, Chairperson, you would be able to read through the detailed account in my own statement as well as the annexures that I presented so as to shed more light on our own explanations on what we have put forward.

20 Obviously when I return to the Commission I will reflect on the actions that we have taken in the state to end state capture, to dismantle the networks that made it possible and to rebuild the efficacy and integrity of state or public institutions.

We are mindful of the fact that the mandate of the

Commission does not extend to how political parties must function and that it is the sole prerogative of political parties themselves, particularly the ANC to determine their own organisational arrangements and some of the thoughts and the suggestions that have been put there obviously we will reflect on with a view of seeing how best we too can improve the way that we function. For instance, we too can be able at a very early stage to see all those markers, those indicators which we have spoken about.

10 We do, however, accept that it is necessary for the Commission to examine how internal processes and practices of political parties impact on the functioning of public institutions, we fully appreciate how the state capture occurred because in the way that we have functioned as a party, it has an impact on public institutions in our country and we must accept that and your Commission has patently made that very clear to us.

20 Now in undertaking this examination, it is necessary to recall that there was significant contestation within the African National Congress on some of the matters that are before the Commission and I think we have articulated that. So as we examine all this, we should not be just lineal in our examination of this. We should be able to deal with the contours of the various issues that the party itself had to deal with.

It is also important to remember that state capture not only undermined the integrity and the capability of public institutions, it also deeply damaged the effectiveness of the African National Congress itself. So it did affect us a party, it did affect the state. As we recognised at our 54th conference, state capture has had a profound impact on the coherence and the unity of the ANC, its ability to carry out its mandate and mission to work for the people of South Africa, as part of its efforts to make what I would all
10 a decisive break with the era of State Capture. The ANC itself has embarked as I sought to explain on a journey of a new world regeneration and I believe that the work of this Commission, as much as its purpose is to serve the nation will in the end also assist the ANC along the path of renewal.

Although it is at times very uncomfortable and difficult for the ANC we welcome this scrutiny as a necessary step in tackling corruption in the State and across the side, and when I say across the side I say so
20 advisedly because in many ways it would also be helpful if we could have reflected on greater scrutiny on other entities other than the State in the way they themselves aided and abetted State Capture. That is various companies because in the end it is possible and indeed it is not only the Gupta related companies that participated,

it is other companies as we well, but I wish to conclude by paying tribute to all those South Africans who have played a role in unearthing corrupt activities that we now know as State Capture.

Here I make reference to those who have been whistleblowers and whistleblowers have not had a great time in our country, once they blow the whistle they have been subjected to enormous pressures, pressures that have affected them personally, professionally, career wise
10 and also has affected their own household. There have been brave men and women of our country who because of their abhorrence of corruption blew the whistle and I regret that in many instances we have not treated them well, and we therefore need to have some process, legislation, of being able to protect whistleblowers.

We could say that we have got various policies but they have not really proven that they are effective. Some whistleblowers have even been killed, but I also want to pay tribute to journalists. Journalists have really gone
20 beyond the call of duty in many respects, in getting the country to be where we are today. ...[Indistinct] spoke about some of the challenges that journalists face but we pay tribute because they have in many ways been very patriotic and played a very key role.

I also want to pay tribute to law enforcement

officials, staff of Chapter 9 Institutions, members of the judiciary, no doubt members of parliament and government officials as well as members of the governing party and other parties as well as the alliance partners of the governing party and leaders of a whole number of other parties and various civil society formations who were vital in bringing many issues to light and to the fore, and they continue where there is wrongdoing they are even courageous enough to be able to bring those to the fore.

10 There are many people who paid a great price
Chairperson for taking a principled stand, and as I was saying it takes a lot for people to come to this Commission but it even takes a great deal more to either be a whistleblower, to be a journalist and to be an active citizen who will want to take a stand.

 There are many people who withstood great pressure and took great risks. The nation owes much to each of these people for they have each in different ways reaffirmed the values of our constitution and our
20 democracy.

 Now the existence of this Commission owes much to the determination of ordinary South Africans who stood up against corruption and State Capture. The existence of this Commission and the fact that it is able to undertake such a far-reaching denomination or investigation,

expensive as it has been, is a testament to the strength of our democracy and the institutions that support it.

So a sitting president come to a Commission such as this one, a Commission that he has established, some people said it is unheard of, but we felt that it was important to come both as President of the Governing Party as well as President of the country. Now as the ANC we deeply appreciate the work of this Commission and reaffirm our total commitment to provide whatever assistance we
10 can to ensure that this Commission fulfils its mandate and it is with those words Chairperson that without being patronising that I would like to thank you and thank this opportunity that you have given to the ANC.

Thank you very much.

CHAIRPERSON: Thank you very much Mr President for your remarks, we appreciate them very much.

I was going to say and I don't know whether you read my mind, I was going to also refer to the fact that I am not aware in the history of this country of a sitting
20 President appearing before a Commission, I may be mistaken but I cannot remember but I think it is very important and I say that quite alive to the fact that yesterday and today you were appearing not as President of the country but as President of the ANC but the reality is that you are President of the country as well, that you have

appeared before the Commission but also to state that it is quite important that the ruling party, the majority party in Parliament, has taken the attitude that you have conveyed to the Commission and to the nation at large that they decided that they would support this Commission. They know that some of the things – they knew that some of the things that would come out of the Commission would not be easy to deal with but nevertheless concluded that it was a process that they should support and the President of the

10 Ruling Party, President of the country, came to the Commission and said I will give evidence on all the matters that I have knowledge of and that the party has knowledge of and I am opening myself up to being questioned openly in front of the nation because as the ruling party we support this process, we support the work of the Commission.

So I think that it is very important and it is something that suggests that the ruling party wants to account to the nation through this Commission, because it

20 realises that while a lot of the things that the Commission is looking into were happening it was the ruling the party but it wants to come to the Commission and say to the nation we may have gone wrong somewhere but we are here and we will account and we will explain what we can explain and we accept that there may have been certain

shortcomings. I think that that is quite important and as the Commission we appreciate that.

As I – as we have agreed the questions have not been exhausted they will still be pursued next time, both in respect of your position as President of the country and as President of the ANC, but I think it is important and the fact that the ANC came here also voluntarily is important, so thank you very much for making yourself available to assist the Commission.

10 Thank you.

We are going to adjourn the day session of the Commission, some of us will come back after a few minutes and start the evening session of the Commission.

PRESIDENT RAMAPHOSA: Can I go home now?

CHAIRPERSON: But you can go home, you can go home now Mr President, you are allowed to go home. I note that you ask whether you can go home.

20 Thank you we are going to adjourn now, the time is one minute to five, I will adjourn for 15 minutes and then I will return to deal with another matter.

We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Good afternoon Mr Myburgh.

ADV MYBURGH SC: Good afternoon Chairperson.

CHAIRPERSON: Good afternoon everybody. Good afternoon Mr Molefe, and thank you for coming back to the Commission.

MR MOLEFE: It is always a pleasure Chair.

CHAIRPERSON: Thank you. Mr Myburgh? Oh, I didn't see your counsel. Good afternoon Mr Masuku.

ADV MASUKU SC: Deputy Chief Justice good afternoon.

CHAIRPERSON: Yes, I didn't realise you were there so sorry about that.

10 **ADV MASUKU SC:** No, no, no I know that Chair, you had better things to do this afternoon than to realise someone in Cape Town ... it is good to see you Chief Justice.

CHAIRPERSON: It is good to see you, thank you, thank you, and thank you for the cooperation also for us to be able to sit this evening. Mr Myburgh?

ADV MYBURGH SC: Yes Chairperson you will recall that at the last sitting of Mr Molefe's evidence he asked for the opportunity to put in an affidavit relating to the Abalosi settlement, he has done that, we intend to take him
20 through that affidavit and then there are a select number of other issues that we wish to deal with whereupon I presume then Mr Masuku would conduct his re-examination.

CHAIRPERSON: Yes okay no that is fine

ADV MYBURGH SC: I don't know if Mr Molefe needs to

be sworn in again.

CHAIRPERSON: Yes, please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

MR MOLEFE: Brian Molefe.

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

MR MOLEFE: I have no objection.

REGISTRAR: Do you affirm that the evidence you will
10 give will be the truth, the whole truth and nothing but the truth, if so please raise your right hand and say I truly affirm.

MR MOLEFE: I truly affirm.

BRIAN MOLEFE: [Affirmed]

CHAIRPERSON: Thank you. Okay you may proceed Mr Myburgh.

ADV MYBURGH SC: Thank you. Chairperson there is something I need to place on the record before I do so, if I may. You would – you may recall that when I was leading
20 Mr Molefe I questioned him about the session of the T-System Computer contract to Zestinator and I ultimately took him to the Zestinator session which he had signed and there were some questions that I asked him. In the context of doing that I read to him paragraph 5.12.3 of Mr Mohamedi's affidavit and that paragraph ends with the sentence that

says both Zestinator and Innovent are partly owned by Salim Essa, a well known associate of the Guptas and a majority shareholder of Trillian Capital Partners. It was in that context that Innovent was also then roped into things.

This caused Innovent's attorneys on the 12th of March, K A Mabani Cooper to write a letter to the Secretariat when they took exception to that, they said that hadn't been proven in evidence, they said in fact Mr Marway had made a similar allegation and they were
10 served with a Rule 33 notice and they put in an affidavit. I understand that they were aggrieved by that, they made reference to the fact that it was defamatory and might cause business complications.

In response to that on the 24th of March I caused the Secretariat to write this letter, which I would like to read into the record if I may.

CHAIRPERSON: Ja.

ADV MYBURGH SC: It is addressed to Mr A Cooper of K A Mabani Attorneys, it is headed Innovent Retail and Asset
20 Management Solutions Innovent.

"1. Further to your letter dated 12th [but received on 15 March 2021] members of the Commission's investigation team have determined that Innovent was not partly owned by Mr Salim Essa.

2. As is duty bound to do Advocate Myburgh SC will formally place this on record when Mr Molefe is recalled as a witness before the Commission [on a date in the near future that you will be advised on].

3. We trust that this will resolve the issues raised in your letter under reply. Should you however require anything further please contact Mr Myburgh or Advocate Myburgh directly.

10

We trust that you will find this in order.

Yours faithfully

The Secretary”

We then also caused an email to be sent to Mr Cooper, I understand that he acknowledged receipt earlier today advising him that this statement would be made on record what we then thought was four o'clock but no doubt he would understand why it is later.

Thank you Chairperson.

20 **CHAIRPERSON:** Okay not that is fine.

ADV MYBURGH SC: Mr Molefe ...[intervenes]

MR MOLEFE: If I may Chairperson on this matter.

CHAIRPERSON: Yes?

MR MOLEFE: I think this underscores the problem that we had where I was expected to answer questions on things

that I was not involved in or on conversations that took place with people that happened in my absence and I remember that the Commission did not seem happy that I was reluctant to drag myself into conversations and issues that I did not know anything about. If I had I may have been party, cited as a party to this damages claim that they are now claiming and so Chair I wish to request that in instances where I do not have any information, do not know or a meeting took place in my absence that really I would be assisted by the Commission to desist from even offering an opinion because it may be used later on, if I am wrong on things that I do not know.

CHAIRPERSON: Well I understand what you are saying Mr Molefe and I think it is consistent with some of the remarks you made previously when you were asked or a comment if you had any on things that may have been said by people discussing issues and maybe mentioning your name when you were not there. I think I did say last time but I think it may well be that if one understands what you are saying in a certain way one might take a different approach, I think I said to you last time some of the things that were being mentioned to you to give you a chance to comment on, are things that may well have an impact or an effect on the evidence given by other people but that effect might well because they have been talking about your

name, maybe it might mention your name and there may have been a few to say if you were not told and given a chance to comment on those things, even though you might not have been in such a meeting or in such a discussion you might complain to say but why is this evidence being taken into account maybe to make certain findings which mention my name in circumstances where I was not given a chance to say something, so it might be out of caution you know, but it may well be that your statement amounts to

10 say look if you know that I was not there I was not party to that discussion I am not going to complain if you make whatever you make out of that discussion which involved my name without me being there, but you understand people are talking about you, you are not there, but whatever their evidence is might well have to be taken into account, so there might have been caution to say we don't want anybody to say afterwards at least you should have told me that certain people were saying the following about me, maybe I could answer and say that one was falsely

20 saying A, B, C, D about me because we have had issues in the past or something like that, I am now making an example.

So it is not out of trying to put you in a difficult position but as I say it may well be that what you are saying amounts to saying as long as I was not there I am

not going to comment, so whatever you ask just take into account that I don't wish to comment on things that people may have discussed about my name when I was not there and then that can be taken into account.

MR MOLEFE: I understand Chair but you know the problem really is instances where people who are talking do not have firsthand information and were not involved in the issues at all, so it is somebody repeating what somebody else said for the third time and I am supposed to
10 comment on that Chair.

I think, I don't know if in the Commission that is good quality evidence, but when two people who do not have first hand information are talking at a dinner between themselves about what they heard somebody else say is very difficult for me to comment Chair because it may have been twisted in the process or it may not be true and I do not know where they heard it from and they don't say where they heard it from, so I just ask Chairperson that the evidence of people who heard from other people who
20 were talking in a corridor somewhere about something that they had heard and they do not have first hand information that it should really Chairperson it should not have a lot of weight when you finally make your decision.

CHAIRPERSON: H'm, ja, no, no that is fine.

ADV MASUKU SC: Chairperson may I just add something

to the discussion?

CHAIRPERSON: Yes.

ADV MASUKU SC: It relates to when the Commission sends documents to us for Mr Molefe to consider I think it is very important that that is also, it is a complaint that I have made in almost all my appearances for Mr Molefe that we get new documents or at least we get new documents a day before his hearing, because it does give an uncomfortable impression that the late giving of these
10 documents is intended to ...[indistinct] or to ...[intervenes]

CHAIRPERSON: To ambush him.

ADV MASUKU SC: Ambush him ja, and so what he is mentioning now is very important for the Commission to consider, just being fair to the witness ...[indistinct] the information that ...[indistinct] I am just adding to what kind of debate it is.

CHAIRPERSON: No, no, that is fine if there is any issue or – about which you received documents late Mr Molefe and you don't think you have had enough time to consider
20 it just say so and you will be given a chance to deal with it when you have had a chance, if you receive them late obviously the legal team will respond to say whether this is something that was received late or this was just a resending of a document that had been sent much earlier or whatever, but the idea is certainly not that anybody

should receive documents late so that when they are questioned they have not had enough time to prepare, that is not the approach, so but I know Mr Masuku is not saying that is the case but he says no it could give rise to that impression.

MR MOLEFE: And Chairperson it is not necessarily new documents, but when it gets sent the thick pile of documents that had been sent last year September the night before you come to the Commission I mean those
10 issues you – I consider them because when I was given the notice to come here there were already frictions on the table and now these documents contain other issues and I am not sure if they are going to be dealt with, and I do not want to waste the Commission's time by keeping on asking to go and consider these documents. At the same time it is unfair for me to not have refreshed my memory by reading the documents properly, if the matters are going to be dealt with in the Commission.

CHAIRPERSON: No, no, no fair enough, I think as we go
20 along, where you feel uncomfortable because you did not think those issues were going to be part of today raise that and let's deal with each one on its merits.

ADV MYBURGH SC: Mr Chairperson perhaps I could just explain something as well, and I will get the exact date.

CHAIRPERSON: Yes.

ADV MYBURGH SC: You would know that the Secretariat, the people involved with the documents, have a pipeline, I mean every day they are preparing bundles for the hearing.

CHAIRPERSON: Yes, yes.

ADV MYBURGH SC: And it is very difficult to get a slot other than the day before.

CHAIRPERSON: Yes.

ADV MYBURGH SC: But what happened in this case when we added documents to the bundle that was done a
10 long time ago and one of the investigators will give me the date, so in preparation for Mr Molefe's recall we said we are going to add these documents to the bundle and we emailed them to him, sometime ago, weeks ago.

It is true then that yesterday or maybe even during the course of the day the actual bundle itself was added to, in other words with this pagination, but the documents themselves had been sent some time ago and we are constrained to do it that way, so when you are told the documents were only received yesterday yes that is in the
20 form of the bundle as you have it before you, but the actual documents that I am going to question Mr Molefe about he got some time ago.

CHAIRPERSON: No, no that is fine, I know about the challenges in terms of the preparation of bundles, I have previously instructed the Secretary to get that issue

resolved so that there are no undue delays in the preparation of bundles, I am going to find out from him what the position is.

ADV MYBURGH SC: No it certainly it is not a criticism from our side.

CHAIRPERSON: Yes.

ADV MYBURGH SC: I don't think it is a problem.

CHAIRPERSON: Yes.

ADV MYBURGH SC: As long as the legal teams take the
10 trouble of sending the documents before then it is really just a matter of pagination, so I mean from our perspective we understand entirely that the people in that department obviously need to deal with bundles on a day to day basis.

CHAIRPERSON: Ja, now I think the problem might be associated with the number of people who are assigned the duty and I have said that that problem should be resolved, so it remains a problem if we might not be able to deal with some issues because documents were received by witnesses late, so but let's see as we go along, in the end
20 we want to make sure that there is fairness.

MR MOLEFE: Just for the record Chair, I mean it is not just about preparation and so on, it is also when you get a summons to come to the Zondo Commission you have to psychologically prepare yourself and you go through the stuff and prepare and you think of all possible questions

that can be asked and then at quarter past ten in the evening, late at night, you get a call from the lawyer to say go and check your emails, there are new documents and that just messes you up psychologically.

CHAIRPERSON: No, no I understand that completely. The better situation is that there should be a certain number of days by when you have got everything you need and you know all the issues that will be under discussion that would be dealt with so that is the better situation
10 which we should strive for and I think which at some stage in the past was possible to achieve with many witnesses, but there have been some challenges in recent months but let us see how we go on, and where you feel that you were not – you didn't think certain issues would be dealt with, or you were not ready for them let's take it from there.

MR MOLEFE: Appreciate Chair.

CHAIRPERSON: Ja, okay, alright. Mr Myburgh?

ADV MYBURGH SC: Yes, thank you. Mr Molefe can we start with your affidavit.

20 **MR MOLEFE:** Yes.

ADV MYBURGH SC: Chairperson you will have in front of you Transnet bundle 5 Exhibit BB22, I understand that ...[intervenes]

CHAIRPERSON: Before that, before that Mr Myburgh you mentioned that after you were done Mr Masuku may or will

wish to re-examine, I just want us, all of us to be on the same page more or less what kind of time we think we are going to need this evening. How long do you think you will be on your side?

ADV MYBURGH: Not more than 45 minutes Chairperson.

CHAIRPERSON: Not more than 45 minutes. Mr Masuku what is your position, is it that you will need to re-examine or you may need depending, and if you may need to you have an idea how long you might take?

10 **ADV MASUKU SC:** Deputy Justice I will listen to the 45 minutes of this – of Mr Myburgh cross-examining – sorry called cross-examination ...[intervenes]

CHAIRPERSON: Ja, questioning ja.

ADV MASUKU SC: ...to the evidence, and then depending on what questions he asked I may want to ask Mr Molefe one or two questions, so I certainly won't be long, I won't be asking on the totality of the evidence that he has been asked in the Commission but just one or two issues that may be necessary to ...[intervenes]

20 **CHAIRPERSON:** To clarify yes, okay no that is fine, that is helpful, I just wanted us all to have some idea of how long we might need to be.

Okay, Mr Myburgh?

ADV MYBURGH SC: Thank you. Mr Molefe at page 97 you will find an affidavit, your Abalosi affidavit.

MR MOLEFE: Yes.

ADV MYBURGH SC: That runs up until page 102, you see it is 405.97.

MR MOLEFE: Yes.

ADV MYBURGH SC: It runs up to 405.102.

MR MOLEFE: Yes.

ADV MYBURGH SC: It includes a number of annexures that run up until page 405.143.

MR MOLEFE: Indeed.

10 **ADV MYBURGH SC:** Do you see that?

MR MOLEFE: Yes.

ADV MYBURGH SC: Could I ask you please to go back to page 405.102 and would you confirm that you deposed to this affidavit on the 29th of March 20 – presumably that should be 2021.

MR MOLEFE: I do confirm.

ADV MYBURGH SC: And you confirm the truth and accuracy of this affidavit?

MR MOLEFE: I do confirm.

20 **ADV MYBURGH SC:** Chairperson might ...[intervenes]

CHAIRPERSON: I must just – so we just need to confirm that is 2021 not 2020 hey?

MR MOLEFE: Yes my apologies.

CHAIRPERSON: Yes Mr Myburgh?

ADV MYBURGH SC: Can I ask you Chairperson to admit

into evidence Mr Molefe's affidavit dated 29 March should be 2021 commencing at page 405.97 as Exhibit BB22.6.

CHAIRPERSON: The affidavit of Mr Brian Molefe which starts at page 405.97 is admitted as an exhibit and will be marked as Exhibit BB22.6.

AFFIDAVIT OF MR BRIAN MOLEFE HANDED UP AS EXHIBIT BB22.6

ADV MYBURGH SC: Mr Molefe what you do and I think very usefully in this affidavit is to set out and attach all the
10 documents that makes it easy to take you through it.

MR MOLEFE: Yes.

ADV MYBURGH SC: But what I propose to do is to jump straight into page 101 paragraph 9, are you there?

CHAIRPERSON: That is page 405.101?

ADV MYBURGH SC: Correct Chairperson.

MR MOLEFE: Yes.

ADV MYBURGH SC: And this is really what the controversy is about and what you were asked to address. It says at paragraph 9:

20 "On the 4th of August I signed a Deed of Settlement relating to the dispute between Transnet and Abalosi ..."

That is the order that we have seen.

"This was to settle all disputes between the parties in litigation under case number 10/43494."

You would confirm that, that is the document we dealt with last time?

MR MOLEFE: Yes.

ADV MYBURGH SC: Then if I can take you to ...[intervenes]

MR MOLEFE: But Chair just to recap, because if we just go to the settlement we may forget exactly what had happened.

CHAIRPERSON: Ja.

10 **MR MOLEFE:** And what had happened was that Abalosi had won a tender to provide services, they did provide the services. The information ...[intervenes]

CHAIRPERSON: I am just trying to think whether they had won a tender or they had been given a tender.

MR MOLEFE: Well I am not sure what had happened, but they were employed.

CHAIRPERSON: Ja because I seem to think there were no competitors but I may be wrong.

20 **MR MOLEFE:** Yes, no, no I would not know but the contract went to them.

CHAIRPERSON: Ja, they were awarded ...[intervenes]

MR MOLEFE: They were awarded work to do at Transnet, they did the work, however Transnet disputed that they had done the work and they had evidence that when I arrived they showed evidence from General Duka that the work had

been done. In the meantime they had been blacklisted and they were feeling very aggrieved and as a result of that there was a court case, 1/10/43/494 in the Gauteng High Court and when I investigated the matter I found that their blacklisting had not been proper and that it was unfair, that they should not have been blacklisted in the first place

The blacklisting was the blacklisting of all of Abalosi, its directors, GNA, in their personal capacity and
10 any associated companies, that is how the blacklisting read. So all of these people were blacklisted like that.

So because I was advised that the Group Chief Executive has the power to rescind the blacklisting I did so because I felt procedurally and as well substantively the blacklisting had been unfair and that is what led to what we are now getting into which is the settlement.

ADV MYBURGH SC: Ja, and perhaps you can just keep your finger there at 101, the deed of settlement that you find and it is something that the Chairperson will be
20 familiar with, that is at 137 Mr Molefe.

MR MOLEFE: Page 137.

ADV MYBURGH SC: Alright, you confirm that? In the South Gauteng High Court, Johannesburg.

MR MOLEFE: Yes, yes, that is the Deed of Settlement.

ADV MYBURGH SC: Alright, and you signed it we see at

page 138.

MR MOLEFE: Yes.

ADV MYBURGH SC: Alright.

MR MOLEFE: Yes, and ...

ADV MYBURGH SC: If I could ask you please to go back to page 101, you say at paragraph 11 ...[intervenes]

CHAIRPERSON: I am sorry Mr Myburgh, I see ...[intervenes]

MR MOLEFE: Sorry Chair ...[intervenes]

10 **CHAIRPERSON**: Sorry Mr Molefe, I see the – your counsel is not there on the screen but I don't know if he hears us. Mr Masuku are you able to hear us, you are not appearing on the screen?

ADV MASUKU SC: Yes, no I am following.

CHAIRPERSON: Oh, you are following, okay. No that is alright, okay, you may continue.

MR MOLEFE: Ja, I think it is important to note that in that deed of settlement it says that Transnet and Abalosi have agreed to settle all disputes between them in this litigation
20 on the following date, in this litigation, referring to that case number.

ADV MYBURGH SC: No, absolutely and you said that at paragraph 9 in your affidavit at page 101.

MR MOLEFE: Yes.

ADV MYBURGH SC: Which we have gone through.

MR MOLEFE: Yes, yes.

ADV MYBURGH SC: Alright then at paragraph 11 you say:

“No payment was made under the Deed of Settlement of 4 August.”

MR MOLEFE: Yes.

ADV MYBURGH SC: And then at paragraph 12 which seems to be a plea paragraph:

10 “On 16 October 2014 Abalosi indicated that they would issue a Bill of Costs and proceed with the review application.”

MR MOLEFE: Yes.

ADV MYBURGH SC:

“They also indicated that the settlement agreement on 4 August excluded the following ...”

MR MOLEFE: Yes.

ADV MYBURGH SC:

20 “1. Loss of revenue from Transnet of R250million; loss of revenue from SASS R387million; loss of revenue from GFleet of R82million and pain and suffering arising from defamation of R700million.”

MR MOLEFE: Yes.

ADV MYBURGH SC: Now what you ...[intervenes]

MR MOLEFE: That comes to about one point – I think about R1.4billion.

ADV MYBURGH SC: Yes, and what you referring to there is the letter from Abalosi at page 139, is that correct?

MR MOLEFE: Yes, that is correct, which outlined their next course of action which is to institute these actions yes.

ADV MYBURGH SC: Yes, and then what you say at page 102, at paragraph 13, these additional claims were in the amount of R1.4billion.

MR MOLEFE: Yes.

10 **ADV MYBURGH SC:** They proposed a settlement of R40million which they considered to be fair restitution and compensation including legal fees incurred in all matters with Transnet.

MR MOLEFE: Yes.

ADV MYBURGH SC: Then you say on the 16th of January 2016 I agreed without admission of liability to offer Abalosi Risk Advisory Services R20million in full and final settlement of all claims.

MR MOLEFE: Yes.

20 **ADV MYBURGH SC:** Costs against Transnet, this was accepted by Abalosi on the 22nd of January 2015.

MR MOLEFE: Yes.

ADV MYBURGH SC:

“I am of the opinion that the settlement of R20million was reasonable under the

circumstances. I deny any suggestions of impropriety on my part.”

MR MOLEFE: Indeed.

ADV MYBURGH SC: And as I understand the nub of your case here is you say look these people were threatening to sue us for another four billion and I considered that a settlement of 20 million was reasonable.

MR MOLEFE: Yes.

ADV MYBURGH SC: Alright.

10 **MR MOLEFE**: Especially that I was convinced that it was Transnet that was at fault.

ADV MYBURGH SC: So what I just wanted to point out to you, if you go to paragraph 12 is as you know Abalosi’s claim, they brought a counter claim and they sued for a loss of revenue in respect of a whole lot of contracts. As I understand it they are now listing other contracts which were not part of their counter claim, is that correct?

MR MOLEFE: Yes.

20 **ADV MYBURGH SC**: Now Mr Todd’s evidence was that all of those claims would have prescribed.

MR MOLEFE: Well, I am not aware of that.

ADV MYBURGH SC: And then you said ...[intervenes]

CHAIRPERSON: I assume you know what prescribed means?

MR MOLEFE: Yes, yes they had been overdue for over

three years.

CHAIRPERSON: Ja.

MR MOLEFE: The impression that I have ...[intervenes]

CHAIRPERSON: In other words could not be enforced in a court of law anymore.

MR MOLEFE: Yes. Chair, the impression that I had is that the loss of revenue and all of these claims had actually occurred between the period where they were blacklisted the time that we were settling. That is the impression that
10 I had.

I may have been wrong, but that is the impression that I had.

CHAIRPERSON: But did you not consider it necessary to first to say let us settle the claim that is in court, which has been filed in court that we know about, settle that. If they have other claims, let them make their claims. Let us instruct attorneys, lawyers, to look into these claims and collect whatever evidence from us and give us advice.

Legal advice what to do.

20 **MR MOLEFE:** You will remember Chair, that even when I made that [indistinct] it was on advice from the legal department that it was reasonable.

CHAIRPERSON: From the internal legal department?

MR MOLEFE: From internal legal department, yes. That it was a reasonable offer to make. So I would presume that

the legal department would have looked at issues of prescription and so on which are quite technical. From where I was sitting, it was a business decision that said rather than be involved in litigation and defending litigation of 1.4 billion, when you know that we did not act our action on this matter or our handling of the matter was not professional, why would you want to go and defend 1.4 billion rand claims rather than settle?

When, I mean Chair there was no point in fighting
10 for the sake of fighting.

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

MR MOLEFE: Just because I am a fighter ...[intervenes]

CHAIRPERSON: No, no ...[intervenes]

MR MOLEFE: I can take them on, so bring it on. It is a destructive attitude. We know. Why waste the court's time, go to court and waste the court's time, when you know that the evidence of their work had been hidden.

CHAIRPERSON: Mr Myburgh?

ADV MYBURGH SC: Yes, ...[intervenes]

20 **MR MOLEFE:** But Chair, also it would be useful perhaps for the commission to find out why was that evidence hidden in the first place that led us to where we are, that led us to this discussion. Why was the evidence hidden in the first place, and I think the answer to that question is very, very clear.

CHAIRPERSON: Did you previously tell us who to your knowledge was responsible for hiding it?

MR MOLEFE: It was the TRF and ...[intervenes]

CHAIRPERSON: TFR?

MR MOLEFE: Ja, Transnet Freight Rail and somebody at TFR contacted our head of security, who is general Duka who I had asked to investigate the matter. He contacted him [indistinct] if you like and said there is evidence that those people did their work and I can provide it to you any
10 day and we have got the evidence.

I even presented it to the risk committee.

CHAIRPERSON: My Myburgh?

ADV MYBURGH SC: Yes, thank you. I just wanted to, I mean you know that one of Abalosi's claims was a defamation. If you have a look at page 405.134.

MR MOLEFE: Yes.

ADV MYBURGH SC: It says there at paragraph 30.5, it talks about articles that were published in the Mail & Guardian. 30.5:

20 "As a result of the said defamation, the plaintiff has been damaged in his reputation of good will and character in the amount of 600 million rand."

Do you see that?

MR MOLEFE: Yes.

ADV MYBURGH SC: And do you see also that in relation to the blacklisting, if you have a look at paragraph 31.4, at page 135, it says:

“As a result of the defendant’s mala fide conduct, all the state departments and or entities which were intending to conduct business with the plaintiff, seized from considering the plaintiff, and then it claimed 300 million.”

10 Do you see that?

MR MOLEFE: Yes.

ADV MYBURGH SC: Alright. Now you talk about ...[intervenes]

MR MOLEFE: But Mr Myburgh, the defamation in their counter claim ...[intervenes]

ADV MYBURGH SC: Yes.

MR MOLEFE: Related to that particular case.

ADV MYBURGH SC: Yes.

MR MOLEFE: The defamation later on ...[intervenes]

20 **ADV MYBURGH SC:** Yes.

MR MOLEFE: Was something else in my understanding.

ADV MYBURGH SC: So when you say, if we go back to paragraph 12, they were, they said they are going to proceed with the review application. In relation to what?

MR MOLEFE: Chair, that is what was in their letter. That

is what they said ...[intervenes]

ADV MYBURGH SC: Yes, but what review application Mr Molefe?

MR MOLEFE: The review of the Transnet's conduct, I do not know what review it was. My interest in the matter was to settle the 1.4 billion rand.

ADV MYBURGH SC: So your evidence is you settled for 20 million in circumstances where you did not even know what review they were going to ...[intervenes]

10 **MR MOLEFE:** No, on circumstances where the legal department of Transnet had considered the issue at hand.

ADV MYBURGH SC: The legal department of who?

MR MOLEFE: The legal department of Transnet, because they advised the settlement.

ADV MYBURGH SC: We can find no trace of that Mr Molefe.

MR MOLEFE: Come again?

ADV MYBURGH SC: We can find no trace of that.

20 **MR MOLEFE:** It does not mean it does not exist. I asked for it as well.

CHAIRPERSON: Was it a written legal opinion?

MR MOLEFE: No, it was you see Chairperson, this letter that I wrote would normally have been accompanied by a memo from the legal department, recommending to settle. As you have seen in these documents, even at Eskom, my

style is never to take a decision alone.

So I would never sit alone and decide that I am going to pay so and so 20 million. It has to come from the operations and they have to say well, we recommend that you do this. There is hardly anything that I did without a recommendation.

So it is unlikely that this settlement letter was written by me without a recommendation. I am quite adamant that there must have been recommendations.

10 **CHAIRPERSON:** I assume that if somebody in the legal department prepared a memo that was going to be sent to you or given to you, it would be a senior member of the legal department.

MR MOLEFE: Yes, usually ...[intervenes]

CHAIRPERSON: An advocate or somebody ...[intervenes]

MR MOLEFE: The head of legal, yes.

CHAIRPERSON: The head of legal.

20 **MR MOLEFE:** Just like this other, the 20 sorry, the settlement is accompanied by a recommendation. Even the payment is accompanied by a recommendation. Everything is done on recommendation. There is, I cannot think of something maybe that I decided on my own and decided to do.

What I discovered yesterday Chairperson, just out of interest, is that I was in the commission, being accused

that I unilaterally decided to cancel Glenco's contract. What I discovered yesterday is in fact that was recommended by Clive, CDH.

Clive Dekker Hofmeyer and for the first time in the last two days I found that document where they actually say you must settle and where they actually show how the two billion rand is calculated, and in fact Chairperson that is in the commission's document, but we spent half a day where I was being accused here of having unilaterally
10 decided to cancel.

Where there was a clear recommendation from CDH, from the lawyers. I hardly ever do things without recommendation in my role as chief executive. That is my style Chair.

CHAIRPERSON: Yes, well just talking on the last point about the document you found, are you going to send it through particularly to the Eskom team?

MR MOLEFE: Chairperson, it is ...[intervenes]

CHAIRPERSON: The secretary, how ...[intervenes]

20 **MR MOLEFE:** Paragraph, I think 45 of CBH affidavit ...[intervenes]

CHAIRPERSON: Ja.

MR MOLEFE: To the commission.

CHAIRPERSON: Yes.

MR MOLEFE: They confirmed that they made that

recommendation.

CHAIRPERSON: Yes.

MR MOLEFE: I think it is 45 to 63.

CHAIRPERSON: Yes.

MR MOLEFE: If we look at their affidavit to the commission itself. So I mean I can go onto the internet and download it and send it again.

CHAIRPERSON: Ja, no, no that is fine. I just want to, I know there is a lot of documentation. As you know there
10 are bundles and bundles. So ...[intervenes]

MR MOLEFE: Ja, sometimes I get nightmares just thinking how you are going to write the report from all this information coming from all angles.

CHAIRPERSON: Ja, no it is a lot of documentation. The last time a few weeks ago when I wanted to find out about how many thousands of pages the transcript is ...[intervenes]

MR MOLEFE: Yes.

CHAIRPERSON: I was told of 52000.

20 **MR MOLEFE:** Yes.

CHAIRPERSON: So, but please do that or ask your lawyers to send and say this is what our client has recently discovered or send it yourself. That would be fine, just so that it is the legal team is, under Eskom is alerted.

MR MOLEFE: I have it on my phone. We will do it before

we leave.

CHAIRPERSON: Okay, no that is fine. Okay.

ADV MYBURGH SC: Mr Molefe, what I was getting as is you see there is three loss of revenue claims.

MR MOLEFE: Yes.

ADV MYBURGH SC: Well, in their counter claim Abalosi brought three loss of revenue claims as well. Large figures. 50 million, 40 million, etcetera.

MR MOLEFE: Yes.

10 **ADV MYBURGH SC:** And those were settled for nothing, only for costs.

MR MOLEFE: No, the amounts are not the same and ...[intervenes]

ADV MYBURGH SC: Sorry?

MR MOLEFE: The amounts are not the same.

ADV MYBURGH SC: Well, yes but sorry, bear with me then if you would go to it.

MR MOLEFE: Yes.

20 **ADV MYBURGH SC:** The amounts may be higher, but if you have a look ...[intervenes]

MR MOLEFE: Yes, the amounts ...[intervenes]

ADV MYBURGH SC: Just bear with me. At page 129 that deal with the claim, the Mpumalanga provincial government, at 130 at paragraph 28.19 the amount claimed was 45 million. Then they at 130 deal with the Department

of Public Transport, G Fleet. The amount claimed at 28.25 is 40 million.

Then a smaller amount, the Department of Public Transport. The amount claimed was 8.3 million. So in respect, I am just putting this proposition to you. In respect of those claims, they were compromised simply for the payment of costs. Why now would you feel that it was necessary to settle these claims for 20 million?

MR MOLEFE: I appreciate Mr Myburgh, you are going into
10 the detail but the fact of the matter is that there had been a legal claim and Abalosi had made a counter claim and we had settled in terms of that legal case. I am not sure, and you might know better.

If there was anything in law that precluded them to pursue other claims that were falling outside of that case, and I think this is what they were intending to do and I am convinced that they were serious. So I do not know, if we start comparing the counter claims and the new claims that they would make, we never went there.

20 We settled before they even opened the amount to, before they even issued summons or whatever, because they went up to 1.4 billion and I felt that the 20 million was a reasonable settlement. So there is nothing that, even the ones that are listed here, if they found that there were other things that they wanted to add on, they could amend

their particulars any time. I believe that that is, that can be done and that is usually done.

So Chair, ja we did not want to go there.

ADV MYBURGH SC: Mr Molefe, was this not a wildly inflated claim? I mean pain and suffering arising from defamation of 700 million?

MR MOLEFE: I do not believe that it was wildly inflated. They had been blacklisted, their business had been literally almost ...[intervenes]

10 **ADV MYBURGH SC:** And had it been compromised for costs? That case was put in their counter claim.

MR MOLEFE: No, no, no that was, that case, these are other cases.

ADV MYBURGH SC: Alright.

MR MOLEFE: That they were bringing up.

ADV MYBURGH SC: So as I understand it, it really was not a matter of you getting legal advice. It seems that you said well, they are suing us for 1.4 million, 20 million ... 1.4 billion. 20 million is a bargain.

20 **MR MOLEFE:** Are you patronising ...[intervenes]

ADV MASUKU SC: [00:15:21] Sorry Chair.

CHAIRPERSON: Yes.

ADV MASUKU SC: Sorry to interfere with Mr Myburgh's cross-examination. I think it is not fair what he is now doing. Mr Molefe has given him a full answer on why they

settled the claim. He said to him that it was a business case. He said that he felt that or given the, there were two things.

The legal opinion that we heard, the legal opinion advice from the internal lawyers and the fact that there was a business reason for him to settle that. I do not understand the role of Mr Myburgh to be to cross-examine Mr Molefe on the ... on what he has clearly stated.

If Mr Myburgh feels that he is not telling the truth,
10 he must tell him the basis on which he forms that view, but this is now cross-examination based on something, that somehow a settlement of this nature would have been either corrupt or not justified, but the reasons had been given already by Mr Molefe.

I think we should move on and get to the other elements or questions to ask, because this answer has been given. It is given in full. I do not understand why Mr Myburgh wants to cross-examine Mr Molefe on that aspect. Because I do not see where he is taking us to.

20 **CHAIRPERSON:** My Myburgh, you might wish to ...[intervenes]

ADV MYBURGH SC: Chairperson, I really simply want to enquire. Was this a business case or was it based on legal advice?

ADV MASUKU SC: It was bought, that is what he says.

ADV MYBURGH SC: Yes, and if it was both, then if that could just be clarified. That is all I am seeking to achieve.

CHAIRPERSON: Yes, okay. Mr Molefe?

MR MOLEFE: Yes sir.

CHAIRPERSON: Ja, was ...[intervenes]

MR MOLEFE: Chair, I am giving evidence about the facts as they happened, and I have stated the facts are that they came up with potential claims of 1.4 billion and I believe on advice from the legal department, the advice was that
10 settle, and they had proposed to settle at 40 million, and we settled at 20 million.

Those are the facts. If Mr Myburgh does not like them, I am sorry.

CHAIRPERSON: Well, let me ask this question. do you remember whether the legal opinion dealt with the question of whether the claims that had been put up by Abalosi, amounted to one comma something billion, were inflated because if the claims were for one point whatever billion, and they themselves, that is the legal department, were
20 suggesting that a reasonable settlement would be 40 million, that suggest to me that they must have thought that these claims were inflated way above what they could get in court.

MR MOLEFE: Well Chair, it was not a legal opinion as such, in a sense that one would get a legal opinion

...[intervenes]

CHAIRPERSON: It was not a written opinion you mean?

MR MOLEFE: No, it was not a written, it was a memorandum such as one of these.

CHAIRPERSON: A memorandum?

MR MOLEFE: To the group chief executive that says this is the situation that we are in, and our recommendation is that we should settle at 20 million, and I would imagine that in making such a recommendation, they would have
10 considered these legal issues that you are now raising with me.

CHAIRPERSON: Yes.

MR MOLEFE: So it was not a legal opinion, it was a memorandum from the legal department and as I say, the fact that I mean I asked if we can try and look for it, but we cannot find it. The fact that it does not exist, I know that such a memorandum would have preceded my making an offer such as that.

CHAIRPERSON: You see, I would expect that if as group
20 chief executive officer, you are faced with a situation whether to settle a claim for one comma something billion rand, or not and if you must settle it, what amount you must offer.

Your legal department says make an offer at 40 million rand. I would expect that one of the things that

would raise questions with you, is when these people have trained 1.4 billion, how do you arrive at 40 million rand and say that is reasonable?

What if even the 40 is not based on anything? So in other words I am trying to see whether your own legal department conveyed to you something that make you feel comfortable or whether they just said settle at 40 without really putting before you reasons that would make your think 40 is realistic, it is not a thumb suck?

10 **MR MOLEFE**: Chair, I mean 40 is what they made, their offer.

CHAIRPERSON: Ja.

MR MOLEFE: So you would have to ...[intervenes]

CHAIRPERSON: You mean Abalosi?

MR MOLEFE: Ja, they said ...[intervenes]

CHAIRPERSON: Your legal department, what did it offer?

MR MOLEFE: 20.

CHAIRPERSON: Oh, it said 20?

MR MOLEFE: Yes.

20 **CHAIRPERSON**: Okay, I am sorry. I missed that.

MR MOLEFE: Yes.

CHAIRPERSON: Because I thought your legal department said 40, offer 40 and you offered 20.

MR MOLEFE: No, Abalosi said 40. It is in the affidavit.

CHAIRPERSON: Ja, okay, alright.

MR MOLEFE: So I do not know why they jumped from 1.4 billion to 40. You would have to ask them that.

CHAIRPERSON: But it is suspicious, you would agree?

MR MOLEFE: No, I am not suspicious because it is not as linear as you paint it Chair. Abalosi may have thought you know, the sooner we get rid of this matter because it was even in the press, it releases us to go and do other business. Perhaps if they came here, that is what they will tell you.

10 It releases us and it removes the blacklisting and it unchains our hands. I am not saying that ...[intervenes]

CHAIRPERSON: If somebody comes and says you owe me one comma something billion rand and then after a few weeks they say if you give us 40 million rand we will accept it, surely that must be suspicious?

MR MOLEFE: No, it does not sound illegal Chair. It is ...[intervenes]

CHAIRPERSON: You would not think it is suspicious?

MR MOLEFE: There would be, no. There would be perfect
20 business reasons.

CHAIRPERSON: But you ...[intervenes]

MR MOLEFE: That I may not be in the position to advance now but perhaps they could advise. Perhaps they have reasons why they would, why they would waive at 1.4 billion. Perhaps they think, they do not want to be seen as

having being paid maybe a settlement of seven or 800 million by Transnet because that would not be good for the image of their company.

I do not know, but maybe if you ask them they will tell you, but I can imagine from a business point of view, that decisions like that are possible. Maybe not from a legal point of view, but from a business point of view Chair ...[intervenes]

CHAIRPERSON: Ja, no I must just tell you ...[intervenes]

10 **MR MOLEFE:** Business is not linear Chair. One plus one is not always two.

CHAIRPERSON: No, no I understand that in some situations, people whether in business or not in business, when they settle matters, sometimes you do not know their own considerations, you know. What motivates them so settle and they will not tell the other side, because it is their own matters, you know.

MR MOLEFE: Yes.

20 **CHAIRPERSON:** But for me, if the gap between what they claimed and what they are prepared to settle for, is too big I would think that it is suspicious that it had been inflated, and that is why I would ...[intervenes]

MR MOLEFE: So Chair, if you were in my position you would have said this gap is too big, that is fine. Then you have a 1.4 billion rand claim and then eventually let us say

you settle at 200 million ...[intervenes]

CHAIRPERSON: Well ...[intervenes]

MR MOLEFE: SO what will happen in that instance is that there will be a commission like this, where it will be said ...[intervenes]

CHAIRPERSON: No, there will not be a commission.

MR MOLEFE: Where I will be asked but you were offered 40 million and you decided to fight and settled at three or four hundred, or 500 million.

10 **CHAIRPERSON:** No, it depends what you do after you do not accept.

MR MOLEFE: And then when they ask me why I fight, I will say because I was suspicious.

CHAIRPERSON: No, no, no hang on. Well, you are entitled to be suspicious when you have got reasonable grounds to be. You might reject it or you might not reject it and delay going back to them and do a certain amount of homework before you then say we reject it or we make a counter offer.

20 So all I am simply saying is that you cannot say to demand that I pay you 100 million rand.

MR MOLEFE: Yes.

CHAIRPERSON: You say I am legally obliged to pay you 100 million rand today.

MR MOLEFE: Yes.

CHAIRPERSON: And then you come in a month's time or whatever time and say I will accept R1 000-00 and then I do not become suspicious.

MR MOLEFE: Yes.

CHAIRPERSON: So I say when the gap is too big for me it should raise suspicions, but that is my thinking.

MR MOLEFE: Yes.

CHAIRPERSON: Okay, Mr Myburgh?

ADV MYBURGH SC: Yes, thank you. I am going to move
10 to a different topic if I may. Could I ask you please to turn to page 147? You were given a 33 notice in respect of Ms Gigaba's affidavit.

MR MOLEFE: Yes.

ADV MYBURGH SC: I just want to take you to certain paragraphs which I will refer to you and just ask you for your comment if you have any Mr Molefe. At page 148 ...[intervenues]

MR MOLEFE: Yes.

ADV MYBURGH SC: Paragraph 31.1 and all of these
20 things are things which were versed before:

“After one of the new age breakfast sessions, Mr Gigaba told me that Mr Brian Molefe was going to be moved from Transnet to Eskom Holdings. I was told this before Mr Molefe was officially appointed.”

You want to say anything about that?

MR MOLEFE: Ja Chair, it takes us to the discussion that we had.

CHAIRPERSON: To the issue that you raised?

MR MOLEFE: Yes, that I raised. Mr Gigaba and Ms Gigaba were talking there. I do not know what prompted the discussion, I do not know what was the context.

CHAIRPERSON: Ja.

MR MOLEFE: In fact one of the things that I noticed is
10 what does Mr Gigaba say about his wife saying this? I mean does he confirm that the discussion did take place? Did the investigators go and ask Mr Gigaba? Is this true what your wife is saying about you, and what was the answer.

So I am not in a position to comment on what ...[intervenes]

CHAIRPERSON: Yes.

MR MOLEFE: Mr Gigaba was saying to Ms Gigaba.

CHAIRPERSON: Yes.

20 **ADV MYBURGH SC:** And then at paragraph 46 at page 150, paragraph 46 deals with you see from the heading above it, Mr Gigaba's transfer from the Department of Home Affairs to the Department of Finance. This is when he was appointed as the Minister of Finance.

Ms Gigaba says at paragraph 46:

“This change in Mr Gigaba’s portfolio appeared to upset him very much. He informed me that the former president told him that he initially wanted to appoint Mr Molefe as the Minister of Finance, but finally decided to appoint him (Mr Gigaba) at the request of other MEC members.”

Any comment on that?

MR MOLEFE: No Chair, I am not in the position to
10 comment.

ADV MYBURGH SC: And then the last paragraph which I want to take you to and I do not think that this is contentious. At paragraph 50, at page 151 Ms Gigaba says that:

“Mr Gigaba and I married on 30 August 2014. I did most of our wedding planning. We both invited the former president and the Guptas, but none of them attended. Mr Molefe was invited and he did attend.”

20 You confirm that?

MR MOLEFE: If I may ask, what relevance is this to the commission that I went to Mr Gigaba’s wedding?

ADV MYBURGH SC: I am just simply putting to you that she says you did.

CHAIRPERSON: You do not wish to comment?

MR MOLEFE: No, I did attend the wedding but I have no further comment.

CHAIRPERSON: Okay.

ADV MYBURGH SC: Then the next document that I want to take you to very briefly, please is the document at page 155. Now this is a recommendation from Mr Mkwana, the then Chairperson of Transnet to Mr Gigaba, on the appointment of the new chief executive.

Are you there at 155?

10 **MR MOLEFE**: Page?

ADV MYBURGH SC: 155, it is right towards the end. When I say 155, I beg your pardon Mr Molefe, it is 405.155. So it is right, literally right at the end of your bundle.

MR MOLEFE: Right at the end?

ADV MYBURGH SC: Ja.

MR MOLEFE: Oh, 405.155. Yes.

ADV MYBURGH SC: Now what I just want to take you to if I may, is this. I do not know if you know anything about
20 this, but if you go to page 160, you remember and I think we dealt with this, I have mentioned it to you but I want to show you the document. You recall that we spoke about the fact that as I recall Mr Sharma nominated you for the position of CEO.

MR MOLEFE: Yes.

ADV MYBURGH SC: And he sat on the selection panel.

MR MOLEFE: Yes.

ADV MYBURGH SC: And what happened then is a decision was made that because he might have had a conflict of interest because he had nominated you his scoring would be removed. If you look at page 160 paragraph 4.5 Consolidated Summary of Ratings and Rankings of all candidates interviewed for GC of Transnet after withdrawal of scores of one panellist.

10 What you will see is if you go to the far right hand side you will see overall ranking Mr Gansha ranked first at 8.1 then you ranked second at 7.9 and Mr Salinga ranked third at 6.7 do you see that?

MR MOLEFE: Yes.

ADV MYBURGH SC: And then under the recommendation the heading The committee conducted interviews of the shortlisted candidates and have identified three recommended candidates who could fill the position. Mr Gansha, yourself and Mr Salinga.

20 **MR MOLEFE:** Yes.

ADV MYBURGH SC: While the overall ratings by the panel member indicate the highest score for – I see it is Dr Gansha followed by Mr Molefe and then Mr Salinga the committee believes that all three of these candidates are highly suitable for appointment as GCE of Transnet and recommend the

appointment of any three of the individuals.

MR MOLEFE: Yes.

ADV MYBURGH SC: And then the recommended candidates they put three forward. I just wanted to point out to you is if you go to page 163 you will see that Mr Gigaba in 2010.

MR MOLEFE: Mr Gigaba?

ADV MYBURGH SC: 2010 at 163 sent to Mr Mkhwanazi guidelines for the appointment of Chief Executive Officer and those guidelines were attached and you find them at page
10 165. I just want to take you to one paragraph and ask you to comment if you want. At page 166 paragraph 2.4:

“The board shall through its governance and nominations committee submit a minimum of three shortlisted candidates and their preferred candidate to the shareholder minister for further assessment and interview by the minister.”

You see that?

MR MOLEFE: Yes.

ADV MYBURGH SC: I just want you to comment if you – if you wish that what you see is that Mr Mkhwanazi did not put
20 forward a preferred candidate he put forward three candidates. Do you have any comment?

MR MOLEFE: No I think Mr Mkhwanazi and the board would be best with that one.

ADV MYBURGH SC: Thank you. Then I want to just put to you when we were speaking or I was leading you in relation

to the driver I think I did mention to you and I think you corrected me in relation to the witness number. I just want to – to make the point that I noted the other day that Witness number 2 and Witness number 2 was the CPO to Mr Gama. Witness number 2 said:

“On another occasion while waiting for Gama in the parking area at his residence Brian Molefe arrived with his Audio S8 and went into the house.”

10 Talking about the Gupta Saxonwold house. Do you want to comment on that?

MR MOLEFE: Chair this is one of those things it was not in the agenda for today the indication was that we would...

ADV MYBURGH SC: Ja sure.

MR MOLEFE: Discuss three issues and in fact I would have like to have refreshed my memory and read it again.

ADV MYBURGH SC: Well let me show you – let me show you it. It is in fact something that I think I touched on last time but we may have got the numbers of the witnesses
20 wrong. If you behind you and someone will help you fish out the file it is Exhibit BB14(d).

MR MOLEFE: Yes.

ADV MYBURGH SC: So he says he saw me arrive...

ADV MYBURGH SC: Let me show – in fairness let me show you.

MR MOLEFE: He says he show – he saw me arrive.

ADV MYBURGH SC: Yes.

MR MOLEFE: I do not have an Audio S8 – never had an Audio S8.

ADV MYBURGH SC: Okay well then you have – that is your answer can I perhaps in fairness let me take you Mr Molefe if you would like – let me take you please – I am referring to the red numbers now. Page 89.

CHAIRPERSON: Is that of the same bundle?

10 **ADV MYBURGH SC:** No this is Bundle.

CHAIRPERSON: A different bundle.

ADV MYBURGH SC: This is Exhibit BB14(d) Chairperson. So at page 89 you find Witness 2's affidavit – Witness 2 was he CPO to Mr Gama alright. If you scroll through this affidavit you will get at page 92 a heading Trips to the Gupta residence, you see that?

MR MOLEFE: Yes.

ADV MYBURGH SC: And then Witness 2 is outlining the occasions that he says that he took Mr Gama to the
20 residence and then at paragraph 14 at page 93

“On another occasion whilst waiting for Gama in the parking area at the residence Brian Molefe arrived with his Audio S8 and went into the house. He drove there on his own. At the time he had already been seconded to

Eskom as CEO.”

MR MOLEFE: Ja I have no recollection of this but I can also say that if this means that Mr Gama was at the – at Gupta residence in the same time as I was that never happened.

ADV MYBURGH SC: Alright.

CHAIRPERSON: I am sorry just repeat that.

MR MOLEFE: I have never been – it has never ...

CHAIRPERSON: Oh I am sorry your mic just switch it on.

MR MOLEFE: It has never happened .

10 **CHAIRPERSON**: Ja.

MR MOLEFE: While I – when I went to the Gupta residence that Mr Gama was also present.

CHAIRPERSON: Okay.

MR MOLEFE: So I – I have no recollection of what he is talking about.

CHAIRPERSON: Yes.

MR MOLEFE: But I can categorically say that I have never been there at the same time that Mr Gama was there.

20 **CHAIRPERSON**: Yes. But could it – could it be that – well I do not know how the house there looked like except what pictures that I have been shown. Could it be that he could be there but in another part of the house and you would not know and you would be in another part.

MR MOLEFE: I do not know Chair. Yes. But if.

CHAIRPERSON: Because you – your evidence was that if I

recall correctly you did go to the Gupta residence many times.

MR MOLEFE: Yes, yes.

CHAIRPERSON: So I am – if somebody says on one occasion I saw him arrive.

MR MOLEFE: Yes.

CHAIRPERSON: It is possible.

MR MOLEFE: It is possible.

CHAIRPERSON: Ja.

10 **MR MOLEFE:** But what I am trying to do is – because I know that what you may want to read into this was that I was there on a common purpose with Mr Gama.

CHAIRPERSON: Ja.

MR MOLEFE: So we were not – I was not.

CHAIRPERSON: No, no I do not think that – I do not think that – well he certainly does not seem to

MR MOLEFE: To suggest that.

CHAIRPERSON: To suggest that you were there together you arrived.

20 **MR MOLEFE:** Ja.

CHAIRPERSON: On your own he and Mr Gama arrived – I do not know whether Mr Myburgh reads it differently.

MR MOLEFE: The thing is that in this era of joining thoughts any thoughts can be joined.

CHAIRPERSON: Mr Myburgh.

ADV MYBURGH SC: Yes I just wanted to echo your comment Chairperson I do not think the suggestion by Witness 2 is that there is any sort of common purpose.

CHAIRPERSON: Yes.

ADV MYBURGH SC: I think he is saying look in passing he saw you there. But you have addressed that. Mr Molefe the last thing I want to deal with is the TNA business breakfasts.

MR MOLEFE: Yes.

ADV MYBURGH SC: Now you were provided on the 26th of
10 March with a copy of what is Exhibit MN4.

MR MOLEFE: Yes.

ADV MYBURGH SC: You will be given a copy now. I just have a few questions to ask you on this and that is my last topic for the evening.

MR MOLEFE: Yes.

ADV MYBURGH SC: I am just waiting for the Chairperson to be handed his file. MN4 thank you.

CHAIRPERSON: Have you got the page number?

ADV MYBURGH SC: If I can ask you – if you could perhaps
20 go to page 1.

MR MOLEFE: Yes page?

ADV MYBURGH SC: Page 1 it is a statement of Daniel Phahlane.

MR MOLEFE: It is not a – it is not an affidavit?

ADV MYBURGH SC: I think you correct yes.

CHAIRPERSON: It appears to be a statement on the face of it.

MR MOLEFE: So this is not a sworn affidavit?

ADV MYBURGH SC: No.

MR MOLEFE: And it – did he give evidence..

ADV MYBURGH SC: Mr Phahlane gave evidence yes.

MR MOLEFE: He did give evidence.

ADV MYBURGH SC: So these are things that are – the commission is familiar with. I just wanted to ...

10 **MR MOLEFE:** He gave evidence under oath?

ADV MYBURGH SC: As I understand it yes. Yes he did. I assume it was under oath or (inaudible) when you say he did give evidence I assume it must be under oath. But Mr Molefe there has been not a lot of controversial things that I want to deal with. Can I just ask you if you have a look at page 2 what Mr Phahlane does is he sets out just above that – above 3.1 last two sentences.

20 “Transnet had ten ad-hoc TNA breakfasts and five contracts with TNA breakfasts from 2011 to 2017 which translated to almost 100 TNA breakfasts.”

And then at 3.1 he lists the ad-hoc breakfasts from 11 to 14 there are ten of them the cost of that was about R12.5 million so the breakfasts costs about R1.2 million each. And then over the page he deals with the five contracts that were

then concluded. And that was 12/13 through to 16/17 and the number of breakfasts there if you add up to 16, 15, 20, 20 and 20 comes to 91 and the cost of that was R99.3 million. So there the breakfasts were costing about R1.1 million per breakfast.

Then at paragraph 4 he lists the sorts of people that would attend the breakfasts and there is familiar names Mr Gigaba, President Zuma and then it ranged if you look at...

MR MOLEFE: And Mr Motsoledi, Mr Mashidele.

10 **ADV MYBURGH SC**: Yes.

MR MOLEFE: Mr Jeff Radebe, Minister Dipuo Peters, Nama lewa, Gwede Mantashe, Rob Davies,

ADV MYBURGH SC: It then ranges what caught my eye.

MR MOLEFE: Yes.

ADV MYBURGH SC: That perhaps is a little bit...

MR MOLEFE: No I was just thinking that the examples that you were giving were just convenient.

ADV MYBURGH SC: No, no not at all In fact I wanted to refer to Graham Smith who caught my eye. You will see his
20 name at page 4 in the middle.

MR MOLEFE: Graham Smith yes he is a

ADV MYBURGH SC: Cricketer.

MR MOLEFE: Cricketer yes.

ADV MYBURGH SC: Ja. So it is a wide range of people.

MR MOLEFE: Yes.

ADV MYBURGH SC: I am not trying to make anything of any particular. So I merely wanted to just ask you really two questions. One relates to you have believed that Transnet got value for money from these very expensive business breakfasts and then I am going to ask you one or two questions about delegations of authority.

But deal with if you could comment on whether you believed this was really value for money that you paid out from 2011 to 2016/2017 well in excess of R100 million for
10 these breakfasts?

MR MOLEFE: Ja Chair I mean you would have to exclude 2016 and 17 because I was not there and that is about R50 million. But to – to come to a determination of whether this was good value for money or not one would have to make a comparative 00:13:52 if we had been spending this money elsewhere engaged in similar activities how much would we have spent? And to do that one would have to look at the Transnet advertising budget 00:14:09 in preparation for the commission I tried to look at what the budget was and I
20 suggest that the commission goes and does that what the budget was for advertising with the regular media houses. So the Transnet budget for advertising and for what it was. So in one of my affidavits for example I – I show that adverts – some of the adverts that I was against Transnet 00:14:47 were actually television commercials where a train would

come and knock a taxi and the commercial would last just a minute or maybe two minutes – three minutes and to say how much for that exposure we got – I mean how much – how much we paid for that kind of exposure. Unfortunately because I have left Transnet I do not have access currently but it would be interesting to see how much we paid for those kinds of advertisements but also for a one page spread advert that says that railway crossings are dangerous and so we spend a whole full page on a newspaper saying that
10 railway crossings are dangerous and we spend a lot of money. In comparison this was a breakfast show that was on television and each one of them lasted more than an hour with the exposure of Transnet logo in a similar way that you do with the state capture commission behind you.

And I know you are going to say you do not pay for it but I will come to that.

CHAIRPERSON: Ja you probably have heard what I have said to certain witnesses about – about the breakfast shows and the adverts but I do not want to ..

20 **MR MOLEFE:** Yes.

CHAIRPERSON: Impact you .

MR MOLEFE: This was...

CHAIRPERSON: In short you are saying ja.

MR MOLEFE: This was exposure of over one hour and it gave a key newsmakers an opportunity to talk at the

breakfast show for over an hour about what they were doing and whatever else they wanted to talk about.

Something that the media did not voluntarily bring out for example the successes that we have had in this country as the government in delivering services Chair. I mean there is controversy now about water and electricity and so on and so forth but in Limpopo where I have worked 30 – 40 years ago Chair the water situation was very bad. People did not have water within walking distance – now they do. I mean it
10 is not the best but now they do and nobody talks about that and this is what these people would bring out and make people aware that the situation is not as hopeless as it is – yes that is what I wanted to say. That the situation is not as hopeless as it is made out to be by the media

The thing with the media Chair is that they control the predominant ideas in society and they are very negative and they continue to be very negative and therefore a predominant idea – the predominant feeling in South Africa is a negative one.

20 These people would assist in putting into the mainstream news – into the mainstream news because a lot of these breakfast shows after they had been aired a lot of the issues would then get into the mainstream news. So it went beyond the one or two hours that we paid for. It also spilled over into the mainstream news which is what we were

looking for and for the money that we paid I think that – even the other news channels would cover it. I think Mr Phahlane talks about it somewhere in his affidavit that after the breakfast shows that some of it would – would come onto other news.

Now before Chair you comment because I see you are about to comment.

CHAIRPERSON: I am holding myself back.

MR MOLEFE: Yes. Yes before you hold yourself let me tell
10 you about an incident you might realise that I like telling stories.

CHAIRPERSON: Huh.

MR MOLEFE: You might realise that I like telling stories. So when I was here my first hearing there was a Covid scare and the hearing was suspended for a few days and during those days I also was wondering what is happening because there was no communication – when are we going back – what is going to happen and so?

There was a newspaper article where they showed
20 you making an award at some ceremony without a mask, without anything. I could see that this was probably a picture from a long time ago you see it was not at that time. But this is the kind of thing that I am talking about. So – and I also noticed that the commission never responded. In the minds of people – certain people in South Africa some

people are saying even on Twitter and so on I say the Chairperson suspended the hearings because of the Covid scare and went to a – an award ceremony of a – I cannot remember what it was – a primary school or something – ja and I remember last time you said ja you got good coverage because...

CHAIRPERSON: Ja.

MR MOLEFE: You went to a primary school and so on but now look at how that coverage – how that picture was used
10 in the media?

You see Chair if it was this time I would invite you to the breakfast show to come and explain what happened.

CHAIRPERSON: Well – well one I did not see what those that information that what they said if it was social media because I do not – I am not into social media but if it was what you are talking about it is something happened I think in 2019. It was the primary school which I attended as a boy.

MR MOLEFE: Yes, yes.

20 **CHAIRPERSON:** Ja. Ja. Okay but ...

MR MOLEFE: And it was a good thing Chair but it ended up being cast in very bad light.

CHAIRPERSON: Yes.

MR MOLEFE: That in fact here is a Deputy Chief Justice Raymond Zondo giving out awards when he is supposed to

be in quarantine and I said it was unfair Chair.

CHAIRPERSON: And I was – I was in quarantine it was an old thing.

MR MOLEFE: But this incident for me captures the essence of the attitude of our media. There is no – there is no attempt to raise the standard of research and the show. There is a thing in the media they call it show if you say something you must be able to show that it is true.

I have heard a lot of things said about me that are
10 blatantly not true and I know that there are a lot of things that are said even by the government I mean about the government even about the President, about that are blatantly not true. People are – and the media does not care to show. And when it is pointed out to them that in fact the article was wrong the retraction and the apology usually update has been to (inaudible). I do not know if he is still there. It is very small on page 17.

CHAIRPERSON: Well that is true well sometimes they (speaking over one another).

20 **MR MOLEFE:** That is – that is unfair.

CHAIRPERSON: They refuse even when they know it is not true I have had that experience. But I think Mr Myburgh wants to carry on with serious business.

MR MOLEFE: No but what I wanted to say Chair because I – today I am – is that these people who have been given an

opportunity to put into the mainstream media in to their news headline issues that they think are important and to correct perceptions that are weighing South Africa down with negativity.

CHAIRPERSON: Ja. Mr Myburgh.

ADV MYBURGH SC: Mr Molefe just to take an example. I mean how would what Graham Smith had to say about presumed he spoke about cricket how would that benefit Transnet as it were?

10 **MR MOLEFE:** No I cannot remember but Transnet looks like an outlier here but I cannot remember the context of what he was saying. I mean we would have to watch the thing and maybe get the answer to your question. I mean if I had known that you going to ask that I would have gone to give and say this is exactly what he said.

ADV MYBURGH SC: But take any of these people they were not speaking about Transnet they were not advancing the interest of Transnet?

MR MOLEFE: No it...

20 **ADV MYBURGH SC:** They were presumably and you would correct me if I am wrong I mean they would – they would have their own agendas they would talk about things that were close to their own hearts.

MR MOLEFE: Yes.

ADV MYBURGH SC: How did that rub off beneficially on

Transnet?

MR MOLEFE: But precisely that – that they are raising these issues of national concern and on a platform that has been provided by Transnet.

CHAIRPERSON: Well I must ...

MR MOLEFE: That is the logic.

CHAIRPERSON: I must tell you that – that the evidence that I have heard is that sometimes I do not know whether often or just sometimes there would not even be anybody from
10 Transnet speaking and I asked the question so how would Transnet be benefitting then I was told that the mere fact that Transnet's logo would show on television or that it was there justified that was quite something justifying ...

MR MOLEFE: No that is not true Chair it you call any of the people including Mr Phahalane who was involved they will tell you that before everything started the sponsor usually the Chief Executive would then speak about (inaudible).

CHAIRPERSON: You speaking too slowly. I am sure ..

MR MOLEFE: And usually those – those

20 **CHAIRPERSON**: I am sure you spoke too softly just repeat.

MR MOLEFE: So I am saying for every one of them before it – the breakfast show started the Group Chief Executive or somebody from the company would then speak for about ten minutes on the topic of their choice and I can send you some of the speeches that I made there about how we pride

ourselves in raising the level of dialogue in South Africa through these breakfast shows and how it is important that certain things that the media is not interested to communicate I have communicated nevertheless and that we attempt to get these things onto the mainstream media.

CHAIRPERSON: Well I think if you do have such it would be important maybe just do an affidavit and attach them or some of them.

MR MOLEFE: Even – even better still Chair the
10 investigators if they ask the SABC for every single one of these breakfast shows. for every single one of these breakfast shows.

CHAIRPERSON: Ja.

MR MOLEFE: They will be able to show you the footage.

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

MR MOLEFE: That is better than me going to look (speaking over one another)

CHAIRPERSON: Well it is just that – because we are
20 approaching the end of the work of the commission the life of the commission we no longer have as many investigators around as we used to so there is limited resources so if you can send what you can send that would be good but I wanted to say ...

MR MOLEFE: I will send it in and submit an invoice as well.

CHAIRPERSON: I wanted to say in regard to what I just told

you mainly that I heard evidence that sometimes and I do not know whether it was often there would be nobody from Transnet speaking. Maybe I should have spoken generally because I have heard evidence about these breakfasts in relation to different SOE's maybe that evidence did not relate to Transnet.

MR MOLEFE: Yes.

CHAIRPERSON: Maybe it related to Eskom.

MR MOLEFE: Yes.

10 **CHAIRPERSON**: And so on so our – you see I do not want to be –

MR MOLEFE: Yes.

CHAIRPERSON: To show that the evidence included Transnet but I have heard some evidence along those lines.

MR MOLEFE: Yes.

CHAIRPERSON: Ja.

MR MOLEFE: I mean.

CHAIRPERSON: Okay alright. Mr Myburgh.

20 **ADV MYBURGH SC**: Yes thank you. Mr Molefe then I just want to take you there is an attached bundle of documents it starts at page 8 could I ask you just to have a look at page 11 it is a cover page of Transnet procurement procedures manual if you can – at page 12 right at the bottom it says:

“Sponsorship and donations.”

See that they are excluded from this manual and they are

strictly governed by delegated powers you see that?

MR MOLEFE: Yes.

ADV MYBURGH SC: Now the first signed document that we have is a document signed by you in this bundle is to be found at page 18 and it is

CHAIRPERSON: I am sorry on which bundle are you now Mr Myburgh?

MR MOLEFE: MM4.

CHAIRPERSON: Oh the most recent one.

10 **ADV MYBURGH SC:** Yes.

CHAIRPERSON: Ja. Okay. Page 18?

ADV MYBURGH SC: Page 18 yes.

CHAIRPERSON: Okay.

ADV MYBURGH SC: BKP-018 are you there Mr Molefe?

MR MOLEFE: Ah yes.

ADV MYBURGH SC: It is addressed to you by the General Manger of Corporate Affairs dated 20 March 2012 sponsorship proposal New Age business briefing session. If you go to the end of the document at page 20 you will see
20 that the financial implications there for 16 sessions will cost R60 million and then it deals with other sponsorship, finance etcetera and you then signed that you see

MR MOLEFE: Yes.

ADV MYBURGH SC: The 23rd of March 2012. And then over the page one has the accompanying sponsorship agreement.

MR MOLEFE: Yes.

ADV MYBURGH SC: For the amount of R60 million.

MR MOLEFE: Yes.

ADV MYBURGH SC: Now perhaps I could just [word cut] the 2012 Delegation of Authority. And if I could ask you to turn to page 167?

MR MOLEFE: [No audible reply]

ADV MYBURGH SC: You will see at paragraph 5.8.5 the last schedule ...[intervenes]

10 **MR MOLEFE**: Yes.

ADV MYBURGH SC: ...headed, Sponsorships and Donations. And if you track the second row, Operating Division, and then you see the first row is DCE right in the middle.

MR MOLEFE: Yes.

ADV MYBURGH SC: Just correct me if I am wrong but as I understand it, your level of authority was up to but not exceeding R 10 million for a sponsorship.

MR MOLEFE: Yes.

20 **ADV MYBURGH SC**: And then if you read the text at the bottom, approved limits are accumulative per annum. Do you see that?

MR MOLEFE: Yes.

ADV MYBURGH SC: So your limit was up to R 10 million. Then the Social and Ethics Committee between

R 10 million and R 20 million and then the board for anything in excess of R 20 million. Is that right?

MR MOLEFE: Yes, yes.

ADV MYBURGH SC: So I suppose that if that was the prevailing delegation at the time in 2012, you did not have the authority to enter into a sponsorship agreement of R 60 million?

MR MOLEFE: Yes. Once again, Chair, I would have to go and research this properly about what happened.

10 **CHAIRPERSON**: Okay.

MR MOLEFE: Because I think, sitting here and trying to answer it now ...[intervenes]

CHAIRPERSON: Okay you are speaking too softly.

MR MOLEFE: Ja.

CHAIRPERSON: It will not be recorded.

MR MOLEFE: Ja, I would want to go to ...[intervenes]

CHAIRPERSON: To research ...[intervenes]

MR MOLEFE: Ja. Because if I have an indication that you are going to ask me about Delegations of Authority
20 responses ...[intervenes]

CHAIRPERSON: Yes.

MR MOLEFE: ... I would have had ...[intervenes]

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

MR MOLEFE: ...and look for a document ...[intervenes]

CHAIRPERSON: Ja.

MR MOLEFE: ...if I find it and try and ...[intervenes]

CHAIRPERSON: Reflect and so on.

MR MOLEFE: Ja. So, I mean, this is a very thick document. It was given to us timeously.

CHAIRPERSON: Ja.

MR MOLEFE: But then just an indication that this is what we would like to focus on.

ADV MYBURGH SC: I am sure, as we have before, Mr Molefe, with the leave of the Chairperson, if you would
10 like to put in affidavit after your evidence on this, certainly from the Legal Team's perspective, we will not have an issue with that.

MR MOLEFE: Ja.

CHAIRPERSON: So you can have time to go and have a look and then one way for you would be to do an affidavit and say: I have had a look at this. This is my response. Or we can arrange for you to come back and say ...[intervenes]

MR MOLEFE: No, no, no. I am not coming back Chair.

20 **ADV MYBURGH SC:** [laughs]

CHAIRPERSON: [laughs]

MR MOLEFE: [laughs]

CHAIRPERSON: I was giving you options.

MR MOLEFE: No, no ...[intervenes]

[Speakers intervening each other – unclear]

MR MOLEFE: Even – even ...[intervenes]

CHAIRPERSON: But if you want to put in an affidavit, that is fine.

MR MOLEFE: No, Chair even an affidavit, I think that the correct people, really, that can point us in the right directions.

CHAIRPERSON: Sorry?

MR MOLEFE: The correct people that can point us in the direction in terms of these delegations, would be either
10 Internal Audit or the CFO's office. They can say – they can answer that question more perfect. Because even if I go and try and research this thing, I do not have access to the document and it was not an area of my speciality.

CHAIRPERSON: Yes.

MR MOLEFE: So maybe Internal Audit can be asked: why did you not pick this thing up as irregular expenditure? And maybe they can give a more intelligent answer than I can hope to give.

CHAIRPERSON: Well, I hear that part but at some stage,
20 we need to have your answer as – your answer to the question whether, as far as you knew, you would have delegated authority or not. So ...[intervenes]

MR MOLEFE: Okay ...[intervenes]

CHAIRPERSON: ...you can check with Internal Audit and so on but at some stage or another, one needs to hear

from you, whether you say you think you were because of A, B, C, D or you cannot remember or whatever, but there needs to be some answer. And if you say: Look, I would need to check something, that is fine. But if you say: Look, I do remember. I did have authority and this is what ...[intervenes]

MR MOLEFE: Yes, I will go and check, Chair.

CHAIRPERSON: Okay alright. Okay.

ADV MYBURGH SC: Chairperson, could I just take an
10 instruction on something for one second?

CHAIRPERSON: Ja.

MR MOLEFE: Would it be too much to ask for a bathroom break, Chair?

CHAIRPERSON: Yes, we can take a bathroom break. Okay let us take a ten minutes adjournment, Mr Myburgh. Just take a ten minutes adjournment. If you would like some comfort break?

ADV MYBURGH SC: That is fine. Thank you.

CHAIRPERSON: Ja, ten minutes adjournment. We
20 adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

ADV MYBURGH SC: It is the first sponsorship agreement and we see that you signed that on the 23 March 2012. Do you confirm that?

MR MOLEFE: Yes.

ADV MYBURGH SC: Now I had taken you to the 2012 delegation of authority at page 167 which shows that your authority was up to 10 million.

MR MOLEFE: Yes.

ADV MYBURGH SC: But what we must place on record is if you have a look at page 141, the 2012 delegation of authority was approved by the board, you see at page 141 on the 25 April 2012. Do you see that?

10 **MR MOLEFE:** Yes.

ADV MYBURGH SC: So in other words ...[intervenes]

CHAIRPERSON: I am sorry, delegation – page 141, that is the cover page, is that right?

ADV MYBURGH SC: 141 is the cover page of the 2012 delegation of authority.

CHAIRPERSON: Yes.

ADV MYBURGH SC: At page 167 is part of that.

CHAIRPERSON: Okay.

20 **ADV MYBURGH SC:** So when you signed the document on the 23 March 2012, the 2012, as we call it, delegation of authority, had yet to kick in, so to speak.

MR MOLEFE: Okay.

ADV MYBURGH SC: So the question then is what was your delegation of authority as of the 23 March 2012 and in answer to that – and the point I was getting at but in a

different way is to be found at page 113, this is the preceding delegation of authority.

MR MOLEFE: Yes.

ADV MYBURGH SC: The 2011 one.

MR MOLEFE: Yes.

ADV MYBURGH SC: And you will see there – but if you turn to page 138 your delegation of authority before the new April 2012 delegation was much higher.

MR MOLEFE: Yes.

10 **ADV MYBURGH SC**: At page 138.

MR MOLEFE: Yes.

ADV MYBURGH SC: Paragraph 5 ...[intervenes]

CHAIRPERSON: I cannot keep up with your pages, Mr Myburgh.

ADV MYBURGH SC: Okay, so the 2011 delegation of authority starts, DCJ, at page 113.

CHAIRPERSON: Yes.

ADV MYBURGH SC: Included in that is page 138.

CHAIRPERSON: Yes and what does 138 have?

20 **ADV MYBURGH SC**: At the top of 138, the first schedule – I think it is paragraph 5.8.5, you will see that Mr Molefe's delegation of authority when it came to sponsorship was 30 million.

CHAIRPERSON: Yes.

ADV MYBURGH SC: So in 2011 it was 30 million and then

with effect from - effectively the beginning of May 2012 it nosedived to 10 million.

MR MOLEFE: Yes.

ADV MYBURGH SC: Now with that in mind I want to take you ...[intervenes]

MR MOLEFE: So I do not have to do the...

ADV MYBURGH SC: No, you do not, fortunately for everyone. Okay.

MR MOLEFE: The supplementary affidavit.

10 **ADV MYBURGH SC:** But the point I am going to make is the one that I am actually driving at but now in a different way. So we see that first agreement that you signed is filed as a sponsorship agreement.

MR MOLEFE: Yes.

ADV MYBURGH SC: And you see attached to that, if you now go to the beginning, page 21, was a sponsorship agreement. We have been through that before.

MR MOLEFE: Yes.

20 **ADV MYBURGH SC:** Let us go to what happened then in 2012 where the now reduced delegation of authority kicks in, had kicked in.

MR MOLEFE: Yes.

ADV MYBURGH SC: You will see that the document that you sign now in 2013, where your delegation of authority for sponsorship had reduced to 10 million, in 2013, if you

go to page 31.

MR MOLEFE: 31?

ADV MYBURGH SC: You signed this document, you see the 2013?

MR MOLEFE: Yes.

ADV MYBURGH SC: And you signed it on the 4 April 2013 by which time the 2012 delegation, the reduced one, had kicked in.

MR MOLEFE: Yes.

10 **ADV MYBURGH SC:** But I just want to draw your attention to the subject. Now instead of this being called a sponsorship, it was all of a sudden called the partnership. Do you see that in the subject line?

MR MOLEFE: Ja.

ADV MYBURGH SC: And if you go to page 32, paragraph 7, the partnership will cost 15 million.

MR MOLEFE: Yes.

ADV MYBURGH SC: So if it was still styled the sponsorship you would not have had the delegation of
20 authority but now it is a partnership and you do.

MR MOLEFE: In fact it is advertising because you will see that it will come out of the Public Affairs advertising budget.

ADV MYBURGH SC: But, Mr Molefe, how do you explain the change from – first year it was a sponsorship, the next

year it is a partnership.

MR MOLEFE: Okay.

ADV MYBURGH SC: Is it just coincidental, has it got nothing to do with your reduced delegation of authority?

MR MOLEFE: Then I will have to do a supplementary affidavit.

ADV MYBURGH SC: Alright.

MR MOLEFE: To go and find out how that happened.

ADV MYBURGH SC: Because if you look at page 33, now
10 the agreement was a partnership agreement.

MR MOLEFE: Advertising. It says Advertising Partnership Agreement. So it is a branding and advertising.

ADV MYBURGH SC: I think simply the proposition – and you are free to put in an affidavit if you wish to. The question is was it just coincidental.

MR MOLEFE: As in once because it says Branding and Advertising Partnership Agreement. You choose to focus on partnership and not on branding and advertising.

ADV MYBURGH SC: But it was ...[intervenes]

20 **CHAIRPERSON**: I do not think, Mr Molefe, I do not think that for Mr Myburgh's proposition it matters that there is advertising before partnership, I think what he is comparing is sponsorship and a partnership, even it's an advertising partnership, that is what - Mr Myburgh, is that correct?

ADV MYBURGH SC: Yes, certainly.

CHAIRPERSON: Yes.

MR MOLEFE: But the sponsorship – was a sponsorship not also a partnership?

CHAIRPERSON: Well, he is giving you an opportunity to explain that to say why is it that when it was called a sponsorship, why is it that it was called a sponsorship at a certain time and this was the delegation. When there was a change of the delegation suddenly its characterisation
10 also changed and then ...[intervenes]

MR MOLEFE: To advertising.

CHAIRPERSON: ...it turned into a partnership.

MR MOLEFE: No the ...[intervenes]

CHAIRPERSON: As I said, you are free to emphasise that it was an advertising partnership, you are not precluded from the – because you may know, you would know what point it brings up but he is giving you a chance to explain the difference but if you say you want to put in a supplementary affidavit, that is fine.

20 **MR MOLEFE:** Okay. In English?

CHAIRPERSON: H'm?

MR MOLEFE: I must write the affidavit in English.

CHAIRPERSON: Mr Molefe...

ADV MYBURGH SC: You see, Mr Molefe, perhaps I could ...[intervenes]

CHAIRPERSON: You do not suggest that you cannot explain this in English. Mr Myburgh?

ADV MYBURGH SC: If we go to 2014, for example at page 44, you will see that the New Age – they are still talking about – wanting you to – they are offering you a sponsorship and then what you see at page 46 in 2014, if you have a look at page 47, paragraph 8, it is deliberately, it seems, styled a partnership. Now of course a partnership would, I assume, have been a standard
10 contract. Would I be correct, financed through the department's budget and you would have been able to approve it. Is that correct?

MR MOLEFE: Come again?

ADV MYBURGH SC: A partnership of that sort would have been a contract that would have financed through the department's budget and you would have been entitled and had the power to approve it, correct?

MR MOLEFE: If it was a sponsorship?

ADV MYBURGH SC: If it was a partnership. We know if it
20 was a sponsorship you would not have because it exceeded your delegation of authority.

MR MOLEFE: Ja but can you please give me an opportunity to go and reconsider this and write it properly because it says from the advertising budget and it is a branding and advertising activity, as we saw it. And I think

that even Mr Mahlani's memo, somewhere there, will probably explain it because he was the branding department, not partnership.

ADV MYBURGH SC: Chairperson, we have no further questions, thank you.

CHAIRPERSON: Yes, no, that is fine. Well, before I let Mr Masuku re-examine, he is going to re-examine, I must just raise this issue going back to the value of this brief, as shows for Transnet, I just want to say one of the issues
10 that I tried to get one of the witnesses – I think it may have been a Transnet witness, to explain about the importance of this advertising, if it was advertising, but I think he sought to explain it that way, you know? Bearing in mind what Transnet's business is, what Transnet is about, and I cannot claim to know everything that Transnet gets involved in, obviously you would know. I did not understand why it would be necessary to spend this kind of money for nothing more than simply to say – at least that is how I understood from one of the witnesses – to say you
20 just want to get people to have a positive image of Transnet. I think whoever the witness was even talked about saying well, we may – Transnet may wish to attract certain professionals to look at employment at Transnet and if Transnet has a bad name, that is not good, it cannot attract those people. It may be my lack of understanding

about branding and so on but I said to him I can understand if a company in the private sector which, for example, sells some products to the public, you know, spends a lot of money on advertising in order to get a lot of customers. But I was thinking, you know, Transnet, generally speaking, as far as the public is concerned, I think provides certain services and as long as those services are – that service is good, generally speaking, you know, people would use those services but of course
10 my knowledge might be outdated because Transnet has been broken up into different entities over the time, but that was part of my concern. Do you want to say anything about that?

MR MOLEFE: Chair, it is a marketing thing.

CHAIRPERSON: I think that is what they said too.

MR MOLEFE: Ja, in marketing and branding. The most important thing about the brand is when somebody, a man in the street, average person, is the brand, what first comes to mind? That is what we want to achieve, the
20 brand. What first comes to mind when he sees the brand. Now take Transnet, Transnet does not provide services to people to you and me, they provide services to big corporates, big corporate who transport their containers on rail to the ports, we load them onto ships and they export. So these are big businesses. But every day people see a

Transnet train passing in the neighbourhood on the way to Saldanha or on the way to Richards Bay. So when they see that Transnet logo what does it evoke in their mind? At that is what the fight is about. It is not about telling people about your services. I see Nando's – I am going to say something wrong again – they hardly ever talk about – okay, they talk about how nice their chicken is but they usually say – they tell jokes and when people think about Nando's, they think about a fun brand, a brand that, you
10 know, more than the amount of salt that they put on the chicken and the peri-peri that they put, they make it fun thing. So Nando's is about fun. You might not know that McDonald's actually makes very little money from hamburgers, they make money from property. So they hardly ever talk about property and that is a business model, you see? So branding is about what the brand evokes, right? So in the context of South Africa, which is a developmental state, the Transnet brand that certainly when I was CEO wanted to evoke was a company that is
20 involved, that is concerned about the fact that maybe there is no water in a certain community or that a company that gave the community an opportunity to understand the problems in the Department of Water Affairs because people would also call in, into this Breakfast, just from all over the country and ask questions that they would like to

ask. But in the end, that leaves an impression in their minds of the brand, of the branding, because otherwise they would not – okay, now they will see a train but at least they can associate the train ...[intervenes]

CHAIRPERSON: With something good.

MR MOLEFE: With something good, yes.

CHAIRPERSON: Okay. Mr Masuku, do you have any re-examination?

10 **ADV MASUKU:** Deputy Justice, happily I have maybe two questions.

CHAIRPERSON: Yes, okay, that is fine.

ADV MASUKU: Yes. The first question that I would like to ask, Deputy Chief Justice, Mr Molefe, do you believe that you managed the Transnet business or the Eskom business in order to advance the private interests of anybody?

20 **MR MOLEFE:** No, Chair. And in fact on reflecting about this and listening to the President talk over the last two days, the frustration that I have is the frustration of a foot soldier.

CHAIRPERSON: Of a...?

MR MOLEFE: Of a foot soldier who is out there trying to do their best under very difficult circumstances and then people come and criticise the trench and they say this trench could have been six metres wider or two metres

smaller and why did you use this ammunition and not that ammunition and yet you are fighting in the heat of battle and responding to the demands of the battle. I mean, the President was here talking as a commander that we deploy and so on and so forth, but the foot soldiers, what did they do when they are confronted with certain situations? And the other frustration is this Commission, for example, it has chosen a particular narrative and the family and their involvement in Transnet and Eskom and ignored others and

10 I ask myself why these particular issues and this particular family. There are other families that also did things with these entities, there are other families' whose behaviour qualifies with the definition of state capture, but there is no interest in that.

Classic example, the locomotives tender, it was not to the Chinese only, the Americans were there, the Canadians were there, the Germans were there but the focus was on the Chinese business there is appropriate narrative and interpretation and understanding of state

20 capture.

Let me give you an example, Chair, in the 1930's, the famous painter here in South Africa called Pierneef.

CHAIRPERSON: Who?

MR MOLEFE: Pierneef. Ja, his painting are very expensive, they go into the hundreds of millions, in fact

one of Ace Magashule's bodyguard has been sentenced to 15 years for removing a Pierneef painting from the Free State government building. In the 1930's the CEO of Transnet...[intervenes]

CHAIRPERSON: Before you go there, Mr Molefe, because I think you go there in pursuit of whatever it is to support the issue of the narrative. Let me remind you that the – as you recall, this Commission came about as a result of the report the Public Protector at the time.

10 **MR MOLEFE:** Yes.

CHAIRPERSON: The issues that the Public Protector said should be investigated by this Commission related almost exclusively to the relationship between the Gupta family and the President and the executive and so on and so on. So, in other words, the Public Protector had in mind that those are the issues that this Commission should investigate.

20 However, when the terms of reference for the Commission were made by the then President, Mr Zuma, the terms of reference were much wider which meant the Commission could look into other families and so on, okay?

So when the Commission started, it went on the basis that its terms of reference were wide but you will recall that Public Protector had said the Commission should finish its job within six months. So we took the

view that it was impossible so we asked for an extension but after about a year and a half, we realised that there was no way we would finish within a reasonable time if we went – we continued to use these wide terms of reference and when we applied for an extension of the period of the term of the Commission at the end of 2019, we said to the court since the whole idea of the Commission from the Public Protector was really about this family, we would focus from then going on on the issues that the Public
10 Protector had identified but we said that whatever we had started we would try and finish.

MR MOLEFE: Yes.

CHAIRPERSON: So I thought let me just mention that ...[intervenes]

MR MOLEFE: Chair, my understanding of the genesis of the Public Protector's report is that Glencore went to complain that Eskom is squeezing them to sell the mine to the Guptas and without investigating it any further, she took it as the gospel truth and wrote the report without
20 even asking us exactly what was happening and I have tried to address that issue here and very little attention was in fact paid to that issue by the Commission. In fact the Commission went on to BOSASA and other things and that is why ...[intervenes]

CHAIRPERSON: I am sorry, I am sorry ...[intervenes]

MR MOLEFE: That is why my story of the Pierneef paintings, Chair, if I could finish it.

CHAIRPERSON: Ja, ja, finish it, ja.

MR MOLEFE: Yes, the Pierneef paintings. The CEO of Transnet in the 1930's commissioned the Pierneef paintings, what they call the station paintings which was Pierneef paintings about Johannesburg railway station. Those paintings are very, very expensive at the moment. They belong to Transnet but they have been given to Mr
10 Johan Rupert to look after and they are in a private museum in Franschhoek. When I was there I tried to go and look at how we can get them back or some other arrangements and so on and so forth. So why is that issue not of interest if BOSASA is of interest. I am not saying there was corruption, in fact I think there may be a legitimate loan agreement with the foundation but it is a family that had an interaction with Transnet whose activities the Commission was not interested in.

I am trying to implicate anybody in anything, I am
20 just making an example.

CHAIRPERSON: Yes, but you did not also - Mr Molefe, you did not in 2018 and 2019 when I went on TV and radio said anyone who has information that could fall within terms of reference and has got information, they must bring that information, you did not bring that issue, that

information to the Commission.

MR MOLEFE: Would you have investigated, Chair?

CHAIRPERSON: Well, if you had given it to us and we had not – you would have a better case but you did not.

MR MOLEFE: No, actually do not – I was just making an example, I did not want to investigate it, ja.

CHAIRPERSON: Okay, alright.

MR MOLEFE: I was just making an example that there is a myriad of issues.

10 **CHAIRPERSON**: Ja.

MR MOLEFE: That go beyond – that could have been investigated. But anyway...

CHAIRPERSON: Ja, okay. You have answered to Mr Masuku's question. Mr Masuku?

ADV MASUKU: The last question, Mr Molefe, you have appeared in the Commission I think more than four times, if I am not wrong, to deal with a myriad of issues relating to decisions that were taken, governance matters that you were involved in when you served in Transnet and in
20 Eskom. Do you feel that in the more than times that you have engaged – you have engaged with the Commission, you have engaged the Commission on your role, do you feel that you now have a better grasp of what state capture really is?

MR MOLEFE: No, actually I – you know, state capture is one of those things that happen all the time everywhere. I just feel that there was a convenient use of the term to probe certain things in a bigger fight.

CHAIRPERSON: Just go closer to your mic.

MR MOLEFE: In a bigger fight, there was a fight that was going on and the parties to the fight decided to use a particular set of events and the other party that was also involved in the fight could have used another set of events
10 and we would still be here. So I feel like it was a tactic that was being used, that we could this term and so on. I mean, I appreciate the fact that we are trying to get to corruption but we are just looking at corruption of a particular type.

The fact that Glencore was trying to extort R470 a ton is a particular type in my books the risk of being sued with R1 billion from Glencore, a particular type of unacceptable behaviour that I felt did not promote a particular narrative, did not promote a particular size of the
20 fight and my feeling is that I think it is a pity that we did not try to go to the core of the state capture itself, if we wanted to, all corruption. What has been unearthed here is just a tip of the iceberg.

CHAIRPERSON: Well, let me say this, Mr ...[intervenes]

ADV MASUKU: [indistinct – recording distorted]

CHAIRPERSON: Oh, I am sorry, Mr Masuku, let me say this. I do think that what the Commission has unearthed is indeed the tip of the iceberg, we did not touch – we did not deal with municipalities and there are many provincial government departments we did not get to. There are many national departments that we did not get to, so indeed on that score, that what the Commission has looked at will be a tip of the iceberg, I would agree.

But going back to the question you raise about why
10 – about what you say is Glencore’s extortion of Eskom, let me say that you may or may not have realised – well, actually last time you appeared here or even before that, you were the one who drew my attention to a question that I had raised some time earlier about whether they had done due diligence and all of that, you know?

MR MOLEFE: Yes.

CHAIRPERSON: Subsequent to your being here – well, I do not know whether subsequent but I think probably subsequently I said to the legal team they need to get Mr
20 Ephron ...[intervenes]

MR MOLEFE: Yes Clinton Ephron.

CHAIRPERSON: To put up an affidavit and deal with this issue and subsequently an affidavit was filed by him and if it was not sent to you and you would like to see it I think the legal team relating to Eskom can consider that but he

has dealt with it in a certain way and I have said to the legal team that deals with the Eskom work stream they must consider calling him back to come and deal with that version, so I am just mentioning what happened that you might not be aware of.

MR MOLEFE: What I am aware of is that he made a statement subsequent to my evidence, not an affidavit.

CHAIRPERSON: Yes, well maybe it might not be an affidavit, it might be a statement.

10 **MR MOLEFE:** Yes it was a statement that was not under oath in which he denied that Mr Ramaphosa had been Chairman of ...[intervenes]

CHAIRPERSON: Yes, but let's deal with one issue at a time, ...[indistinct - laughing] now, so I am saying that I have said to the team that deals with the Eskom work stream they must consider calling him to come and take a report and deal with that issue, so I am just mentioning that so that you know that it didn't – it wasn't left at you just saying there is this and nothing was done.

20 **MR MOLEFE:** But maybe Mr Glasenberg Chair, Glasenberg.

CHAIRPERSON: Well Mr Glasen – well I don't know about that aspect but we have gone to – the Commission has gone to Mr Glasenberg about other issues and acquired some affidavit and he was asked from the reports I have

received whether he will be prepared to come and testify and I was told that apparently he was not available or keen but that was in relation to something else, not necessarily this. Anyway Mr Masuku was that your last question?

ADV MASUKU SC: There is just one issue I just thought I would ask Mr Molefe to clarify.

CHAIRPERSON: Yes.

ADV MASUKU SC: The question from Myburgh which was just over – relating to an allegation that he may have
10 visited the Gupta family driving in the Audi S8 right, you have never owned a car like that in your life?

MR MOLEFE: No I have never owned an Audi S8.

CHAIRPERSON: Okay.

MR MOLEFE: And Chair there is another matter that I would like to have an opportunity to explain further.

CHAIRPERSON: Sorry?

MR MOLEFE: There is another matter that I would like an opportunity to explain further by way of an affidavit.

CHAIRPERSON: An affidavit?

20 **MR MOLEFE:** Yes, ja, and a properly considered affidavit.

CHAIRPERSON: Ja, is that in relation to ...[intervenes]

MR MOLEFE: Transnet.

CHAIRPERSON: To Transnet?

MR MOLEFE: Ja, the increase.

CHAIRPERSON: Ja.

MR MOLEFE: From twenty something billion, or 38million
...[intervenes]

CHAIRPERSON: To 54?

MR MOLEFE: 54billion, is not an increase, not even in
accounting, it is a variance, it is the difference between
budget and actual and not an increase in anything. So,
and I would like to go and write what you know what you
call the difference between a budgeted amount and an
actual amount, it is not an increase but I would like to
10 explain it in more detail properly, academically researched.

CHAIRPERSON: H'm, Mr Myburgh I don't think there
should be any problem with that?

ADV MYBURGH SC: No, except I perhaps would ask Mr
Molefe to consider whether Mr Singh is not more than able
to deal with that, perhaps we could ask him ...[intervenes]

CHAIRPERSON: But ...[intervenes]

MR MOLEFE: Let's limit to Mr Singh there, I am sorry, I
can explain, he is a ...[intervenes]

CHAIRPERSON: Ja, well I just don't want a situation
20 where you feel you were prevented from explaining
something that you wanted to explain, in case Mr Singh
doesn't explain it satisfactorily.

MR MOLEFE: I will leave it to Mr Singh, but just an
increase and a variance are two different things.

CHAIRPERSON: Ja, no, no, that is fine, but well if you

say you leave it to Mr Singh that is fine. Okay Mr Masuku are you done?

ADV MASUKU: No Chairperson I think those are the questions I would like to have asked Mr Molefe, but Chair maybe I am speaking over the – I am engaging the Commission virtually ...[indistinct] submission something could I ask Mr Molefe to talk to – on his own deal with an aspect that he believes I may have missed, I will ask him.

CHAIRPERSON: Okay, no that is fine, that is fine. Okay
10 thank you very much to everybody, thank you for your cooperation and thank you to the staff and the technicians, thank you to Mr Molefe’s legal team. Mr Molefe thank you for your cooperation and thank you Mr Masuku, thank you Mr Myburgh and your team, we will adjourn now and tomorrow I will be – for the benefit of the public I will be hearing the evidence of Mr Gama.

We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 30 APRIL 2021