

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

15 JUNE 2021

DAY 409



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Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 15 JUNE 2021

UNKOWN COUNSEL: Told the commission Chair.

CHAIRPERSON: Ja.

UNKOWN COUNSEL: Yes.

CHAIRPERSON: Yes.

REGISTRAR: Chair the matter that has been called is allocated under SEQ18 of 2020. It is an application by Siyangena Technologies and Others to cross-examine Mr Oellerman. Yesterday on the 14th of June we have been
10 furnished with a Notice of Withdrawal – as it stands the matter has been withdrawn. The application has been withdrawn.

CHAIRPERSON: Yes I have seen the correspondence. Thank you. So that matter has been withdrawn. Thank you.

REGISTRAR: Thank you Chair.

CHAIRPERSON: Next matter.

REGISTRAR: Kgamanyane and Sesoko.

CHAIRPERSON: And I think Registrar for the sake of the record do also mention the SEQ number just for the record.
20 This is SEQ09/2020, is that correct? Is that correct? Ja.

REGISTRAR: Yes.

CHAIRPERSON: Okay. Any appearances here? Yes okay. Well the applicant must then address me. You – you appear for the LEA work stream legal team. Okay alright. Let me start with the applicant. They will sanitise. They must

sanitise before you use the podium.

ADV MOKARI SC: Chairperson.

CHAIRPERSON: Yes just for the record you will just have to place yourself on record so that the record reflects who appeared and then we can start.

ADV MOKARI SC: Thank you.

CHAIRPERSON: Not that I do not know who you are. I do know you but for the record.

ADV MOKARI SC: Yes.

10 **CHAIRPERSON:** Let the record show appeared.

ADV MOKARI SC: It shows who appears indeed Chair.

CHAIRPERSON: Yes.

ADV MOKARI SC: Indeed Chairperson. My name is William Mokari SC. As it has been pointed out already I am appearing for Mr Kgamanyane in respect of the allegations that were made during the course of the hearings of the commission by Mr McBride, Mr Sesoko and Mr Khuba – all three were at the relevant times employees of IPID.

CHAIRPERSON: Yes.

20 **ADV MOKARI SC:** And Mr Kgamanyane was at some point appointed to act in the position that was occupied by Mr McBride which is Executive Director of IPID.

CHAIRPERSON: I think that Mr Mokari a lot that you will say in support of this application is likely to be the same thing that you will say in regard to his application to cross-

examine – for leave to cross-examine the other two. The Registrar mentioned the Sesoko matter only but you are right that he also applied for leave to cross-examine Mr McBride as well as Mr Khuba, is that right?

ADV MOKARI SC: Yes indeed. In fact the Registrar mentioned Kgamanyane.

CHAIRPERSON: All three.

ADV MOKARI SC: Sesoko and Khuba.

CHAIRPERSON: Oh okay.

10 **ADV MOKARI SC:** So she mentioned all three of them.

CHAIRPERSON: Okay – all three okay no that is fine.

ADV MOKARI SC: And I am happy to deal with them at once.

CHAIRPERSON: No I think...

ADV MOKARI SC: Because they are interlinked.

CHAIRPERSON: I think that is convenient.

ADV MOKARI SC: Yes.

CHAIRPERSON: I think that is convenient but she must just give me all of them. Registrar are you giving me new
20 files or are you giving me files that I have been keeping which have got my notes? I need files that have got my notes. Is this the one? Okay. All right. Let me mention to you Mr Mokari a consideration that applies not only to your client's application but it also applies to applications brought by other applicants in regard to other witnesses but

which fall within what we in the commission call the Law Enforcement Agencies – LEA. That includes – that relates to IPID, that relates to the Hawks, that relates to the NPA.

Paragraph 7 I think it is of the Terms of Reference of the Commission give power to the Chairperson to refer some matters that the commission would otherwise investigate to – that paragraph gives the Chairperson the power to refer some of the matters to Law Enforcement Agencies for further investigation or to what it refers to as
10 the convening of a separate inquiry.

The understanding is that what was contemplated is that there may be matters that this commission might not be able to get to and it might decide that they must be referred to Law Enforcement Agencies for the – further investigation or to a separate inquiry for further investigation.

Now on my understanding that could be matters where the commission did not get to do any investigation at all or it could be matters where the commission was able to start investigation but could not finish.

20 So that – that is the understanding of that paragraph that I have. Now the Law Enforcement Agencies that work stream is a work stream that will be referred to before I mentioned in paragraph 7 or a recommendation may be made to the President to establish other processes for purposes of investigating allegations that have been made

under those bodies – Law Enforcement Agencies, IPID, NPA, the Hawks and so on.

So in regard to the – to IPID the commission as you know did listen to various witnesses including Mr McBride, Mr Khuba and Sesoko and they gave their evidence and various persons were served with 3.3 Notices including your client and at a certain stage it was envisaged that they might all give evidence. But the fact of the matter is that it is quite a wide investigation that needs to be done and that
10 this commission is not going to complete the investigation in regard to these agencies.

So therefore because the commission is not going to complete the investigation it cannot make any adverse findings against anybody because obviously that would not be fair and that would not be proper.

So what I envisage is that whatever other forum or process will look at the – these allegations and investigate further that forum or those bodies which will investigate would look at whatever the commission – had been placed
20 before the commission and do further investigation based on that and in appropriate cases they would want to hear people who are implicated which would include somebody like your client who wanted to say something but could not say it because the commission did not pursue the investigations to completion.

So that – that is the position. So given that understanding the question arises whether the position should not be that no further investigation should be or evidence should be heard in regard to these bodies because it is a fact that the commission is not going to complete the investigation – it may as well leave everything to whoever will complete – will take the investigation further and that includes the question of cross-examination.

But of course it may well be that somebody might
10 say Chairperson I understand that completely but maybe here is somebody who came to the commission and said all kinds of things about me and at least I should have my version put up or something like that.

So I think if we talking about anything along those lines one could look at the possibility of saying well would it not be adequate if an evidence leader of the commission reads out a summary of that person's version in public at a hearing such as this to say such and such witness gave evidence and implicated this person in this way the
20 commission is not going to complete its investigation in this regard and this person – but this person has put up an affidavit and here is the summary of what he has to say whether that kind of balancing would not be adequate.

In other words to the extent that one might say the – the – I should not grant leave to cross-examine seeing that

the process of investigation is likely to be taken further by another body and the person can exercise cross-examination under that body, what do you have to say about – is this concern.

ADV MOKARI SC: Thank you very much Chairperson. Of course we – we do appreciate that the commission is in no position to – to finish everything and especially in the light of the many applications that have been brought by people to cross-examine so the proposal that you make I think is –
10 it is a sensible one but what I can propose is the following and I will examples in the context of the Kgamanyane, McBride and Sesoko, Khuba situation.

For instance in respect of Mr McBride he gave a statement – a sworn statement, an affidavit and the commission gave Mr Khamanyane an opportunity to respond – he also filed a sworn statement. So the commission has the two affidavits.

CHAIRPERSON: Both versions ja.

ADV MOKARI SC: Yes so both versions are there and if the
20 commission for instance is going to – because I would not – I would not prefer the commission not to say anything at all about what was said for the sake of the fact that some of the things were said in public and the report is going to be made public to the – then to those interested.

So the commission should still be able to deal with

that which was put by the respective individuals under oath and consider whether what has been said by each of them is supported by objective evidence.

Let me give an example. Where Mr McBride put a statement which is based on what he was told by other people. So basically strictly speaking if we are talking the law of evidence one will say that this evidence is inadmissible unless the probative value of it is supported by the persons from whom it comes from.

10 So if then the commission is unable to find any corroboration from Khuba and Sesoko on what he has said so the commission will have to reject it because at some point it has to apply that test but to the extent that it is supported by what they say then the commission will look at what Kgamanyane has said in his sworn statement and whether what Kgamanyane say in his statement is corroborated by the documents that he has attached to his statement.

20 So at the end if the commission applies that test it may even come to a conclusion that in respect of certain matters if one were to apply the – the terms that we usually use in motion proceedings that is so far-fetched that the commission must reject it outright because it has no merit. So there is no need even to say that it must go for further investigation because it is burden other fora with

unnecessary material. But where then the commission will find that there is some merit which require for the investigation it will do so.

So if that is what the commission is going to do we will have no problem with that because the commission will see when considering the affidavit of Mr McBride that everything that he says is that he was told by people because he says I never met Kgamanyane. When Kgamanyane was appointed to act in my position I was on
10 suspension. So they never met. So whatever he is saying about Kgamanyane is what he was told by other people. And those people that he is talking about is Khuba and Sesoko.

And when you come Sesoko and Khuba then the commission will look at what they say about what McBride has said about them and if there is no correlation then the commission will simply then not take that as something of substance which require further investigation.

So I think that if the commission is going to
20 approach it that way it will help the commission also in terms of its time pressures that it will not be able to finish the investigation.

And I will say that from the side of my client then I do not think you will have a problem with that knowing that there is no risk of any adverse finding made against him but

also knowing that what he has put under oath in his sworn statement supported by documentary evidence will be taken into account by the commission and when the report comes out it will also have that analysis.

So I think that you will not have any problem if that type of an approach is – is followed because our concern was a situation where allegations were made and they were carried to the – carried to the public through media platforms and the public will ask and say but we have not
10 heard what Kgamanyane has said what Kgamanyane's response is but if the public knows that Kgamanyane did put a version although it is by way of an affidavit and he was – he was available to testify to depart whatever was said about him but because of the time pressures and because of the discretion of the commission in terms of paragraph 7 of the Terms of Reference that it has that latitude to refer certain matters for further investigation then I think that people know that whatever was said about Kgamanyane by McBride – by Sesoko – by Khuba does not necessarily
20 reflect the truth but the converse may actually be the truth.

So I think under those circumstances we think that we can be accommodating knowing that we have that comfort.

CHAIRPERSON: Yes. Yes. No I think that – that would be good. I think the – I think the bottom line would be that

since the commission would be regarding the matters as not having been fully investigated it would then approach the matter on the basis that the matter – the matter or matters may need further investigation and therefore it would be not fair to make some finding when there is still going to be another process. And of course to the extent that the commission would say anything about the allegations or evidence that has been led it would have regard to all versions that are before it so that – that would be the
10 position.

So if – if that – if your client is able to live with that and accept that scenario it would seem to me therefore that there is no need to go into cross-examination. There is no need to grant leave so – but on the – on the understanding that the investigations not having been completed there cannot be adverse findings.

ADV MOKARI SC: Yes.

CHAIRPERSON: Find – findings must be made when the investigations are completed. So – so I think we are on the
20 same page.

ADV MOKARI SC: Ja I think we are on the same page. Ja no then I understand that.

CHAIRPERSON: Yes. Yes.

ADV MOKARI SC: Yes.

CHAIRPERSON: No, no thank you. I think in that situation

we are therefore faced with in terms of formalities either that you withdraw the application or I dismiss it but this is the understanding in terms of the investigation not having been completed.

ADV MOKARI SC: Well I think ...

CHAIRPERSON: Which one would you prefer?

ADV MOKARI SC: I think all what the commission has to say then is to say that in respect of matters involving Law Enforcement of course...

10 **CHAIRPERSON:** Ja.

ADV MOKARI SC: The Chairperson will have to hear others.

CHAIRPERSON: Ja.

ADV MOKARI SC: Because I understand there are others.

CHAIRPERSON: Ja.

ADV MOKARI SC: The commission is not in a position to investigate these matters fully and therefore it is likely to refer them for further investigation.

CHAIRPERSON: Ja.

20 **ADV MOKARI SC:** And for that reason...

CHAIRPERSON: Ja.

ADV MOKARI SC: It will not consider the applications.

CHAIRPERSON: Ja.

ADV MOKARI SC: To cross-examine.

CHAIRPERSON: Ja.

ADV MOKARI SC: Yes.

CHAIRPERSON: Well I do not know whether it is correct to leave it that it will not consider because it is like they are hanging in the air. We know that...

ADV MOKARI SC: Or can I understand what I am saying – understand what you are saying.

CHAIRPERSON: Yes.

ADV MOKARI SC: So basically then I mean the ...

CHAIRPERSON: Ja because the manner...

10 **ADV MOKARI SC:** The long and short of it is that...

CHAIRPERSON: Yes.

ADV MOKARI SC: The application is withdrawn.

CHAIRPERSON: Ja.

ADV MOKARI SC: For the reasons given – yes.

CHAIRPERSON: For the reasons given ja.

ADV MOKARI SC: That is right yes.

CHAIRPERSON: Okay no thank you. So that – that is the – the position and I appreciate your cooperation and your understanding.

20 **ADV MOKARI SC:** Thank you Chairperson.

CHAIRPERSON: Thank – thank you. So that covers the three matters.

ADV MOKARI SC: Yes the three matters that is now Kgamanyane in respect of McBride, Sesoko and Khuba.

CHAIRPERSON: Yes okay no thank you.

ADV MOKARI SC: Thank you Chairperson.

CHAIRPERSON: Please call the next matter.

REGISTRAR: Mr Gigaba and Mr Bishop SEQ5 of 2021.

ADV MYBURGH SC: Good afternoon Chairperson. Mr Myburgh of the commission standing in for Ms Sibiya.

CHAIRPERSON: Yes.

ADV MYBURGH SC: Of the legal team from Alexkor.

CHAIRPERSON: Yes.

ADV MYBURGH SC: Chairperson you know that this is an
10 application brought by Mr Gigaba to cross-examine Mr
Bishop. It arises in the Alexkor stream. I understand that
you are aware that earlier today we received from the State
Attorney on behalf of Mr Gigaba a notice of withdrawal of
the application.

CHAIRPERSON: Yes I am aware so this application has
been withdrawn. Okay thank you.

ADV MYBURGH SC: Thank you Chairperson may I be
excused?

CHAIRPERSON: Yes you are excused.

20 **ADV MYBURGH SC:** Thank you.

CHAIRPERSON: Thank you. Please call the next one.
Just raise your voice I am not sure that everybody can hear
you oh is your mic not working. It is the matter of Mr Hlaudi
Motsoeneng who applies for leave to cross-examine Mr
Carrim SEQ16/2020. Yes.

ADV KUFA: (Inaudible).

CHAIRPERSON: Yes.

ADV KUFA: (Inaudible).

CHAIRPERSON: Yes.

ADV KUFA: Sorry – SEQ 16.

CHAIRPERSON: Yes.

ADV KUFA: Of 2020.

CHAIRPERSON: Yes.

ADV KUFA: Which is the one that is you are currently
10 seized with.

CHAIRPERSON: Ja.

ADV KUFA: And the second one is the one pertaining to
the leave for application to cross-examine Ms Lulama
Mokhobo the former CEO of the SABC.

CHAIRPERSON: Yes. Let – but let us deal with the – the –
number 16 first.

ADV KUFA: Yes indeed Chair.

CHAIRPERSON: Okay.

ADV KUFA: Ja Chair I do not know if you are in receipt of
20 the applicant's heads of arguments in respect of this matter.

CHAIRPERSON: They may have reached my office but I did
not get a chance to read them. I was told that there were
matters where written submissions had arrived sometime
today. I see that there are heads of argument. Is this –
this is the matter relating to Mr Carrim.

My recollection is that in both matters Mr Motsoeneng wanted to cross-examine on very narrow points.

ADV KUFA: Yes indeed it is very narrow points and they can be easily disposed of without ...

CHAIRPERSON: What was the dis – what is the dispute of fact or the disputes of fact that he is complaining about here?

ADV KUFA: Okay let me just 00:36:16 quickly because...

10 **CHAIRPERSON:** Ja.

ADV KUFA: Okay the disputes of facts are quite narrow in they identified in the founding papers of applicant.

CHAIRPERSON: Yes.

ADV KUFA: Under the heading Disputed Facts.

CHAIRPERSON: Ja.

ADV KUFA: Also on the heads I can just address you – they are also reinforced and encompasses a corollary the application for cross-examination.

20 **CHAIRPERSON:** In your written submissions is that what you deal with at page 2 as Mr Motsoeneng's rendition issues? No, no that is not your heads of argument.

ADV KUFA: The disputed facts are Chairperson.

CHAIRPERSON: Ja

ADV KUFA: Are on the – commence on paragraph 29 of the heads of argument.

CHAIRPERSON: Okay let – I am sorry I have moved to the affidavit. Just take me to the affidavit again?

ADV KUFA: Oh to the affidavit quickly.

CHAIRPERSON: Ja.

ADV KUFA: Let me just – because my laptop what – a bit frozen let me just get you there.

CHAIRPERSON: I see at paragraph – page 11 paragraph 35 of Mr Motsoeneng’s affidavit so he says:

10 “Disputed facts identified in the affidavit of
 Mr Yunus Carrim.”

ADV KUFA: Yes indeed.

CHAIRPERSON: Ja just run through them quickly for me.

ADV KUFA: Yes. One of the – I think it is easier because they are in with the – regurgitated in the heads I will just quickly go to the heads.

CHAIRPERSON: Yes, ja okay.

ADV KUFA: One of the major issues is pertaining to the issue of the encryption model of the SABC wherein Multi – the – be – MultiChoice deal just to put it bluntly.

20 **CHAIRPERSON:** Ja.

ADV KUFA: And if you look at Mr Carrim’s evidence before this forum which the applicant takes aversion to was opportunistic and malicious to the integrity and reputation of the applicant as you will see and note just to quickly address on the points of dispute.

CHAIRPERSON: Ja I think what I am – what I am really looking for is that this is what Mr Carrim says and this is what ...

ADV KUFA: Mr Motsoeneng says.

CHAIRPERSON: In regard to that point.

ADV KUFA: Yes.

CHAIRPERSON: You know. That is going to much easier.

ADV KUFA: Yes that is what I am ...

CHAIRPERSON: You are trying to do.

10 **ADV KUFA:** To address you on Chair.

CHAIRPERSON: Okay all right.

ADV KUFA: Because I do not want to bedevil and waste the commission's time.

CHAIRPERSON: Yes. Ja.

ADV KUFA: In that regard.

CHAIRPERSON: Ja.

20 **ADV KUFA:** So if you look at the – the issue was about to do with the STB control and encryption. Remember Chair I do not know if you recollect the testimony of Mr Kruger who spoke at length.

CHAIRPERSON: Ja.

ADV KUFA: On the issue encryption and remember if I can take you a few steps or a few years back you were part of the forum of the Constitutional Court.

CHAIRPERSON: Ja.

ADV KUFA: That gave judgment pertaining to the encryption.

CHAIRPERSON: Ja.

ADV KUFA: To say that the cabinet was correct in adopting the approach it did adopt.

CHAIRPERSON: Ja.

ADV KUFA: In addressing the encryption.

CHAIRPERSON: Ja.

ADV KUFA: Issues.

10 **CHAIRPERSON:** Yes.

ADV KUFA: And so now it is surprising that then Mr Carrim when he is before this forum he takes an about turn about decisions that were taken when he was not yet Minister. So those decisions are the decisions that was saying that it is a disputed fact.

CHAIRPERSON: Yes but what I know – what factual statements did Mr Carrim say about Mr Motsoeneng that Mr Motsoeneng disputes?

20 **ADV KUFA:** Well one ball of contention is that Mr Carrim says that it is Mr Motsoeneng who was anti encryption. That is a dispute of fact.

CHAIRPERSON: Ja.

ADV KUFA: Because Mr Motsoeneng was never anti.

CHAIRPERSON: Yes.

ADV KUFA: Encryption. This was a decision taken by

government.

CHAIRPERSON: Ja.

ADV KUFA: The cabinet which was mandated to take the decision.

CHAIRPERSON: Ja.

ADV KUFA: Thereof.

CHAIRPERSON: Yes.

ADV KUFA: So it will not all go well for the interest of this commission if that evidence is to be led or laid bare and
10 untested through cross-examination.

CHAIRPERSON: Right.

ADV KUFA: Yes.

CHAIRPERSON: Okay. Of course Mr Motsoeneng was neither the Minister nor the CEO of...

ADV KUFA: The SABC.

CHAIRPERSON: Of SABC.

ADV KUFA: Yes indeed.

CHAIRPERSON: And that may raise the question of even if it may be said that he was anti the question might arise why
20 is it so important that we should go into that and have cross-examination when he was not even the head of the SABC.

ADV KUFA: It is because also the head of the SABC – remember I said that is why earlier on in the – I referred you to the...

CHAIRPERSON: Ja.

ADV KUFA: Leave to – for the application to cross-examine Ms Lulama Mokhobo.

CHAIRPERSON: Yes.

ADV KUFA: Ms Lulama Mokhobo's evidence is in tandem with Mr Carrim's.

CHAIRPERSON: Ja.

ADV KUFA: Evidence and she – remember she was the erstwhile CEO of the SABC.

10 **CHAIRPERSON:** Ja.

ADV KUFA: And she also opportunistically and generously implicates Mr Hlaudi Motsoeneng for misdeeds which misdeeds Mr Hlaudi Motsoeneng did not commit. If anything the person who 00:42:26 the fiduciary duties is Ms Lulama Mokhobo.

CHAIRPERSON: Yes.

ADV KUFA: So now if you look at the evidence of Ms Lulama Mokhobo before this forum which she gave not on an affidavit but orally those are not in sync with the general
20 accepted issues like what you are placing before this forum Chair to say that Mr Motsoeneng was neither the CEO nor was he a member of cabinet pertaining to these issues.

CHAIRPERSON: But I would imagine that when Mr Motsoeneng gave evidence he dealt with that as well is it not?

ADV KUFA: He did deal with the issues on the 12th of September 2019 but remember we then parked his evidence.

CHAIRPERSON: Ja.

ADV KUFA: After there were a number of issues that he wanted to address this commission on.

CHAIRPERSON: Ja.

ADV KUFA: And remember you granted him leave to supplement...

10 **CHAIRPERSON:** Yes.

ADV KUFA: His evidence which supplementary affidavits were served and still serve before this forum.

CHAIRPERSON: Yes.

ADV KUFA: And he has still to testify on those supplementary affidavit.

CHAIRPERSON: Yes.

20 **ADV KUFA:** And furthermore the other arresting issue that is to be placed before this forum is that whilst in the process of bringing that information before this forum that is when there was this long queue of people now coming to implicate him. So it was like as if the – he was now – Mr Motsoeneng was fodder for...

CHAIRPERSON: Ja.

ADV KUFA: For the general public that anyone – any Jack and Jill can come and implicate him. So it will not all go

well for the interest of this commission if that evidence ...

CHAIRPERSON: Ja.

ADV KUFA: Is to be ignored or let alone for the commission to accept it as the truth.

CHAIRPERSON: So your answer is he did testify about it but orally but he has also covered it in affidavits.

ADV KUFA: Yes he has covered it in the affidavits.

CHAIRPERSON: Ja.

ADV KUFA: But remember the...

10 **CHAIRPERSON:** He just had not had another opportunity to give oral evidence.

ADV KUFA: Ventilate it yes.

CHAIRPERSON: But otherwise –

ADV KUFA: Yes to ventilate it before this forum.

CHAIRPERSON: Ja. Okay what were the other state – factual statements that he takes issue with from Mr Carrim?

ADV KUFA: One of the issues of Mr Carrim remember is about the Channel 24 News Channel.

CHAIRPERSON: Ja.

20 **ADV KUFA:** Which – that one I think it can be easily resolved on paper but...

CHAIRPERSON: Ja.

ADV KUFA: I think suffice to say just for avoid a little doubt I think it is best that I also address you on that issue because the News 24 Channel.

CHAIRPERSON: Ja.

ADV KUFA: Was not only sanctioned by Mr Carrim himself but also by Ms Lulama Mokhobo. This YouTube

CHAIRPERSON: What did Mr Carrim say about – about News 24?

ADV KUFA: He is saying that this was – what Mr Carrim says is that it was a decision that was arrived at by MultiChoice by I think – I think there was involvement of Mr 00:45:24 Patel pertaining to that issue and then secondly
10 the issue was also that according to Ms Lulama Mokhobo the – she was never part of that decision. But if you look at the board resolutions and the board minutes and the YouTube video clips – remember there was a time when we had a chitter chattering pertaining to the YouTube videos and you were saying that they might consume the time of the commission if we were to play them. And we said that we will only go to that portion where she even makes congratulatory messages and pats herself on the back pertaining the News 24 Channel. So I do not know whether
20 there is form of amnesia on her part and Mr Carrim’s or it is just unwittingly or wittingly avoiding putting the truth before this commission.

CHAIRPERSON: But what did Mr Carrim say about Mr Motsoeneng in regard to that channel that Mr Motsoeneng takes issue with?

He said that Mr Motsoeneng was the one who was responsible for it. Mr Motsoeneng was not responsible for it. It was actually Mr Carrim himself.

CHAIRPERSON: Ja.

ADV KUFA: And Ms Mokhobo.

CHAIRPERSON: Yes.

ADV KUFA: Yes.

CHAIRPERSON: Okay all right.

ADV KUFA: So those are mistruths that can be...

10 **CHAIRPERSON:** And you were saying on papers that can be resolved.

ADV KUFA: They can be resolved on paper like I said.

CHAIRPERSON: Ja.

ADV KUFA: We do not want to take much issue on them.

CHAIRPERSON: Yes.

ADV KUFA: Because I mean those are – I think those are issues because in any event what Mr Motsoeneng did was in the application for cross-examination he then annex to it the board minutes, the board resolutions.

20 **CHAIRPERSON:** Ja.

ADV KUFA: Let us between the erstwhile Chairperson of the SABC board who is Dr Ngubane and also pertinently he also attached letters from – which were exchanged between the then Minister of Communications Dina Pule and Mr Carrim also as well.

CHAIRPERSON: Ja okay no that is fine. And what other factual statement did he – is he complaining about that was made by Mr Carrim?

ADV KUFA: I think it is also the – the other issues that cut and paste issue of the Sowetan News Reports that Mr Carrim went at large before this forum giving evidence on. Yes.

CHAIRPERSON: What was – what was the statement that Mr Carrim made about Mr Motsoeneng?

10 **ADV KUFA:** What Mr Carrim did was that remember if we take a few steps back to the Public Protector's Report that was issues against largely Mr Motsoeneng pertaining to the maladministration, alleged maladministration and irregularities at the SABC where aspersions were cast on him and were if we – we can remember pertinently and clausally so why the Public Protector then says that Mr Motsoeneng must undergo the rigours of a disciplinary enquiry pertaining to those issues. That disciplinary enquiry never happened.

20 If anything Mr Motsoeneng was then assailed in the disciplinary enquiry for making disparaging remarks pertaining to the then erstwhile SABC board. So those issues – I do not want to deal with them because in any event I am sure the court seized with the Public Protector's Review Application would adequately deal with those

issues.

So suffice to say what I can then do and propose before this commission is that those issues – what this forum can then do is to park or put them in a hiatus those issues to say that they are all going to – to say they are not going to deal with those issues since they are going to be playing out anyway in any event in the Public Protector's Review Application.

CHAIRPERSON: I will tell you what I propose to do. I
10 propose not to grant him leave to cross-examine but his
version would be taken into account. Matters where
evidence or allegations have been made of somebody being
involved in acts of state capture and corruption and fraud,
those are matters where I give a lot of weight for purposes
of leave to cross-examine. On what you say - you are
telling me, it seems that, largely, it is a question of Mr
Motsoeneng saying: Somebody has lied about me, or
something to that effect. And this is, what they said, it is
not true. This is the position. So, my intended approach is
20 to say. All versions must be taking into account in regard
to this matter and whatever will be done will be based on
both versions but that given all the circumstances, it does
not seem to me it would be in the interest of justice that I
grant him leave to cross-examine on these matters. That
is what is in my mind. Do you want to say something about

it?

UNKNOWN COUNSEL: Yes.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: I have a bit of a stigmatised nightmare pertaining to that, Chairperson.

CHAIRPERSON: Ja, yes.

UNKNOWN COUNSEL: And I respectfully say so.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: Because it is encroaching onto the
10 applicant's rights before this forum.

CHAIRPERSON: Ja.

UNKNOWN COUNSEL: Remember what was said in the
...[intervenes]

CHAIRPERSON: Leave out the question of him testifying whatever was left. I leave that out. I am not affecting that for now.

UNKNOWN COUNSEL: Yes, because why I am saying the nuance of this – of his evidence, in any event, before this forum, is pertaining to his rights to say that people can be
20 implicated in and from the manner in which the interrogations were panned out before this forum, it was as if you, as the Chairperson, was readily likely to accept the versions proffered by Mr Carrim and Ms Mokhobo than his version. That is why he has a challenge.

CHAIRPERSON: Ja.

UNKNOWN COUNSEL: That is why he is saying: I need to ...[intervenes]

CHAIRPERSON: Ja.

UNKNOWN COUNSEL: ...my rights here are vetted unless if I am granted the leave to cross-examine these individuals who obscures(?) and in a reformative(?) manner, not only – there is one other issue that, if you look at the end of our heads, which we also invite this Commission to do, to say that if, at the end of the day, if
10 you are going to take that exercise and to realise that these two individuals, that is Mr Carrim and Ms Mokhobo, lied before this forum.

Then, we would want you as the Chairperson to direct whatever ruling or findings that you have made to be taken by the Secretary(?) of the Commission to the NPA for further investigation and prosecution for perjury because you cannot have people coming and playing out in the gallery here, lying about individuals lives. I mean, these are people's lives. Their dignities are shammed.

20 **CHAIRPERSON:** Well, let me say this. I mean, I appreciate the impact on individuals of allegations that are being made or are made from time to time in hearings in the Commission. I appreciate that. But what I am saying is that cross-examination - if cross-examination is not granted it does not necessarily mean that there is one side

of the story before the Commission. There are still two sides or more sides and the Commission would have regard to all of them.

UNKNOWN COUNSEL: Okay.

CHAIRPERSON: And of course, you will appreciate that by the very nature of the power that has been given to the Chairperson to grant leave to cross-examine, it also means he may refuse leave to cross-examine in certain circumstances but it does not mean that where leave to
10 cross-examine has not been granted or has not been allowed, where cross-examination had not been allowed, it does not necessarily mean that it is an unfair hearing. It is all – it all depends on everything.

So, one. You can assure Mr Motsoeneng that no particular witness's evidence has been accepted, that is disputed, and that which evidence is accepted, and which evidence is not accepted, it is something that will come out in the report finally. So, there may be a situation where somebody thinks because the witnesses giving evidence in
20 a certain way, or the Chairperson seems to be listening very attentively, maybe he is going along with that version.

The Chairperson has an obligation to listen to every witness and to ask questions. Some witnesses complain that the Chairperson is asking too many questions as if he is the evidence leader. So, you can

assure him. But I was giving you the benefit of what was going on in my mind.

UNKNOWN COUNSEL: Okay, yes, h'm.

CHAIRPERSON: So that you can address it before we conclude.

UNKNOWN COUNSEL: Yes.

CHAIRPERSON: But I think you have addressed it. I do not know if you want to say anything more.

UNKNOWN COUNSEL: Ja, there is just one issue that
10 lays for your disposition, Chair. I do not want to go into the constitutional debate because I firmly believe and my client, the applicant, firmly believes that he has a right, an unvetted right to cross-examination in terms of Section 39(2). I mean, we must promote dispersion(?) object of the constitution. We do not want to go into the constitution debate.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: Because we will consume the Commission's time.

20 **CHAIRPERSON:** Ja.

UNKNOWN COUNSEL: But it suffices to say that the applicant wants - in the alternative, his notice of motion was that, in the event that the leave to cross-examination fails he be granted leave to lead evidence in rebuttal of the evidence implicating him in terms of Rule 3.3 as read with

Rule 3.9 of the Commission's rules.

CHAIRPERSON: I think you have said earlier on that when he left the witness stand the last time ...[intervenes]

UNKNOWN COUNSEL: Yes.

CHAIRPERSON: ...there was an understanding that he may have to come back to deal with certain matters.

UNKNOWN COUNSEL: That was before the implications.

CHAIRPERSON: Ja.

UNKNOWN COUNSEL: Ja.

10 **CHAIRPERSON:** So, I think that will need to be done is to look at the basis on which he left and to look at the issue of him dealing with the remaining part orally. So, there would be the question of, is it necessary to allow oral evidence to deal with that or will justice be done even with looking at the versions as put up in affidavits but that is something I can look at in due course.

UNKNOWN COUNSEL: Alright. Thank you, Chair.

CHAIRPERSON: Alright, okay.

UNKNOWN COUNSEL: Ja.

20 **CHAIRPERSON:** So, in regard to his application for leave to cross-examine, Mr Carrim, the application is dismissed. If reasons are requested, they will be furnished but with regard to his application for leave to cross-examine Ms Mokhobo, we can deal with that.

UNKNOWN COUNSEL: Yes. Thank you, Chair.

CHAIRPERSON: Okay. I am sorry. I have not allowed this to be called because you are on the podium, but Mr Pretorius indicates there is somebody. Yes.

ADV PRETORIUS SC: [Microphone not switched on]

CHAIRPERSON: Oh, on the matter that I have disposed of?

ADV PRETORIUS SC: [Microphone not switched on]

CHAIRPERSON: Oh, does he represent Mr Carrim? Does he still want to address me? Let me hear what he has to
10 say quickly. So, somebody will sanitise. But I have disposed of the matter, but I will hear what you have to say quickly.

ADV HARRISON: Thank you, Chairperson.

CHAIRPERSON: Yes.

ADV HARRISON: I think my presence may be supercilious now that you have actually ruled on the matter.

CHAIRPERSON: Well... Yes, and I did not want to hear anybody. [laughs]

ADV HARRISON: Ja, well ...[intervenes]

20 **CHAIRPERSON:** ...other than ...[intervenes]

ADV HARRISON: You know, we would go with that Mr Chairperson.

CHAIRPERSON: Yes.

ADV HARRISON: Just to place myself on record.

CHAIRPERSON: Yes.

ADV HARRISON: For Mr Carrim ...[intervenes]

CHAIRPERSON: Yes.

ADV HARRISON: ...from the law firm Harrison
...[indistinct] Lebatsi(?).

CHAIRPERSON: Yes.

ADV HARRISON: We have prepared submissions on
these issues.

CHAIRPERSON: Yes.

ADV HARRISON: I am not going to, in view of your ruling
10 ...[intervenes]

CHAIRPERSON: Ja.

ADV HARRISON: ...waste your time or take up any further
of your time but we will submit them to you for your
consideration.

CHAIRPERSON: Ja. No, that is alright. Thank you.
Okay, now let me now deal with me the matter of Mr
Motsoeneng who applies for leave to cross-examine
Ms Mokhobo. Registrar, what case number is that?

REGISTRAR: SEQ 17-2020.

20 **CHAIRPERSON:** Okay.

UNKNOWN COUNSEL: Now, Chair, I do not know if this
application is going to also suffer the same fate as the
preceding ...[intervenes]

CHAIRPERSON: I will ...[intervenes]

UNKNOWN COUNSEL: ...application.

CHAIRPERSON: I will tell you what. My recollection with regards to this one is, that the whole issue is about the issue of authority.

UNKNOWN COUNSEL: Yes, indeed.

CHAIRPERSON: Is that right?

UNKNOWN COUNSEL: And she alleges that she was afraid of Mr Motsoeneng.

CHAIRPERSON: Well, that part I do not remember but ...[intervenes]

10 **UNKNOWN COUNSEL:** Well, we remember, actually.

CHAIRPERSON: It was about – I mean, the issue about authority. I am not sure why there should be cross-examination on that issue because that issue should be resolved by way of somebody submitting a document that shows authority, whether it is a resolution of the board or it is a delegation of authority or it is a provision in a statute or regulations. Is it not?

UNKNOWN COUNSEL: Yes, actually, I wanted to address you on that issue. That, actually, what Ms Mokhobo does, 20 wittingly or unwittingly, she submits ...[indistinct]. A number of annexures, I think it is from page 53 to 376 of SEQ 17 where, actually, at the bulk of those annexures, actually, support the contention of these, of Mr Motsoeneng than her own views. So, it is actually a self-defeating exercise on her part but like you say ...[intervenes]

CHAIRPERSON: But of course ...[intervenes]

UNKNOWN COUNSEL: ... Chair, I am not in your hands
...[intervenes]

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: ...pertaining to that issue.

CHAIRPERSON: Because if you agree with me and if you say that the documents that she has submitted show that there was authority. As I say, authority would normally be proven by way of a document.

10 **UNKNOWN COUNSEL:** Yes. Yes, indeed.

CHAIRPERSON: Ja, ja.

UNKNOWN COUNSEL: Because what Mr Motsoeneng has done is, he has attached his founding affidavit and also his replying affidavit.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: A number of annexures that dispels the myth ...[intervenes]

CHAIRPERSON: Ja.

20 **UNKNOWN COUNSEL:** ...that the decisions that were taken were not taken in sync ...[intervenes]

CHAIRPERSON: Ja.

UNKNOWN COUNSEL: ...without resolutions or board decisions.

CHAIRPERSON: Ja.

UNKNOWN COUNSEL: But to say that these decisions

were taken, the board well-knowing that these decisions were taken, and they are taking... that these decisions will be taken.

CHAIRPERSON: So, should we not deal with the matter on the basis that, to the extent that, it becomes necessary for me to decide whether there was authority, the documents are there and the document that he relies on is there or documents that he relies on are there and therefore there is no need for him to come and say: You
10 see, this is the document.

UNKNOWN COUNSEL: Ja. Yes, Chair, I would agree with you, but I just want to add a further – excuse the punt – a further feather in the hat.

CHAIRPERSON: Ja.

UNKNOWN COUNSEL: So, to say that Mr Motsoeneng would love that in the event that there is to be a negative ruling towards him, that there will be a further invitation to say – because remember, we have vetted(?) his assets to cross-examination. So, we are saying. To ensure that his
20 rights to access this forum in terms of Section 34 of the Constitution and also in terms of Section 9.3 of the Constitution that right to equality and right to equality of arms when pertaining to proffering evidence before this forum.

We are saying that you invite him further to say

that if there is a negative inference drawing are made against his evidence, that there will be a further invitation extended to him to say perhaps there is a way of... that these three or four questions are still outstanding. Can you address us on these questions? Then if we agree on that, then I think – I do not think the applicant will have any challenge with that.

CHAIRPERSON: No, I think the approach should be. If he is satisfied that the documents that prove what he
10 wants to prove are before the Commission, that should be enough. The Commission must have regard to all documents and all affidavits and decide – it might not be necessary to decide whether there was authority or not but in case it is necessary for the Commission to decide that issue, then it can have regard to that.

UNKNOWN COUNSEL: But Chair, the ...[intervenes]

CHAIRPERSON: Otherwise, we will never finish. If we say we will invite him at some stage and so on.

UNKNOWN COUNSEL: No, no I do understand.

20 **CHAIRPERSON:** Ja.

UNKNOWN COUNSEL: We need to bring finality to these proceedings.

CHAIRPERSON: Yes, ja.

UNKNOWN COUNSEL: I am on all fours there with you, Chair.

CHAIRPERSON: Ja, ja.

UNKNOWN COUNSEL: But one thing that remains for termination, again, is the rights of the applicant which are being circumscribed.

CHAIRPERSON: Ja.

UNKNOWN COUNSEL: Because remember we have had already had volumes of information, evidence, Chair, now before this forum, calling him whatever names. All that that has been said about him. I do not want to go into that
10 debate but all I am saying is that. What then happens to his rights? Because we are trying to also to put as a... mechanism the issue of that – in the event that evidence is not overlooked.

CHAIRPERSON: No, no ...[intervenes]

UNKNOWN COUNSEL: Because remember, the evidence is before the forum but what guarantee do we have that the evidence will not be overlooked.

CHAIRPERSON: No, no, no.

UNKNOWN COUNSEL: Yes, that is all I am ...[intervenes]

20 **CHAIRPERSON:** All the evidence that is before the Commission will be looked at. You cannot assume or want a guarantee of anything other than that the Commission will apply its mind to the evidence before it. So, the Commission will apply its mind to evidence before it and decides issues that believes it should decide. Some of the

issues that the parties might think, it will need to decide, might be issues that it decides they are not important to decide. But as far as the issue of authority, I think we agreed that, usually, that should be shown by way of documents and you have already said the documents that had been put up, actually, by Ms Mokhobo seems, you say, supports Mr Motsoeneng.

UNKNOWN COUNSEL: Yes. And then there is also the last remaining determination which is similar to the one
10 that I addressed you to in the application. The issue pertaining to perjury.

CHAIRPERSON: Ja.

UNKNOWN COUNSEL: That in the event that she has found to have misled this forum, consequences must take place. In other words, the Secretary of this Commission must be directed to place that evidence before the ...[intervenes]

CHAIRPERSON: When the record is filed and it is made public, the Secretary of the Commission will have no power
20 anymore. The Commission will have ended because the report must go to the President. You remember?

UNKNOWN COUNSEL: Yes, I ...[intervenes]

CHAIRPERSON: It will definitely become public. It will wait for some time until the President decides to make it public. By that time, I believe, the Secretary will not be

there. The stuff will not be there. It will be done. But, obviously, it is up to the Chairperson in regard to anybody that he may find has committed perjury. It is up to the Chairperson to draw that to the attention of the law enforcement agencies ...[intervenes]

UNKNOWN COUNSEL: Yes.

CHAIRPERSON: ...if he should consider that that is what should happen.

UNKNOWN COUNSEL: Yes, precisely, Chair.

10 **CHAIRPERSON:** Okay, alright.

UNKNOWN COUNSEL: Ja. Thank you.

CHAIRPERSON: Okay.

UNKNOWN COUNSEL: Yes.

CHAIRPERSON: So, on the basis that we have discussed, I would, therefore, dismiss this application and it is on the basis that the question of authority should be dealt with by way of affidavit. It might not need cross-examination.

UNKNOWN COUNSEL: Okay.

CHAIRPERSON: Okay, alright.

20 **UNKNOWN COUNSEL:** Ja.

CHAIRPERSON: Thank you

UNKNOWN COUNSEL: Thank you, Chair. That will be my roll ...[intervenes]

CHAIRPERSON: Those are your matters.

UNKNOWN COUNSEL: Ja, that will be my roll, Chair.

CHAIRPERSON: You are excused if you wish to be excused.

UNKNOWN COUNSEL: Thank you, Chair. I am indebted, Chair.

CHAIRPERSON: Thank you. Please call the next matter.

REGISTRAR: Mr O’Sullivan in respect of the evidence of Mr Montana.

UNKNOWN COUNSEL: Chair?

CHAIRPERSON: Yes?

10 **UNKNOWN COUNSEL:** On behalf of PRASA Legal Team, I just need to put on record ...[intervenes]

CHAIRPERSON: PRASA Work stream, not legal team.

UNKNOWN COUNSEL: Work stream.

CHAIRPERSON: If you say PRASA Legal Team it means you represent PRASA.

UNKNOWN COUNSEL: PRASA Work stream for the Commission

CHAIRPERSON: Ja.

20 **UNKNOWN COUNSEL:** I want to put on record that the matter has been postponed.

CHAIRPERSON: Yes, okay. This application has been postponed. Thank you.

UNKNOWN COUNSEL: Thank you.

CHAIRPERSON: Yes, next matter.

REGISTRAR: Advocate Mogwebe(?) of Mr Agrizzi.

CHAIRPERSON: You did not mention the SEQ number, did you?

REGISTRAR: [No audible reply]

CHAIRPERSON: Registrar?

REGISTRAR: SEQ 59-2019.

CHAIRPERSON: Yes, Mr Hulley.

ADV HULLEY SC: Thank you, Mr Chair. Mr Chair, I am standing in on behalf of the BOSASA Work stream. I understand that of the papers that have been filed by
10 Mr Mogwebe that it was his intention to apply for leave to cross-examine Mr Agrizzi. A recent correspondence between Mr Mogwebe and the Secretariat suggests that there may be some doubt and there might be some confusion as to whether that is indeed his intention. I am not sure. If I my understanding is correct. Mr Mogwebe was intending to link up via ...[intervenes]

CHAIRPERSON: Is the representative here today?

ADV HULLEY SC: [No audible reply]

CHAIRPERSON: Is he represented here? Is somebody
20 here?

ADV HULLEY SC: My understanding was that he was at one stage represented but he is no longer represented.

CHAIRPERSON: Yes. So, have you got the correspondence that makes you say it is not clear whether he intended ...[intervenes]

ADV HULLEY SC: Yes, I can read you ...[intervenes]

CHAIRPERSON: ...to cross-examine?

ADV HULLEY SC: ...Mr Chair.

CHAIRPERSON: H'm?

ADV HULLEY SC: To page 521.

CHAIRPERSON: What page?

ADV HULLEY SC: Page 521 of the bundle.

CHAIRPERSON: Yes?

ADV HULLEY SC: And what he says is – and there is
10 correspondence which precedes this but in terms of the
pagination system, it actually runs in the opposite order
but to take you to the most recent correspondence on the
subject. At page 521, you will see there is an email and
the email purports to be from a mail(?) Gomez Komedi(?)
but at the end of the email, you will see that it is in fact
Advocate Mogwebe who has used that email address.

CHAIRPERSON: I am sorry. Just repeat. Just repeat the
point you are making. I am not sure that I follow. I was
trying to see what he says here.

20 **ADV HULLEY SC:** What it says – if I can take you to the
bottom of the email. It says:

“Please provide me with a copy of and any
accompanying documentation of any formal
application made by me on my behalf to cross-
examine Agrizzi and advise whom made such

application, when was it made and what was the Commission's response to such application..."

So, in other words, what he appears to be suggesting is, that if such an application had been made it was not, in fact, made by him. The purport or the import, rather, of what he conveys is that he does not seem to be the author of such an application.

10 However, that is not supported by the actual body of the document itself because there is, in fact, if you would consider page 1 of the same bundle, you will see there that there is an application for the extension – sorry, for – it says extension to give evidence and cross-examine witnesses.

20 That document is, in fact, signed – sorry, unsigned but if you turn to page 3, it purports to be a document that has been prepared by Lawrence S Mogwebe and it is dated the 14th of February of 2009. If I can then also take you to the actual statement which commences at page 7 of that bundle?

CHAIRPERSON: H'm?

ADV HULLEY SC: And take you to page 44, you will see there it purports to be a signature at the foot of the page. It is signed by Advocate Lawrence Mogwebe, and it is dated the 16th of March of 2019.

CHAIRPERSON: H'm.

ADV HULLEY SC: If you look at page – paragraph 86 of that very page ...[intervenes]

CHAIRPERSON: But maybe, just – what is the upshot of this correspondence? I see here at page 521 he seems to suggest that he never made any application and that is what you are dealing with by referring to page 1 but I see there are other correspondence. What was the last correspondence he sent? What do you say?

10 **ADV HULLEY SC:** The most recent correspondence from him is that which appears at page 521 to which I took you to previously, Mr Chair.

CHAIRPERSON: Oh, okay.

ADV HULLEY SC: So that is the most recent correspondence from him.

CHAIRPERSON: Ja. Well, I see that at 05:22, which was the previous day, he says – he seems to suggest that he did not receive a notice of set-down but at 05:21 the subject is: BOSASA, Agrizzi, SEQ 59-2019 – Notice of set-
20 down. He says at the end:

“But importantly for me, I have never made any formal application to cross-examine Agrizzi. If such was made on my behalf, please provide the details and supporting...”

It seems to me that I must just dismiss the

application.

ADV HULLEY SC: It seems so.

CHAIRPERSON: Ja.

ADV HULLEY SC: We would have in any event made such a submission, Chair.

CHAIRPERSON: Yes. This application is dismissed.

ADV HULLEY SC: Thank you, Chair.

CHAIRPERSON: Okay. Next matter.

REGISTRAR: Advocate Mosing in respect of the evidence
10 of Mr McBride, Colonel Du Plooy, Mr White, Mr Khuba,
Mr Sesoko, Mr Booysen and Mr Mlotshwa. SEQ 47-2020.

CHAIRPERSON: Yes. Please, switch on your mic so we can hear you.

UNKNOWN COUNSEL: Thanks, Chairperson.

CHAIRPERSON: Yes.

ADV MATHUBEDI SC: Chairperson, Mathubedi together with Advocates Vilikazi, Madlanga and Ramaimela.

CHAIRPERSON: Yes.

ADV MATHUBEDI SC: We appear for the applicant.

20 **CHAIRPERSON:** Yes.

ADV MATHUBEDI SC: Chairperson, you will note that there is other three matters of a similar nature ...[intervenes]

CHAIRPERSON: Yes.

ADV MATHUBEDI SC: ...which are set down for today.

CHAIRPERSON: Yes.

ADV MATHUBEDI SC: And also, there are four matters which are set down for tomorrow of a similar nature.

CHAIRPERSON: Yes, yes.

ADV MATHUBEDI SC: Chairperson, I have heard your sentiments ...[intervenes]

CHAIRPERSON: Yes.

ADV MATHUBEDI SC: ...that you have advanced.

CHAIRPERSON: Yes.

10 **ADV MATHUBEDI SC:** In the circumstances, I am going to ask that this matter stand down to tomorrow so that I should – the legal team should have an inclusive consultation with other affected implicated officials in the NPA ...[intervenes]

CHAIRPERSON: Yes.

ADV MATHUBEDI SC: ...to convey what the Chairperson said today.

CHAIRPERSON: Yes, okay. No, that is fine. I had been told that there was a request to move them to tomorrow,
20 but I thought that we should rather use as much of today as possible but in the light of what you are saying that you need to consult in regard to the issues I have raised, I think that is fair enough. We can adjourn then to tomorrow. So that would be – do you want to just for the record mention all those matters that we are – you are

asking me to adjourn to tomorrow?

ADV MATHUBEDI SC: It is Advocate Mosing, Baloyi, Mokgatle and Mashuga.

CHAIRPERSON: Yes. Okay, alright. Those matters are adjourning to tomorrow.

ADV MATHUBEDI SC: As it pleases the Chairperson.

CHAIRPERSON: Okay, thank you.

ADV MATHUBEDI SC: May I be excused?

CHAIRPERSON: You are excused. So, registrar, you will
10 just have to note those. So, you do not call them again.

REGISTRAR: [No audible reply]

CHAIRPERSON: I just wish to take a short adjournment. There is a heater at my feet, but it has not been switched on. So, I would like to give an opportunity to somebody to switch it on. So, we will adjourn for about five minutes. We adjourn.

INQUIRY ADJOURNS FOR A SHORT BREAK:

INQUIRY RESUMES AFTER A SHORT BREAK:

UNKNOWN COUNSEL: ...service as well as the
20 investigation office, should get together with the team from the NPA to see ...[intervenes]

CHAIRPERSON: Ja, I seem to remember ...[intervenes]

UNKNOWN COUNSEL: Yes ...[intervenes]

CHAIRPERSON: ...that actually he – what seems to have transpired is that Mr Phahlane(?), at least I got him to his

version as well as the version of at least one other witness that he seemed to help.

UNKNOWN COUNSEL: Correct.

CHAIRPERSON: He seemed to try to help.

UNKNOWN COUNSEL: Yes, Chair.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: Yes. Now in that respect, Chair.

The affidavit of Mr Phahlane deals specifically with that matter. We are of the considered view, Chair, that it shall

10 be dealt with on a ...[intervenes]

CHAIRPERSON: On an affidavit.

UNKNOWN COUNSEL: Correct, Chair.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: But ...[intervenes]

CHAIRPERSON: I would think that is what should happen too. Ja.

UNKNOWN COUNSEL: Yes, thank you, Chair.

CHAIRPERSON: Okay.

UNKNOWN COUNSEL: Now we turn to ...[intervenes]

20 **CHAIRPERSON:** So, that was the only issue relating to Mr Roelofse otherwise?

UNKNOWN COUNSEL: Correct.

CHAIRPERSON: Ja. No, in that situation, as I say, I do have recollection ...[intervenes]

UNKNOWN COUNSEL: Yes.

CHAIRPERSON: ...that he said he tried to help, and he was corroborated in this regard by this one witness and if you say it is Mr Roelofse, then I ...[intervenes]

UNKNOWN COUNSEL: Well, Chair, actually, Mr Roelofse was contradicting himself.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: When he was pressed by Ms September for the Commission to say: Are you now changing your position? He said: I had never said that
10 General Phalane was part of the people who resisted or who refused to assist. But he deposed to a statement following his testimony stating that indeed he did but there is no evidence from Colonel Roelofse proving that he ever communicated with Mr Phahlane in any form, requesting information. And in that respect, Chair, his evidence stands to ...[intervenes]

CHAIRPERSON: Ja.

UNKNOWN COUNSEL: ...to be dealt with or rejected ...[intervenes]

20 **CHAIRPERSON:** Ja and ...[intervenes]

UNKNOWN COUNSEL: ...as it were.

CHAIRPERSON: And the matter does not really need cross-examination.

UNKNOWN COUNSEL: Indeed, Chair.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: Ja.

CHAIRPERSON: Okay, no, I think that makes sense but if, at the level of formality, what would you like us to do with it? Would you like to withdraw it or do you ...[intervenes]?

UNKNOWN COUNSEL: It will be dealt with on paper, Chair.

CHAIRPERSON: Yes. So that there is no need to grant leave to cross-examine.

10 **UNKNOWN COUNSEL:** Correct, Chair.

CHAIRPERSON: Okay, alright.

UNKNOWN COUNSEL: Yes.

CHAIRPERSON: So, this matter will be dealt with without cross-examination.

UNKNOWN COUNSEL: Thank you, Chair.

CHAIRPERSON: Okay, alright. And then we deal with the one relating to Mr Sesoko.

UNKNOWN COUNSEL: Correct, Chair.

20 **CHAIRPERSON:** I did see – I was shown correspondence to which reflects the sentiment you have expressed from I think those instructing to you ...[intervenes]

UNKNOWN COUNSEL: Yes, that is ...[intervenes]

CHAIRPERSON: ...because ...[intervenes]

UNKNOWN COUNSEL: ...that has been the case, Chair.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: Yes.

CHAIRPERSON: Because you recently received a letter which indicated an outcome that may have appeared as at odds with the earlier decision.

UNKNOWN COUNSEL: Correct.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: That is dated 15 April 2021.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: And this time it is from Professor
10 Dumile Mosala who is the Secretary.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: It is specific, Chair, this one. It goes ...[intervenes]

CHAIRPERSON: Ja, it relates to specific allegations.

UNKNOWN COUNSEL: The matter of rendition.

CHAIRPERSON: Yes, yes.

UNKNOWN COUNSEL: Correct, Chair. Yes.

CHAIRPERSON: And the response, as I recall, was that we have no issue with the issue of rendition. We apply to
20 cross-examine on something else and we were granted leave already.

UNKNOWN COUNSEL: Correct, Chair.

CHAIRPERSON: That is my understanding.

UNKNOWN COUNSEL: Correct. Because the testimony of Mr Sesoko ...[intervenes]

CHAIRPERSON: Ja.

UNKNOWN COUNSEL: ...in no way implicated General Phahlane.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: That he was part of the people who perhaps instigated the arrest of Arnot Ramat and Mr Sibiya.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: And there is no substance in
10 ...[intervenes]

CHAIRPERSON: Ja, I think what happened. As you would have seen that the latest bundles are quite specific. There was some difficulty in understanding certain parts of Mr Phahlane's affidavit and that led to that, but I think in the light of the response from judicare(?), your instructing attorneys, that whatever that decision is, it does not really adversely affect your client because he never sought to cross-examine in regard to Mr Sesoko.

UNKNOWN COUNSEL: Yes, Chair, I think ...[intervenes]

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

UNKNOWN COUNSEL: Yes.

CHAIRPERSON: And my approach, therefore, would be that in regard to the matters which are covered by the order that was already granted in favour of your client, that must still be carried out and the two are not in conflict, as I

see it.

UNKNOWN COUNSEL: Thank you very much.

CHAIRPERSON: Would that be fine with you?

UNKNOWN COUNSEL: That would be super.

CHAIRPERSON: Yes. What I can mention to you is that we might – the Commission might give your client an opportunity before the end of June ...[intervenes]

UNKNOWN COUNSEL: We will appreciate that, Chair.

CHAIRPERSON: ...to cross-examine.

10 **UNKNOWN COUNSEL**: We will appreciate that.

CHAIRPERSON: So, your client could be ready any time.

UNKNOWN COUNSEL: We would appreciate that, Chair.

CHAIRPERSON: Okay, alright. So, there is no need to make any decision on this one because the order was already granted.

UNKNOWN COUNSEL: Correct, Chair.

CHAIRPERSON: Okay, thank you.

UNKNOWN COUNSEL: Thank you, Chair.

CHAIRPERSON: Thank you. Okay. Next matter.

20 **REGISTRAR**: Mr Van Loggerenberg in respect of the evidence of Mr Montana, SEQ 49-2020. Chair, this next matter is an application that is brought by Mr van Loggerenberg to cross-examine Mr Montana. Yesterday on the 14th we received an email from Mr van Loggerenberg requesting that his application be withdrawn, that he does

not want to pursue the application to cross-examine Mr Montana. Yes.

CHAIRPERSON: Yes, I am aware of the correspondence so the withdrawal is noted.

REGISTRAR: Yes, Chair.

CHAIRPERSON: Thank you. The next matter is Kgamanyane. That has been dealt with. This is Mr Kgamanyane's application for leave to cross-examine Mr McBride. Then you can call the next matter, Registrar.

10 **REGISTRAR:** Mr Cwele in respect of the evidence of Mr Shaik and Mr Njenge, SCQ11 of 2020.

CHAIRPERSON: Is there any appearance? Okay?

ADV SEMENYA SC: Chair, good evening.

CHAIRPERSON: Good evening, Mr Semenya.

ADV SEMENYA SC: I appear in this matter on behalf of Mr Cwele and might I immediately indicate to the Chair ...[intervenes]

CHAIRPERSON: I am sorry, Mr Semenya, please just pull the mic closer to you. Ja, so I can hear you. Your voice is
20 soft by its nature so when the mic is far away I will not hear you.

ADV SEMENYA SC: Heeded, heeded, heeded, Chair. I am representing Mr Cwele in this application.

CHAIRPERSON: Yes. I understand there are two applications actually, is that right?

ADV SEMENYA SC: That is correct.

CHAIRPERSON: Ja, okay.

ADV SEMENYA SC: I have given my learned colleague, Mr Pretorius, a copy of a document I beg leave to hand up to you, Chair.

CHAIRPERSON: Yes, okay.

ADV SEMENYA SC: The document does no more, Chair, in paragraph one, two, three, it is just a background of why we are here today.

10 **CHAIRPERSON:** Yes.

ADV SEMENYA SC: I think in the light of the exchange, Chair, you have had with various other people before us, I might just point you to paragraph 5 which you will find on the following page.

CHAIRPERSON: Yes.

ADV SEMENYA SC: Addressing Mr Shaik's application.

CHAIRPERSON: Yes.

20 **ADV SEMENYA SC:** There we are pointing to areas of his evidence that we say require testing and we say the allegations by Mr Shaik alleging that Dr Cwele had anything to do with the protection services that were offered to his ex-wife during her trial requires further probing. Chair, you will recall this is where they say that he, as a minister, took a responsibility for the protected service for his ex-wife then and we say that is not correct,

it requires probing.

Under 6 we say with the leave of and direction of you, Chair, an intelligence report involving the role of Mr Shaik with foreign intelligence services, what we call the UK report, would be required to deal with the actual reasons precipitating the resignation of Mr Shaik.

You would recall Mr Shaik's evidence is that he resigned because the environment was made totally intolerable for him, Maqa ...

10 **CHAIRPERSON**: Maqetuka.

ADV SEMENYA SC: Yes, Chair, as well as Mr Njenge.

CHAIRPERSON: Mr Njenge.

ADV SEMENYA SC: So it is a classified document. We would think if we are granted leave to cross-examine, it might be helpful for you, Chair, to give directions about our access to this and the access by the Commission of this document.

20 Under 7 we say there are allegations by Mr Shaik regarding a meeting with Dr Cwele in Cape Town where Mr Shaik alleges that Dr Cwele instructed the investigation into the Gupta family and their relationship with the then President of the Republic of South Africa Mr J Zuma be discontinued. We say that requires further interrogation because the suggestion is the intelligence services was stopped from doing what the law says is their responsibility

and they were being stopped by the minister at the time. We say this also requires further interrogation.

Under 8 we say Mr Shaik also alleges that Dr Cwele was micromanaging the SSA for Intelligence and we say further clarity would need to be sought in cross-examination regarding this matter.

I might as well deal with the other one of Mr Njenge which we address under paragraph 9.

CHAIRPERSON: One of these was – I think one of these, 10 if I am not mistaken, was filed way out of time, is it not, one of these applications. One of his applications, was it not filed way out of time? I think there are two applications for leave to cross-examine.

ADV SEMENYA SC: Yes, Chair.

CHAIRPERSON: I think one might have been filed on time or if it was out of time it was not so late but I am under the impression that another one was filed way out of time. The normal time would be 14 days after receipt of 3.3 notice. Am I mistaken about that?

20 **ADV SEMENYA SC:** Well, the timelines are correct, Chair, I am not alive to the fact that any of these application was late but...

CHAIRPERSON: Yes.

ADV SEMENYA SC: Then it will be a matter requiring condonation. An application for condonation, I do not

know.

CHAIRPERSON: I think he does apply for condonation but it is very brief. I think he says he challenges in terms of funds, that is why he was late, but I think that is about all, if I am not mistaken. But he may be late by nine months or more, I am not sure. Mr Pretorius, am I mistaken about one of these being late, very late? I am sorry, they must just sanitise for you.

ADV PRETORIUS SC: Chair, the 3.3 notices were sent to
10 Ambassador Cwele on the 12 November 2019. The application to cross-examine, that is the first application, was made on the 21 January 2020, some ten weeks later. There was no application for condonation in that application. The second application to cross-examine Messrs Shaik, Njenge and Maqetuka was made on the 5 August 2020. It seems a renewed application.

Condonation was sought, it appears in paragraph 23 on page 27 of the bundle. No real grounds are set out for condonation save to say that he was strapped for funds
20 and could not bring the application earlier. But that does not explain why there was an application some eight months earlier, presumably funded. So the application for cross-examination does not really carry with it and adequate explanation for condonation.

If the application is to be granted it would have to

be granted on quite strong other grounds or overriding other grounds.

CHAIRPERSON: So there was the first application, that was for leave to cross-examine only one of the three witnesses.

ADV PRETORIUS SC: No, two, Chair.

CHAIRPERSON: On both occasions it is two?

ADV PRETORIUS SC: Well, on the second occasion there was the third person, Maqetuka.

10 **CHAIRPERSON:** Oh, okay, okay.

ADV PRETORIUS SC: But I understand the application now in any event to be in respect of Messrs Njenge and Shaik only.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: So that third person can fall away.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: So the application in respect of the two witnesses in respect of whom cross-examination is now sought, was brought first on the 21 January 2020 by
20 attorneys and secondly on the 5 August 2020. On the 5 August 2020 the condonation for the late filing of the second application was sought on the basis that there were no funds. It appears that there were funds for an application eight months earlier.

CHAIRPERSON: And the period on the second application

of delay was about how long? How many months?

ADV PRETORIUS SC: About nine months.

CHAIRPERSON: About nine months, okay. And the previous one, ten weeks more or less.

ADV PRETORIUS SC: Ten weeks, yes.

CHAIRPERSON: Ja. Okay, alright. Mr Semenya?

ADV SEMENYA SC: I thank my colleague for the information as provided, Chair.

CHAIRPERSON: Yes.

10 **ADV SEMENYA SC:** Ultimately, Chair, it lies in the Chair's discretion whether to condone or not.

CHAIRPERSON: Ja.

ADV SEMENYA SC: And perhaps the more compelling reason why condonation ought to be granted, Chair, is that this is, in our judgment, a matter of grave public interest and we think the evidence given [indistinct] Dr Cwele, is of a nature that if undisturbed – if unperturbed may yield an outcome very prejudicial to the purpose of the recommendations which this Commission ought to make at
20 the end of the day.

CHAIRPERSON: Well, to the extent that one can say that the condonation application covers both witnesses, covers him, that is the applicant, in regard to both witnesses. In other words, if we are to disregard the first application which, as I understand from Mr Pretorius, did not have any

condonation application even though it was 10 weeks late and we take the latter one which was late by a longer period but nevertheless did have an application for condonation although maybe one would have hoped for a more detailed explanation than one can say well, there is an application for condonation and then there's a question of whether it is adequate for that length of delay.

What I can say is that I do think that Dr Cwele should be given an opportunity to put his version before
10 the Commission and I am aware that the Commission is taking steps to see if he can give evidence to put his side of the story. Therefore, if that is what is going to happen, he will get a chance to refute whatever evidence has been given by his witnesses against him that he wishes to refute, his version will be before the Commission but it may well be that partly because his condonation application might not be adequate it may well be that he does not get leave to cross-examine them but that is different from a situation where it is only going to be their version of what
20 happened.

So, in other words, it is different where he is nevertheless going to be able to put his version, tell the public his side of the story so that it will not just be their version, but he might just not get the leave to cross-examine them. But when one looks at that, one looks at

the fact that the evidence leaders do question witnesses, and these witnesses were questioned, but obviously one is not saying that is the same as cross-examination.

On a later note, I do say – I want to say that if I were to think of granting leave, the fact that you have indicated that you might need no more than an hour and a half would be an important incentive for me to grant leave. Not only that but because if you would be doing the cross-examination, I happen to know that you go straight to the
10 point, you do not waste time. So that would have counted in his favour. But I think I have difficulty because of the condonation issue.

ADV SEMENYA SC: Chair, ultimately we are in your hands.

CHAIRPERSON: Yes.

ADV SEMENYA SC: Might I just indicate two points?

CHAIRPERSON: Ja.

ADV SEMENYA SC: The one is that obviously a Commission is not to be rigid in its approach, it is an
20 investigative exercise and ultimately the South African public requires to know the truth of these matters and the executive to be properly advised arising out of this, so that is the first point we would really like to make.

The second is to say, Chair, we are really pointing to a very limited and narrow area of interest and to make a

point which is trite, cross-examination serves a different purpose than parties putting their versions. It is really intended to test the correctness of a version so that on a balance of probabilities you ultimately, as a Commission, would make determinations arising from it. But Intelligence is one of the core issues, I would submit, are the matters this Commission is going to get itself entangled with.

CHAIRPERSON: Would those be your submissions?

ADV SEMENYA SC: Those would be our submissions,
10 Chair.

CHAIRPERSON: Yes.

ADV SEMENYA SC: As I say, with Njenge we make those points.

CHAIRPERSON: Ja.

ADV SEMENYA SC: And the areas are clarified where we want to go with it.

CHAIRPERSON: Yes, yes. If reasons are requested they will be given but the **APPLICATION FOR CONDONATION IS REFUSED.**

20 **ADV SEMENYA SC:** As the Chairperson pleases.

CHAIRPERSON: Thank you. Okay, alright. But, as I indicated, the intention on the part of the Commission is that Dr Cwele should get a chance to put his side of the story. Okay.

ADV SEMENYA SC: We are indebted to you, Chair.

CHAIRPERSON: Okay, thank you. Please call the next matter.

REGISTRAR: Werksmans Inc in respect of the evidence of Mr Montana, SEQ45/2020.

CHAIRPERSON: Yes?

ADV HUTTON SC: Good evening, Chairperson.

CHAIRPERSON: Good evening.

ADV HUTTON SC: Ross Hutton for Werksmans. Chairperson, to a certain extent we have anticipated the
10 approach that you have taken in relation to most of these matters tonight.

CHAIRPERSON: Yes.

ADV HUTTON SC: Could I, with your leave, read out a very short statement that Werksmans has prepared in relation to their application?

CHAIRPERSON: Is – I am not sure about reading out a statement because I am expecting you to tell me if you are moving for the application or you are withdrawing the application. If you are moving application obviously you
20 can then present argument. That is what I am expecting.

ADV HUTTON SC: Chairperson, what – we are not going to pursue the application.

CHAIRPERSON: Okay.

ADV HUTTON SC: But I would like to give you the reasons.

CHAIRPERSON: Okay, do so.

ADV HUTTON SC: In a very brief statement.

CHAIRPERSON: Ja, do so.

ADV HUTTON SC:

10 “Werksmans have decided not to pursue its application to cross-examine Mr Montana. After having listened to Mr Montana’s *viva voce* evidence and having had regard to his affidavit, Werksmans is satisfied to rely upon the content of the two affidavits that it is has filed with the Commissioner which deal with *inter alia* the allegations raised by Mr Montana. Mr Montana has levelled the most audacious and scurrilous allegations against Werksmans yet he has failed to produce a scintilla of admissible to corroborate his self-serving injurious attack on Werksmans. The judgments handed down in relation to both Swifambo and Siyangena have vindicated the stance adopted by the then board of control under the Chairmanship of

20 Dr Molefe which sought to identify and bring to book those individuals and corporations who engaged in a feeding frenzy of unlawful behaviour to the detriment of PRASA and the commuters who rely upon this vital service. Werksmans remains proudly committed to the legal fight against the scourge of

corruption which continues to plague our country
and will not be deterred from so doing.”

And if we could simply leave it at that.

CHAIRPERSON: Yes and you – and the application is
withdrawn, is that right?

ADV HUTTON SC: That is correct.

CHAIRPERSON: Ja, okay, thank you.

ADV HUTTON SC: Thank you.

CHAIRPERSON: Next matter? Who is that? Oh, go to
10 the podium, Mr Montana.

MR MONTANA: Chair, thank you very much for the
opportunity.

CHAIRPERSON: Yes.

MR MONTANA: And I be here, Chair, I have been notified.

CHAIRPERSON: Yes.

MR MONTANA: And, of course, I am glad that – I think
Adv Myanise(?) did explain the nature of this process,
Chair.

CHAIRPERSON: Yes.

20 **MR MONTANA:** So if it was a court process with the rules
and everything, I would not be standing here.

CHAIRPERSON: Yes.

MR MONTANA: Chair, I think of course we have dealt
with three matters, this is the third one, we’ve dealt with
two matters. I was disappointed, of course, that this is a

Commission that speaks for the other people because I would have loved – I have been asked, I have a family bereavement and I came here, Chair, to honour the request from the Commission.

CHAIRPERSON: Oh, okay, you are talking about Mr O’Sullivan?

MR MONTANA: Van Loggerenberg, O’Sullivan and then this third one, Chair.

CHAIRPERSON: Yes.

10 **MR MONTANA:** Because if indeed it was going to be withdrawn...

CHAIRPERSON: You would not have come.

MR MONTANA: I should have been informed.

CHAIRPERSON: Ja, now ...[intervenies]

MR MONTANA: But, Chair, the Werksmans – I call it Werksmans, has been granted the opportunity to make a statement and I think, Chair, for the same two minutes or three minutes you have granted, I want to ask to be given the opportunity and I am glad, Chair, because the last time
20 they stood, Werksmans indicated they want to cross-examine me and I said I welcome the opportunity to be cross-examined.

CHAIRPERSON: Ja, you said you are ready.

MR MONTANA: I am ready, Chair. Today I was coming here not to oppose but to mention three things, Chair.

CHAIRPERSON: Ja.

MR MONTANA: My ...[intervenes]

CHAIRPERSON: But remember, Mr Montana, to the extent that you may already have said your piece about them, whatever they may have said was to respond to that.

MR MONTANA: No, no, Chair.

CHAIRPERSON: Ja.

MR MONTANA: You remember at the time – I have not testified, Chair.

10 **CHAIRPERSON:** Ja.

MR MONTANA: I have not been led on my evidence.

CHAIRPERSON: Ja.

MR MONTANA: I do not know the rules – in fact, Chair, last week I watched this Commission and, you know, I was so unhappy, Chair, because I – for me, irrespective of – I just want the rules to be applied consistently. I came to this Commission ...[intervenes]

CHAIRPERSON: Okay, let me give you the two minutes you wanted.

20 **MR MONTANA:** Thank you, Chair.

CHAIRPERSON: Use it for the purpose of – you wanted to respond, ja.

MR MONTANA: Of Werksmans, Chair.

CHAIRPERSON: Ja, ja, let us do that.

MR MONTANA: Chair, I mentioned three things about

Werksmans in my affidavit. The first issue relates to how they were appointed, that they were appointed not only irregularly but they were appointed fraudulently. And, Chair, there are documents including the Auditor-General's report of 2016. I was going to stand up here to say Werksmans – that was issued in 2016. There was another one in 2017. Werksmans did not challenge those reports by the Auditor-General, a Chapter 9 institution, and in fact I quote in detail in my own affidavit and actually I am
10 shocked to hear someone standing here and saying there was no evidence. I provided even letters, including detailed emails, that shows that this legal firm that claims to be fighting corruption in the country is at the heart of corruption, their appointment is in fact the most corrupt. So that is the first issue, Chair. And that is why I was waiting and Werksmans know that they could not sustain this lie.

The second issue, Chair, I have mentioned, again based on evidence, I have said this legal firm was not only
20 paid monies but companies that are contracted to them, not contracted to PRASA, had been paid monies. I provided – so I was waiting for them to challenge that. They are not willing to do that.

Finally, Chair, I produced reports of Werksmans where I said in their own reports, not somebody else's

reports, where they said they will conduct surveillance and I provided those reports that shows the amount of surveillance on over 922 entities and over a thousand individuals. So, Chair, I was willing, but I am glad today that they withdraw and they make a statement – these are political statements, Chair, does not assist you but, Chair, I am glad that Van Loggerenberg has withdrawn, I am glad Werksmans has withdrawn and I am just asking the Commission to now provide me with a date for me to be led
10 on my evidence. That is all I am asking for, Chair, thank you very much.

CHAIRPERSON: Thank you, Mr Montana. Registrar, call the next matter.

REGISTRAR: General Phiyega in respect of the evidence of Mr van Loggerenberg, SEQ42/2020.

CHAIRPERSON: Good evening, please switch on your mic.

COUNSEL FOR APPLICANT: Evening, Judge, it's 2.08.59, initial R.

20 **CHAIRPERSON:** Yes.

COUNSEL FOR APPLICANT: I have been here before.

CHAIRPERSON: Yes.

COUNSEL FOR APPLICANT: Judge, I have listened to Judge's sentiments expressed earlier with Mr Mokgatle.

CHAIRPERSON: Yes.

COUNSEL FOR APPLICANT: And Judge would note that there was a request for information from the Commissioner in relation to Lebeya and that – Lieutenant General Lebeya, that is, and that has been supplied comprehensively. And Judge there was also a request for information and an application to cross-examine in respect of retired Colonel Loggerenberg and Judge, in the reply and the application, which have been combined, would find the section that has been dealt with contains two
10 annexures which comprehensively indicate – it is two letters. The first one is dated the 7 August 2014. It should be the last page and that is the acceptance of the extension of term of office from the 1 November 2014.

CHAIRPERSON: I am sorry, what paragraph is that?

COUNSEL FOR APPLICANT: It is the last annexure to ...[intervenes]

CHAIRPERSON: It is an annexure to...

COUNSEL FOR APPLICANT: General Phiyega's affidavit relating to Loggerenberg.

20 **CHAIRPERSON:** Oh, must I look at the last page of that annexure?

COUNSEL FOR APPLICANT: Yes, last two pages, Judge.

CHAIRPERSON: Yes, okay.

COUNSEL FOR APPLICANT: The last page is dated the 7 August 2014 and it is the acceptance of the extension of

the contract from the 1 November 2014.

CHAIRPERSON: I am sorry, are we looking at the same file? My last document is an SAPS letter addressed to the Executive Director of IPID and signed by Major General E Nhlanhla. Are we looking at the same thing?

COUNSEL FOR APPLICANT: Judge, may I have leave to approach my learned colleague if are in fact dealing with the same one?

CHAIRPERSON: Ja, okay.

10 **COUNSEL FOR APPLICANT:** Judge, I have been advised that it is index page 11.

CHAIRPERSON: Oh, okay. Yes, okay, I have got it.

COUNSEL FOR APPLICANT: Yes, Judge, note the letter ...[intervenes]

CHAIRPERSON: That is a letter from C N Mbekela to Lieutenant General Ngobene, is that correct? That is the one on page 11, red numbers, page 11.

COUNSEL FOR APPLICANT: Unless my colleague tells me otherwise. It is the annexure after the affidavit, Judge.

20 **CHAIRPERSON:** Okay, let us – do you have General Phiyega's first page of her affidavit being marked 001 in red numbers at the top?

COUNSEL FOR APPLICANT: Yes.

CHAIRPERSON: Okay.

COUNSEL FOR APPLICANT: That is correct, Judge. The

next page ...[intervenes]

CHAIRPERSON: I must go to the end of that affidavit?

Must I go to the end first of that affidavit?

COUNSEL FOR APPLICANT: Yes, Judge, end of the

...[intervenes]

CHAIRPERSON: To get to the annexure that you want.

COUNSEL FOR APPLICANT: That is correct,
Chairperson.

CHAIRPERSON: Okay, the last page of that affidavit is at
10 page 10, red numbers, zero ten. Right? Then at 011 it is
this letter from C N Mbekela to Lieutenant General B M
Ngobene.

COUNSEL FOR APPLICANT: Yes, there should be one
more letter, Judge.

CHAIRPERSON: And then there is another one at page
12, which is the next page, addressed to Mr McBride.

COUNSEL FOR APPLICANT: No, that is out, Judge. May
I have leave...[intervenes]

CHAIRPERSON: You have a different one?

20 **COUNSEL FOR APPLICANT:** I have a different one, if the
different one has been supplied.

CHAIRPERSON: Maybe what we can do is we could go to
another matter while you and your colleague try to sort this
one out.

COUNSEL FOR APPLICANT: We will, Judge.

CHAIRPERSON: Registrar?

COUNSEL FOR APPLICANT: Thank you. Registrar, did you skip the matter of M Mokgatle versus J Booysen? Did you skip it? Is it the next one now? That one has not been withdrawn, has it? Okay. Why do you not call it? Okay, so let us put that on record. The matter of M Mokgatle versus J Booysen, I understand is postponed to tomorrow. Okay, then call the next matter?

REGISTRAR: Mr Nair in respect of the evidence of
10 Richard le Roux, SEQ20/2020.

CHAIRPERSON: This is an application by Mr Nair for leave to cross-examine Mr le Roux.

COUNSEL FOR LEGAL TEAM: Thank you, Chair. Chair, we received a letter from Magistrate Nair's legal representatives this afternoon and I am advised that a copy has been availed to you. In essence, Magistrate Nair's legal representatives indicate that they only became aware of the set down for today's hearing early this afternoon.

20 **CHAIRPERSON:** Yes.

COUNSEL FOR LEGAL TEAM: They also indicate that Magistrate Nair persists with his application, if he is called to testify by the Chair. They also indicate that if he will be called by the Chair to testify that they then seek that today's hearing be postponed to a date on which their

counsel would be available.

Chair, to the extent that Magistrate Nair's legal representatives indicate that they would only persist application if Magistrate Nair is called, the Chair would recall that on the 21 July 2020 Magistrate Nair's evidence was called and was postponed for the purpose of the Commission and his legal team exchanging affidavits and so insofar as the Chair is concerned, Magistrate Nair is a witness who has been called to give evidence and so that
10 would not necessarily be a ground on which they can base their application and to the extent that they seek a postponement, we have not received any formal application in this respect but would be in the Chair's hand.

And insofar as the application itself, Chair, as the legal team we have no intention of opposing it. In fact we are of the view that it would assist the Commission's proceedings and insofar as the request for a postponement by way of this letter, we are in your hands, Chair.

CHAIRPERSON: Well, just so that whoever reads the
20 transcript at some stage would know that who was speaking, that it was somebody from within the Commission, maybe you must just place yourself on record to say you are from the legal team.

COUNSEL FOR LEGAL TEAM: Certainly, Chair, I appear on behalf of the Commission's legal team in respect of the

BOSASA work stream of evidence.

CHAIRPERSON: Well, I think that I would be disinclined to grant Mr Nair leave to cross-examine because, if I recall correctly, he provides an explanation in his affidavit when he puts up his version which does not appear to be disputed by Mr le Roux but I am not sure. But the terms of disputes of facts, I seem to think that the position was that some security installations were done and by BOSASA or one of their subsidiaries in his house. What remained was
10 why they were done.

I cannot remember whether his version was that he asked them to do the installations and he paid them himself in which case, unless there was evidence to the contrary, I would expect that to be the end of the matter. Well, what is your recollection? It seems to be common cause that security installations were made in his house. So in regard to the evidence of Mr le Roux and Mr Agrizzi with reference to other places where they made security installations, there were certain issues because certainly
20 those people did not, as I recall, say we paid and so on. Do you recall his version? In other words, one would be looking at other disputed facts and, if so, what are those disputed facts between the two versions?

COUNSEL FOR LEGAL TEAM: Thank you, Chair. In essence, Magistrate Nair disputes Mr le Roux's evidence

on four grounds. First, he denies ever meeting Mr le Roux and that is relevant insofar as Mr le Roux was the head of the so-called special projects that BOSASA handled insofar as important persons to BOSASA being ministers and ANC members as – according to Mr le Roux.

Now on that score, Magistrate Nair denies firstly being part of the special projects because he does not fit into the category of either minister or ANC member.

Secondly, he disputes that the installations at his
10 house were done pursuant to a corrupt motive or reason.

Thirdly, he disputes the dates on which the installations took place and so, as the Chair initially put, he does not deny that installations were done at his house, the just denies the circumstances around which they were done.

And then he also disputes that he ever met any other BOSASA employee. He states to have dealt with only one person who was indeed employed by BOSASA at the court at which Magistrate Nair sits as this particular
20 person, who was working under a contract that BOSASA had been awarded by the court, in particular, Magistrate Nair goes as far as saying that this was a private arrangement between himself and this particular person and all of this Mr le Roux has denied. He has insisted that it was pursuant to the special projects.

CHAIRPERSON: Does Mr Nair say he paid for the installations in his house because if the position is that BOSASA – if he admits that BOSASA or a subsidiary of BOSASA was installing security installations at the court and then he made arrangements with BOSASA to also install – make installations, security installations in his private house, the question would arise whether he paid for it. Does he deal with that?

COUNSEL FOR LEGAL TEAM: Yes, he does.

10 **CHAIRPERSON:** Ja.

COUNSEL FOR LEGAL TEAM: If I might refer the Chair to page 15 of the application.

CHAIRPERSON: Ja.

COUNSEL FOR LEGAL TEAM: In particular from paragraph 14 and following.

CHAIRPERSON: Well, this does not appear to be Mr le Roux's response. His affidavit, Le Roux, is not paginated but you say I must go to page 15?

20 **COUNSEL FOR LEGAL TEAM:** Can we start at 14 please, Chair?

CHAIRPERSON: Ja.

COUNSEL FOR LEGAL TEAM: From paragraph 14 of Magistrate Nair's affidavit. There he speaks about the contractual basis upon which he agreed to with Mr Beju. Mr Beju is the particular employee of Sondolo who was

employed to work under the court's contract. He says there that there was an oral agreement that they entered into for the installation of a basic camera system and to repair the existing electric fence. He then goes on to say that it was an agreed maximum contract price of R50 000. He goes further at paragraph 15 to say that the contractor never complied with his contractual obligations and says that in fact the security installation was not done as per the agreed terms and that it included the installation of
10 equipment that was faulty and/or not functional and/or was installed at positions within the residence that was in direct conflict with the agreed contractual terms.

Insofar as the payment at paragraph 16 he says that at no stage was he made aware or did he request Mr Beju to install equipment at an excess value of R50 000. He also says that he was not provided with an invoice and at no stage was he informed that the budget would be exceeded.

He then says that in any event in absence of proof
20 regarding the cost of the equipment that he disputes the amounts that were alleged by Mr le Roux. He then also says that Mr Beju was called upon to remedy the situation and that this never happened.

Mr Nair then says he eventually resiled from the agreement and subsequently caused the contractual

deficiencies and the installation to be remedied by a third party contractor. He then says he denies any implied involvement in state capture and so forth. So he does not say in his affidavit that he actually paid for the costs of the security upgrade.

CHAIRPERSON: And he does not say that he returned the – whatever had been installed to BOSASA.

COUNSEL FOR LEGAL TEAM: That is correct, Chair. That is correct, Chair, only says there at paragraph 16 that
10 he had to call on a third party to come and remedy what had been done at this residence.

CHAIRPERSON: Yes. Ja, well I think what – I think a date – has a date been fixed for Mr Nair to give evidence?

COUNSEL FOR LEGAL TEAM: Not yet, Chair, we await your direction.

CHAIRPERSON: Ja, okay. A date will be given and I think what I should do is postpone this application and let Mr Nair tell his version, take the witness stand first and after he has finished his evidence I will see what disputes
20 of facts remain between the two versions and then decide the application after that. I think arrangements will have to be made for Mr le Roux to be available so that if I grant Mr Nair leave to cross-examine him he would be available.

COUNSEL FOR LEGAL TEAM: Thank you, Chair.

CHAIRPERSON: Ja. So this application is postponed.

COUNSEL FOR LEGAL TEAM: Thank you, Chair. May I please be excused?

CHAIRPERSON: Ja, you are excused. Please call the next matter.

REGISTRAR: Baloyi in respect of Robert McBride, SEQ33/2020.

CHAIRPERSON: That matter – is that one of the matters postponed to tomorrow?

REGISTRAR: Correct.

10 **CHAIRPERSON:** Is that a yes?

REGISTRAR: Yes.

CHAIRPERSON: Okay, that matter is postponed to tomorrow. Yes?

REGISTRAR: Advocate Mashuga in respect of Robert McBride, SEQ35/2020.

CHAIRPERSON: Is that one of the matters postponed to tomorrow?

REGISTRAR: Correct.

20 **CHAIRPERSON:** Okay, that matter is postponed to tomorrow. Next?

REGISTRAR: Afriforum in respect of President Ramaphosa, SEQ16/2020.

CHAIRPERSON: What about Memela, which appears before Afriforum?

REGISTRAR: Ms Memela and Mr Mamola Phiri,

SEQ36/2020.

CHAIRPERSON: This matter – this application has been withdrawn. Alright, next matter.

REGISTRAR: Afriforum in respect of President Ramaphosa, SEQ16/2020.

CHAIRPERSON: Okay. Yes?

ADV DU PLESSIS: Good evening Chair.

CHAIRPERSON: Good evening.

ADV DU PLESSIS: My name is Mira du Plessis, I am from
10 the Johannesburg Bar and I appear on behalf of Afriforum.

CHAIRPERSON: Yes, okay. I think there is appearance for the legal team as well. Thank you Mr Pretorius, ja do that, the registrar will just call this matter the Afriforum matter again.

REGISTRAR: Afriforum in respect of President Ramaphosa, SEQ16 of 2021.

CHAIRPERSON: That is the application by Afriforum for leave to cross-examine Mr Ramaphosa. Yes?

ADV DU PLESSIS: That is correct Chair. Chair for your
20 convenience I prepared a bundle concerning our heads of argument together with our application and the relevant sections of President Ramaphosa testimony that we referred to.

CHAIRPERSON: Yes, okay. I have read the papers in this matter. The first difficulty I have with it is that in order

for a person to apply for leave to cross examine a witness in terms of the rules that person must be implicated by that witness. When I read Afriforum's application, I did not - I do not remember seeing anywhere where they say President Ramaphosa is going to implicate them, is that correct?

ADV DU PLESSIS: That is correct, Chair.

CHAIRPERSON: So if that is correct, how do you - how does Afriforum out of everybody in South Africa qualify to
10 apply for leave to cross examine because everyone who applies for leave to cross examine does so because they are implicated by that witness?

ADV DU PLESSIS: Is this the only issue Chair would like me to address you on?

CHAIRPERSON: Yes, do so please.

ADV DU PLESSIS: On behalf of Afriforum I would just like to express our sincere gratitude for being afforded this opportunity today. We do understand there is severe time constraints on the Commission and we also appreciate the
20 fact that there is still a magnitude of work to be done by the Commission.

Chair, Afriforum takes cognisance of the fact that this application does not fall within the scope of Rule 3 of the rules. However, we are relying on the provisions of Rule 11 which states that, I quote:

“Any party wishing to make any application to this Commission, which is not otherwise provided for by these rules, must do so on at least seven days’ calendar notice.”

This rule is relied upon in congruence with Section 38(b) of the Constitution in terms of which, I quote:

10 “Anyone acting in the public interest may approach a Court for relief arising from infringement or threatened infringement of rights in the bill of rights.”

Further along our arguments I will also elaborate upon the relevant authorities on the subject, but with your leave Chair I would just like to make one or two submissions with regards to our standing today.

CHAIRPERSON: Well do that but I want you to understand that and if the rules say, as I think you and I agree they do say, you have to be an implicated person in order to apply for leave to cross examine a witness. If you are not an implicated person it means you fall outside the
20 category of persons who may apply and that, it seems to me is for a good reason.

Because if it were to be otherwise, then anybody and any organisation in the country that feels like we would like to cross examine so and so they can apply and you know, that so many organisations have gotten their

constitutions, or founding instruments, something that allows them to do a lot of things.

So, one, even when it comes to somebody who is implicated, they are not given the right to cross examine, they have to apply and I must decide that in terms of the rules based on the interests of the work of the Commission, and you must remember that this is a situation where there is already there would be an Evidence Leader of the Commission, a lawyer who would
10 be questioning that witness and that lawyer who would be questioning that witness, in terms of the rules is entitled to question the witness with a view to establishing the truth, you see?

ADV DU PLESSIS: Indeed, Chair, I completely agree with you, Chair.

CHAIRPERSON: So when you have regard to that and the time constraints, then it becomes difficult to say it is in the interests of the work of the Commission for me to grant Afriforum leave to cross examine, you see what the
20 problem is, tomorrow, somebody else is going to say, I also want to cross examine the President, another e one will say I also want to cross examine - we - it is floodgates, opening the floodgates

ADV DU PLESSIS: I understand that Chair, and all the issues that you just raised now, I have answers for those

questions, I have prepared an argument to this effect.

CHAIRPERSON: Ja.

ADV DU PLESSIS: And Afriforum is an objective body to these proceedings and a friend of this Commission and in terms of our submission, we do not say that the Commission is not performing their work, we are merely trying to assist the Commission on very specified issues.

CHAIRPERSON: Well, what I can tell you is that there is nothing preventing you Afriforum or anybody to bring
10 something to the attention of the legal team for them to say, with regard to a certain topic, here is our suggestions of issues that we would like the Commission or the Evidence Leaders to seriously consider pursuing or obviously, ultimately, it would be up to the Evidence Leader what to do, but making those suggestions and nobody has said you cannot, but cross examination is something else.

ADV DU PLESSIS: Would you be inclined to the hear the rest of my submission, Chair?

CHAIRPERSON: Well, I would like you to address the
20 concerns that I have raised because...[intervene]

ADV DU PLESSIS: I will do that.

CHAIRPERSON: ...if you persuade me on them, maybe I can listen to the rest but if you do not persuade me on them, then there is no point in going further but I can assure you that I have read Afriforum's affidavits in full.

ADV DU PLESSIS: Did you receive my heads of argument, Chair?

CHAIRPERSON: I did not - I have not read your heads of argument.

ADV DU PLESSIS: It is all there in the bundle that I have prepared for you.

CHAIRPERSON: Ja, okay, alright but those are my primary concerns.

ADV DU PLESSIS: I understand, Chair, I completely
10 understand Chair.

CHAIRPERSON: So I give you – is it fine if I give you 10 minutes to...[intervene]

ADV DU PLESSIS: 10 minutes is perfect Chair.

CHAIRPERSON: Ja, okay, do that.

ADV DU PLESSIS: Firstly, Chair it should be recorded that the applicant is an independent civil rights association, Afriforum has got more than 280,000 members of the public and their families. I am sure that you are well aware of the work done by Afriforum for the community. So
20 I would not elaborate upon the argument of the organisations work on this subject.

Secondly, Chair would have noted that in our initial application which was placed before this Commission, we aimed at placing evidence before the Commission by leading oral evidence on the Cadre Deployment

Commission. The Evidence Leaders in leading evidence on the subject matter, Advocate Pretorius and Advocate Freund did however question President Ramaphosa at great length and I must submit we could not have done a better job than that.

However, it did transpire from President Ramaphosa's testimony that in consideration of his answers to specific questions proposed to by your team and to ask to a certain extent by yourself Chair the fact is
10 that the public is still left with a great amount of uncertainty in certain regards.

CHAIRPERSON: You must remember that he is still coming back...[intervene]

ADV DU PLESSIS: I understand that, Chair.

CHAIRPERSON: ...and when he comes back, there are still some outstanding issues that he must deal with in his capacity as President of the ANC, and thereafter give evidence as President of the country, so his not done.

ADV DU PLESSIS: I understand that, Chair. Chair, if we
20 look at the constitutional of matters of Ferreira vs Leven that was a 1996 matter and then also the lawyers for human rights matter, it was a constitutional matter in 2004 and then Limpopo legal Solutions vs Ben Peters, where you delivered unanimous judgment in favour of the applicants in your capacity as Justice of the Constitutional Court.

It becomes evident from the previous matters I referred to that Section 38(d) creates an opportunity for any individual or any group to approach a Court project if moved by the desire to benefit any portion of the public. Furthermore, Chair would note from our heads of argument that we make mention of the proposed recommendations of the South African Law Commission with regard to public interest actions, in terms of which it is proposed, that this scope of standing is required for litigation of a public
10 character, where the relief sought is generally forward looking, and general in its application.

Chair, in line with the aforesaid, we will submit that the provisions of Section 38 would therefore allow us to act on behalf of our members based on the foundation of the human rights, we appreciate the fact that this is not a normal Court, it is a Commission of inquiry indeed, premised on the constitutional rights of the public.

However, we bring this application before this Commission based on our constitutional rights in terms of
20 dignity, equality, and most importantly there is the rights against unfair discrimination. I understand that you might at this stage ask me, how are we going to assist the Commission in its work, Chair the answer is quite simple.

Afriforum as an objective party acting within the interests of its members, is a friend of this Commission

and as I stated in my opening address to you Chair, we are well aware of the magnitude of work done by the Commission already and still needs to be done by the Commission.

But we aim to ease the burden of the Commission by assisting, we did make our best attempt to eliminate the important issues relating to the Cadre Deployment to the bare minimum and I will point them out to you shortly. We do submit however that the public is directly affected by
10 the allegations of State Capture by fraud, by corruption, and as electorates of this community, we respectfully submit that we should be entitled to satisfy our curiosity in this regard and by clarifying certain issues with President Ramaphosa in his capacity as the leader of the ANC.

The specific portions of President Ramaphosa's testimony which raises concern amongst our members are the following, in his opening statement President Ramaphosa in aim of a remedy of the past events, the view of the ANC is that the ANC is complicit in this regard is
20 acknowledged and these problems are to be dealt with by the ANC.

Our line of questioning in this regard would specifically pertain to the promises made by President Ramaphosa during his first new dawn opening address to the nation, and also whether the current state of our

country has improved to this in effect.

President Ramaphosa further elaborates upon the statement and says that even before the advent of democracy that the ANC said that in transforming the public service to reflect the values of our democracy or better still the diversity of our country that we must emphasise professionalism and competence.

Chair I quote from page 27 of the 28th of April transcript in front of you:

10 “It is the ANC’s view that the practice of Cadre
Deployment should not be inconsistent with the
principles of fairness, transparency and merit in the
appointment of individuals to public entities, Cadre
Deployments cannot be faulted in principle.”

When Advocate Pretorius proposed to President Ramaphosa that there has been evidence that the deployment policy goes far beyond mere recommendation. President Ramaphosa denied this and stated that the Deployment Commission merely recommends.

20 In this regard Chair, we would like to hear from President Ramaphosa his comment on the testimonies provided by Mr Johnson, Mr Sodi and Ms Barbara Hogan. We refer to the certain portions of the testimonies in our affidavit.

Chair page 45 of the 28 April transcript you

specifically asked, you Chair, asked President Ramaphosa on the importance of the Deployment Committee opposed to mere identification of potential candidates, and in our opinion, the answers provided on this proposal were vague and begs for clarity from the President.

Furthermore, it was proposed by yourself to President Ramaphosa that the candidates recommended by the Deployment Committee might have an unfair advantage, if I interpreted that correctly. President
10 Ramaphosa responded to this and I quote:

“We are a political organisation and what we do in government is very political.”

So you do need that political filter that will go ahead and appoint people who are not fit for purpose. Chair, with all due respect, we found this statement extremely confusing.

Then at page 75, Advocate Pretorius proposed to the President, that a certain view has been expressed before this Commission that there is no need for a Deployment Committee anymore, and then Advocate
20 Pretorius referred the President to the testimony of Ms Barbara Hogan, and specifically, I quote:

“How can just a handful of people possibly have the institutional knowledge and resources to pronounce suitable candidates for every senior position in government and the private sector.”

This quote Chair, lays the foundation for the very essence of our argument today specifically in relation to our constitutional rights against unfair discrimination.

What is more important, and I am almost done, Chair I can see looking at your watch, I am nearly done.

CHAIRPERSON: Ja, I think you are left with two minutes, yes.

ADV DU PLESSIS: What is more important and our biggest concern in this regard is President Ramaphosa's
10 answer and I quote:

“When dealing with these types of matters, it is better to be circumspect and not to throw the baby out of the bathwater because if there is something that causes an irritation, it does not mean that you chuck everything out because the Deployment Committee has a number of considerations that it needs to keep in mind.”

Chair, with all the respect, we would like to know where that leaves us on the way forward. Does this mean that
20 the future holds the same prospect as the events of the past?

In talking about the past and on page 71 Advocate Pretorius specifically raised the question on how experiences of the past could be prevented from happening again, whereby we have President Ramaphosa proposed

regulation at State level and a renewal process.

Chair, because the future and the economy of the country, as well as the democracy of the country is important to all of us we submit that we desire to partake in the development of the regulations, and specifically the said renewal process. We would like to know what these regulations would look like and we would like to give our input in our capacity as electorates of the country and then we can also make more informed decisions when casting
10 our votes.

In conclusion and once again, an absolute must stand raised by the members of the applicant is that President Ramaphosa in his closing statement, and I quote:

“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
20 and some of the thoughts and suggestions that have been put, there obviously we will reflect on with the view of seeing on best we to can improve the way we function.”

With respect, we submit that the statement contradicts the opening address to this Commission, and we seek clarity

on where this leaves us Chair.

I am ending my argument by stating that the constitution creates a structure of accountability between the voters which is us, the National Assembly, the President and the cabinet, Cadre Deployment to a big extent disrupts every link in this chain of accountability.

CHAIRPERSON: Thank you.

ADV DU PLESSIS: Chair, I am going to cut myself short there and say that we stand by the submissions made in
10 our heads of argument and we pray that Chair would grant us leave to participate and when President Ramaphosa comes back in front of the Commission.

CHAIRPERSON: Yes, no, thank you.

ADV DU PLESSIS: Thank you, Chair.

CHAIRPERSON: I do not intend hearing you Mr Pretorius, you already have an idea of some of my preliminary views. You - I gave you a chance to address me.

The - insofar as Afriforum wanted President Ramaphosa to be called as a witness, he is - he has
20 already been invited and he came and he will still come back. But insofar as Afriforum wanted him - wanted leave to – or ask for leave to cross examine him, that application is refused. If Afriforum insists on reasons they can write and reasons will be given.

ADV DU PLESSIS: Thank you, Chair I appreciate your

time, thank you.

CHAIRPERSON: Okay, thank you, okay alright. Next matter?

REGISTRAR: I recall the matter of General Phiyega and in respect of the evidence of Mr Van Loggerenberg SEQ42 of 2020.

CHAIRPERSON: Yes, you are back.

ADV MANIKLALL: Thank you Chair, Chair we have confirmed that the annexure was sent to Mr Hulley but
10 unfortunately it did not find its way to my learned friend.

CHAIRPERSON: Yes.

ADV MANIKLALL: But nevertheless, Judge it is been dealt with in the annexures as before Judge the one is dated the 21st of September 2014, on page 11.

CHAIRPERSON: But is the annexure, is there a copy that has been given to me or not?

ADV MANIKLALL: No, it has not been given to you but maybe we have left of...intervene]

CHAIRPERSON: If you have another one.

20 **ADV MANIKLALL:** Yes, absolutely.

CHAIRPERSON: Ja, okay. Yes?

ADV MANIKLALL: But essentially, there the provincial Commissioner had accepted the extension of the contract for five years in August of 2014.

CHAIRPERSON: Yes, you started off your address by

saying you took note of the remarks I made earlier, you did not proceed to say what you make of them in the context of this application, do you want to help me out with that first.

ADV MANIKLALL: Yes, Judge, in the context of the application and based on Judge's remarks - we have - I have taken instructions in the meantime, and the application can safely be withdrawn simply because Judge has already made the comments which Judge said which not deserve repetition.

10 **CHAIRPERSON:** Yes.

ADV MANIKLALL: Except Judge if you accept into evidence that letter and the letter preceding that the one you refer to on page 11 Judge. That is where the letter dated 21st of September 2014...[intervene]

CHAIRPERSON: Are they annexures to her affidavit?

ADV MANIKLALL: That is the annexure to her affidavit.

CHAIRPERSON: Ja, if they are annexures to her affidavit, that is fine, because then they are part of the affidavit.

ADV MANIKLALL: Yes, and then Judge will accept that is
20 on that basis, the entire issue of expecting a report from the Provincial Director of Public Prosecution that the witness testified to falls away, Judge.

CHAIRPERSON: Well, within the context of the remarks that I made, I think what you are saying is you are happy to withdraw the application in the context of those remarks.

ADV MANIKLALL: Yes.

CHAIRPERSON: But the affidavit with its annexures remains, obviously, with the Commission.

ADV MANIKLALL: Yes, Judge and that that dispels the aspersions that were cast on General Phiyega in the course of the evidence of Loggerenberg.

CHAIRPERSON: Yes.

ADV MANIKLALL: This safely dispels it completely, Judge.

10 **CHAIRPERSON:** Yes, so the position is that you would accept that, since her affidavit is before the Commission, putting her side of the story with the annexures that should be adequate.

ADV MANIKLALL: That should be adequate for Judge to make the actual finding.

CHAIRPERSON: Ja, well, in the context of those remarks, is that I might not make any finding either way but at least the version is there. If I want to say anything, I will have regard for all versions.

20 **ADV MANIKLALL:** It is completely there now.

CHAIRPERSON: Its complete, ja. Okay, alright, so, can I note that the application is withdrawn?

ADV MANIKLALL: That is correct, Judge.

CHAIRPERSON: Okay, I note that this application has been withdrawn, thank you. Next matter?

REGISTRAR: Ms Memela in respect of the evidence of Ms Sambo SEQ4 of 2020.

CHAIRPERSON: This matter, this application has been withdrawn, please call the next matter.

REGISTRAR: Ms Memela in respect of the evidence of Mr Human SEQ5 of 2020.

CHAIRPERSON: This application has also been withdrawn, call the next matter.

REGISTRAR: Mr Zulu in respect of the evidence of Mr
10 Dukwana SEQ42 of 2019.

CHAIRPERSON: The one of Mr Pathana vs Sesoko has already been withdrawn, is that right? Yeah, when we dealt with it was – yeah we dealt with it on the basis – oh we dealt with it on the basis that it had already been decided there would be no cross examination. Okay, so what is the next matter? Mr

REGISTRAR: Mr Zulu in respect of the evidence of Mr Dukwana SEQ42 of 2019.

CHAIRPERSON: Ms Rangata?

20 **ADV RANGATA:** Chair, within the Free State work stream, there his is an application that was brought by Mr Zulu to cross examine Mr Dukwana. The application has since been withdrawn, we have been furnished with the letter yesterday on the 14th of June 2021 indicating the mandate by the attorney, Thobeko Dlamini Incorporated to withdraw

the application to cross examine Mr Dukwana.

CHAIRPERSON: Yes, okay so that application has been withdrawn?

ADV RANGATA: Yes.

CHAIRPERSON: Okay, thank you.

ADV RANGATA: Thank you, Chair.

CHAIRPERSON: Thank you, next Matter.

REGISTRAR: Advocate **Chipa** in respect of the evidence of Mr Agrizzi SEQ03 of 2019.

10 **CHAIRPERSON:** There is nobody appearing for the Commission there but this application there was a request for it to be adjourned, did I fix a date Registrar? What date have I fixed for it?

REGISTRAR: The 22nd of June?

CHAIRPERSON: What time, sorry 23rd of June?

REGISTRAR: 22nd of June, I think.

CHAIRPERSON: So this application has been adjourned to the 22nd of June at 10am. Next matter.

20 **REGISTRAR:** Mr Buthelezi in respect of the evidence of Mr Popo Molefe and Mr Ryan Sacks, SEQ17 of 2021.

CHAIRPERSON: Yes?

ADV NGALWANA SC: Good evening Chairperson, it is Vuyani Ngalwana for Mr...[intervene]

CHAIRPERSON: Good evening, Mr Ngalwana.

ADV NGALWANA SC: It has been a long wait,

Chairperson.

CHAIRPERSON: You have not appeared before this Commission in a very long time.

ADV NGALWANA SC: Yes.

CHAIRPERSON: I think the last time you appeared, we were still in the other venue, or did you appear in this venue?

ADV NGALWANA SC: No, this is the very first time and hopefully the last, it is freezing here. Chairperson thank
10 you for the indulgence of hearing us.

CHAIRPERSON: Yes.

ADV NGALWANA SC: I note that you are yet to grant a single of these applications. I am hopeful that the fortunes of my client will be different.

CHAIRPERSON: Well you have already said you hope not to come back here.

ADV NGALWANA SC: Well, I need not come but someone else may, Chairperson you will have noted, I am not sure if you have received my client's applications. It is in fact,
20 different from the usual applications one gets because we are not eager – we have not come here out of eagerness to embarrass anybody or to expose anybody's evidence.

But we are here to ensure that the Evidence Leaders do their job as they are supposed to do them. You will have noted that the manner in which the application is

phrased, maybe not in the notice of motion, but certainly in the founding affidavit, is we asked the Evidence Leaders to take an opportunity to probe the probative value of the evidence that was given to them by Mr Sacks on the one hand, and Mr Popo Molefe on the other.

If they should be either unwilling to do so, or they should fail to do so then we offer our services to perform that task. That is all we are asking, we are not eager to just as the sword as it were, we simply want the evidence
10 to be properly probed.

Having said that, I am wondering because usually when one brings an application, one is told whether or not the application is opposed or not.

CHAIRPERSON: Yes.

ADV NGALWANA SC: I have not heard any word as regard as to whether Mr Sacks is opposing the application, or Mr Popo Molefe is opposing the application. What we have received yesterday was a ten-page affidavit deposed to by Mr Sacks, in which he seeks to distance himself from his
20 own evidence because he says, well, that was not my evidence that was the evidence of Mr Molapo[?] or something or Moloto or that this was evidence that was contained to this report to the Hawks, but it is not his own evidence.

There is though one aspect, which he stands by and

he says is his evidence that is that there had been a disbursement of some R99million to Sebenza by Swifambo something to that effect and alleging that my client, Mr Buthelezi may have benefited from that by his association with three companies and Mr Buthelezi has set out clearly in his affidavit, that Sebenza only received a princely sum of 3.5million of the R100million that Mr Sacks is testifying to.

So Chair, with regards, Mr Sacks I have heard what
10 you said earlier to other persons who were standing here before me that the fact that evidence has been led does not necessarily mean that it is accepted, holus-bolus.

CHAIRPERSON: Of course.

ADV NGALWANA SC: That the person who has been implicated by the evidence may be given an opportunity to put his side of the story, except cross examination has as you know, a different purpose.

CHAIRPERSON: Ja, sure, sure. It is not to say it takes the place of.

20 **ADV NGALWANA SC:** Absolutely, Chair.

CHAIRPERSON: Ja, it is simply to say one must have - one must know that even though there might not be cross examination, there will be two or more versions, which is different from there being no cross examination and no other version but it is not obviously to suggest that it takes

the place of cross examination.

ADV NGALWANA SC: Absolutely Chairperson, now the point I wish to make is a brief one in relation to that statement that you have made. It is that sometimes a witness gives a particular version, which is contrary to the version that the person his implicated may give, but the cross examiner may want to get to the reason, the motivation behind the witness giving that version in that particular way.

10 That is not something one can address by simply putting one's own client's version on paper or on record, it is only something that the witness who gave that evidence in that particular way can explain and that is where cross examination comes on.

CHAIRPERSON: No, no that is really obviously a place for cross examination, it is a question of weighing up in each case, to say in this case, how important is it in the light of A, B, C, D in the light of all the issues.

ADV NGALWANA SC: Yes.

20 **CHAIRPERSON:** But you started off by saying, in effect, as I understood you although this is an application for leave to cross examine, you really have no particular that is your client, no particular eagerness to say we really would like to cross examine at all costs possible but you have some concern about whether the particular witnesses

were probed sufficient.

ADV NGALWANA SC: Yes, Chairperson.

CHAIRPERSON: Yes.

ADV NGALWANA SC: May I phrase it this way?

CHAIRPERSON: Ja.

ADV NGALWANA SC: Our interest is to see the truth being unearthed not a version of the truth, not one witness's version of the truth but there through the truth objectively speaking.

10 **CHAIRPERSON:** Ja.

ADV NGALWANA SC: And we afraid we feel that that was not done in relation to Mr Popo Molefe and Mr Sacks, certainly as relates to my client, Mr Sfiso Buthelezi and so we are happy if the Chairperson says, well, we will give whoever the Evidence Leader was I cannot remember now an opportunity to probe the aspects that you have identified in your affidavit.

CHAIRPERSON: Well, that is really what came to my mind when you said there to say, it would be good to hear
20 whether - it would have been Mr Soni.

ADV NGALWANA SC: Yes, that is the one.

CHAIRPERSON: I think it would be good to let him have the opportunity if he has not had it, I know his not appearing here today, because he has been given - his involved in another matter, these days, not in the

Commission. To hear what his reaction is, once he has read if he has not already read this and hearing your client's sentiment.

If he says, well, having gone through this, I would not mind probing further, it may be that your position would be okay, let us leave this - leave it to - let us allow him to do that and because we might be fine after that and if he takes the view that look he thinks he has probed enough, then we can take it from there.

10 **ADV NGALWANA SC:** Yes.

CHAIRPERSON: So it may well be that I should not decide this now, maybe I should see if I can decide it in the next few days but he would need to indicate what the position is. But what I am thinking at the moment is whether I could say for example, let us adjourn it to, let us say, Friday morning this week, for him and for you if you're available to come and he indicates what his attitude is and then we take it from there. I am choosing just choosing Friday, if you are not available Friday, we can choose another date,
20 another day.

ADV NGALWANA SC: Well, I would not have much choice, I did not have much choice to come here today, I had to come from Cape Town to be here in person.

CHAIRPERSON: Oh, yes, yes.

ADV NGALWANA SC: So out of respect for the

Chairperson I did not want to make excuses.

CHAIRPERSON: Yes.

ADV NGALWANA SC: So, Chair I would be amenable to that.

CHAIRPERSON: Yes.

ADV NGALWANA SC: And it would be preferable, of course, if we were to know in advance what the position of the Evidence Leader is so that, you know, if we come here, we could come here on a watching brief basis if he is to
10 take up that opportunity.

CHAIRPERSON: Ja, well, you might or might not know, I am going to hear a few applications for leave to cross examine tomorrow, tomorrow is a public holiday. But some of us will be working and so I am wondering whether - I mean, he could read tomorrow, and maybe arrangements could be made for him to be in touch with you to indicate what his inclination is and then if, for example, he were to say, okay, maybe I should say, either way, then I may be either Thursday morning, or at some stage on Thursday he
20 can come here and let me know or the two of you and let me know and then if we have to wait because he is going to take the matter further then we just adjourn until then.

If he does not intend to take it further, then you address me on whatever else you wish to address me on and then I can decide.

ADV NGALWANA SC: Well, I will have nothing more to address you on everything that we have to say...[intervene]

CHAIRPERSON: Is what you have said.

ADV NGALWANA SC: Is in the affidavit.

CHAIRPERSON: Is in the affidavit, okay.

ADV NGALWANA SC: And if it is necessary, I might just without reading just refer you to the paragraphs.

CHAIRPERSON: Ja, that is fine.

ADV NGALWANA SC: In relation to Mr Sacks it is really
10 the aspects starting at paragraph, it is from paragraphs 39
to paragraph 46 of the affidavit.

CHAIRPERSON: Let me get there, 39?

ADV NGALWANA SC: To 46.

CHAIRPERSON: To 46.

ADV NGALWANA SC: And in relation to Mr Popo Molefe is from paragraphs 49 to paragraph 55.

CHAIRPERSON: In relation to Mr Popo Molefe it is from paragraph?

ADV NGALWANA SC: 49 to 55.

20 **CHAIRPERSON:** 49 to 55.

ADV NGALWANA SC: And you will note their Chair, the manner in which we have set them out it makes it easy for anyone. Well, with a modicum of training in trial advocacy, to be able to see what questions needs to be put.

CHAIRPERSON: I am sorry; did you say 59?

ADV NGALWANA SC: To 55, from 49 to 55, in relation to Mr Molefe.

CHAIRPERSON: Yes, okay.

ADV NGALWANA SC: And so one will find that in relation to Mr Molefe it is really four questions, or there about.

CHAIRPERSON: Yes.

ADV NGALWANA SC: And in relation to Mr Stacks it is three to four questions there about but of course, one cannot confine oneself...[intervene]

10 **CHAIRPERSON:** No, no that is true.

ADV NGALWANA SC: ...in the way in which cross examination works you may ask a question and I a witness may open himself up to another question.

CHAIRPERSON: That is fair enough.

ADV NGALWANA SC: But it would not - in my estimation, I have heard you having that discussion with Mr Semanya, my senior.

CHAIRPERSON: Yes.

20 **ADV NGALWANA SC:** In my estimation, certainly, if I were to do it, I would not take longer than 30 minutes in relation to Mr Sacks and maybe 40 minutes in relation to Mr Molefe.

CHAIRPERSON: Yes.

ADV NGALWANA SC: So the whole exercise would not take longer than an hour.

CHAIRPERSON: Well, I can just tell you that it helps if you – I have not had the opportunity to know that to see you cross exam because then I know, so and so, does not waste time.

ADV NGALWANA SC: Yes.

CHAIRPERSON: But I might not have seen you cross examine but the way you have addressed the issues is to the point.

ADV NGALWANA SC: Yes, thank you, Chair.

10 **CHAIRPERSON:** And I would imagine that the cross examination if granted would be along the same lines.

ADV NGALWANA SC: It would be to the point Chair; may I just say one last thing. It is unfortunate that in a Commission setting we use words like cross examination.

CHAIRPERSON: Yes.

ADV NGALWANA SC: And so it gives the witness and an impression that his going to be under the whip, but cross examination will not be that.

20 **CHAIRPERSON:** It gives the impression that his going to be examined crossly.

ADV NGALWANA SC: Absolutely and cross examination, is not like that, maybe you may be given leading questions where you answer yes or no and it is done.

CHAIRPERSON: Ja, no, no, that is true, that is true.

ADV NGALWANA SC: That will be all for now,

Chairperson.

CHAIRPERSON: Yes, okay, shall we say, Thursday or Friday, from your side you are – or he might be in – okay I think because there is somebody representing him in here. She is going to - she will talk to him and I think maybe we should say, Friday.

He might not be available himself because of the trial in which he is involved but Ms Rangata can come, but it can be Thursday as well if that suits you better.

10 **ADV NGALWANA SC:** Thursday suits me better
Chairperson.

CHAIRPERSON: Thursday, okay let us say Thursday at 10 o'clock, just to inform me what the position is because you have nothing further to add on the merits of the application.

ADV NGALWANA SC: Of course, it depends on what he has to say, I doubt I will have much more to add.

CHAIRPERSON: Yes, okay, no, that is fine. Let me hear what Ms Rangata has to say.

20 **ADV NGALWANA SC:** Thank you, Chair.

CHAIRPERSON: Thank you. Let them sanitise. Ms Rangata.

ADV RANGATA: Thank you, Chair and thank you for my brother, I am very indebted for the guidance that you have given in the matter, I think it kind of short circuit the

issues.

CHAIRPERSON: Yes.

ADV RANGATA: I should say that Thursday, it suits me better in case Advocate Soni is not able to be in attendance I will definitely attend on his behalf.

CHAIRPERSON: Yes.

ADV RANGATA: So I can confirm that Thursday 10 o'clock should be proper.

CHAIRPERSON: Okay, no, that is fine.

10 **ADV RANGATA:** Yes.

CHAIRPERSON: That is fine, let us leave it at that then. So this matter is adjourned for now until Thursday at 10 o'clock.

ADV RANGATA: Thank you, Chair.

CHAIRPERSON: Registrar, was that the last matter?

REGISTRAR: Chair, I think that is all the matters for the day.

20 **CHAIRPERSON:** Ja, thank you. We are done then, tomorrow for the benefit of the public I will hear – I will be sitting and I will hear some applications for leave to cross examine that have been postponed to tomorrow, we adjourn. Thank you very much to everybody, for their cooperation to be here until this time. Thank you very much.

REGISTRAR: Thank you.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS TO 16 JUNE 2021