

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

23 JUNE 2021

DAY 415



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 23 JUNE 2021

CHAIRPERSON: Good morning Mr Myburgh, good morning everybody.

ADV MYBURGH SC: Good morning DCJ. DCJ

MR SOLOMON: Morning Chair.

CHAIRPERSON: Good morning Mr Solomon, good morning Mr Gigaba.

MR GIGABA: Good morning Chair.

ADV MYBURGH SC: Mr Hulley is here I understand he
10 would like to address you before I begin if that is in order?

CHAIRPERSON: Yes – ja let us get that out of the way.
Yes Mr Hulley. You can do so from where you are.

ADV HULLEY SC: Thank you Mr Chair. Mr Chair as you
are aware we were supposed to commence this morning
with the testimony of Major General Mnonopi. Now we had
served a summons on Major General Mnonopi and we were
still apparently awaiting the return of service from the
Sheriff.

20 When we made enquiries during the course of
yesterday it turned out that the summons had been served
but apparently on the wrong address. So the consequence
has been that when we contacted Major General Mnonopi
she indicated that because she was not aware of the matter
she was not prepared to come and testify at such short
notice but has indicated that she will be willing to testify

even at short notice but not obviously not today.

So I have given her certain dates that I would try to chat with you – with you with – about Mr Chair but obviously since we have not yet had an opportunity to speak to each other I cannot yet give her those dates or assure her of those dates.

But we will – we...

CHAIRPERSON: Ja.

ADV HULLEY SC: That is where we are at the moment.

10 **CHAIRPERSON**: No that - that is fine. We – we will talk and see what can be done. Of course there is a problem with dates.

ADV HULLEY SC: Yes.

CHAIRPERSON: That we all know because of our time constraints. But we will talk.

ADV HULLEY SC: That is...

CHAIRPERSON: And then take it from there.

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: Okay all right.

20 **ADV HULLEY SC**: My apologies as far as this is concerned.

CHAIRPERSON: Okay no that is fine.

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: Thank you. Before we proceed Mr Myburgh I understand that when I announced yesterday that

Mr Agrizzi would be testifying today or would be cross-examined by Mr Wakeford's counsel I was mistaken. That had been the original date but that I had subsequently approved that he be moved to tomorrow. So I am just making a correction for the benefit of the public so nobody should say Mr Agrizzi was meant to be here and he did not pitch. So I got my information wrong so he is only going to be here tomorrow virtually not physically and he will be cross-examined by counsel for Mr Wakeford.

10 The consequence of that Mr Myburgh for us is that we have a little bit more time for Mr Gigaba's evidence than we thought we would have should we need it.

Obviously we want to finish as soon as possible but at a practical level it does mean that instead of Mr Agrizzi needing to testify at twelve the next witness would be after lunch Brigadier Xaba. So I just mention that for what it is worth.

ADV MYBURGH SC: Yes as you know DCJ we are going to try and squeeze in Mr Benjamin at twelve o'clock.

20 **CHAIRPERSON:** Yes, no, no that is fine. I just wanted to

ADV MYBURGH SC: Thank you.

CHAIRPERSON: You to understand because I think you have been trying to squeeze things through and – and time has not been on our side. Okay no that is all right.

ADV MYBURGH SC: Thank you.

CHAIRPERSON: Maybe we do need to get Mr Gigaba to do the oath again. Please just administer the oath again.

REGISTRAR: Please state your full names for the record.

MR GIGABA: Knowledge Malusi Nkanyezi Gigaba.

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

MR GIGABA: No.

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

10 **MR GIGABA:** Yes.

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

MR GIGABA: So help me God.

CHAIRPERSON: Thank you. Okay Mr Myburgh.

ADV MYBURGH SC: Thank you. Good morning Mr Gigaba.

MR GIGABA: Good morning Mr Myburgh

20 **ADV MYBURGH SC:** I think you should have open in front of you Bundle 11. I just want to take you please to page 837.125. We have since the last sitting added your statement – written statement in responses to Ms Carolus.

MR GIGABA: Yes.

ADV MYBURGH SC: Could I just direct your attention please to paragraph 13.

MR GIGABA: Yes.

ADV MYBURGH SC: Could I just direct your attention please to paragraph 13.

MR GIGABA: Yes.

ADV MYBURGH SC: Which you find at the foot of the page.

MR GIGABA: Yes.

ADV MYBURGH SC: Where you state that:

“As Minister I was cautious to ensure that I executed my duties.”

10 **MR GIGABA:** Yes.

ADV MYBURGH SC:

“In relation to SOE’s with due respect for my and the board’s respective mandates. I understood my role to be largely limited to giving policy direction to the SOE whereas the board’s operational functions were not within my remit. With respect to decisions to abandon airline routes this an issue which could be dealt with by the Department it would be brought to the Minister for approval. Once the department had completed an inter – independent assessment of the application.”

20

Do you confirm that?

MR GIGABA: Yes.

ADV MYBURGH SC: Could I then ask you please to turn to Bundle – Bundle 10. And if I could ask you please to turn to page 494 of Bundle 10. You find at page 494 the commencement of a – quite a lengthy statement by Mr Momoniat, do you see that?

MR GIGABA: Yes.

ADV MYBURGH SC: And you will see if you go to page 498 at paragraph 1 Mr Momoniat is a Deputy Director General at National Treasury. You see that?

10 **MR GIGABA:** Yes I am aware.

ADV MYBURGH SC: And if I could then ask you please to go to page 500 the previous page 499 at paragraph 7.

MR GIGABA: Yes.

ADV MYBURGH SC: He sets out what his evidence relates to and the issue that I would like to deal with briefly is stated at page 500 paragraph 7.9 where he says his evidence relates to:

20 “The attempt by the Justice Crime Prevention and Security JCPS Cluster Ministers and the National Director of Public Prosecutions NDPP to change delay and stop the FICA bill.”

Do you see that?

MR GIGABA: Yes.

ADV MYBURGH SC: Now this is something that you have

dealt with in your statement. If I could ask you to go to the back of the file and in particular could I ask you to have a look at page – I think it is the last page in fact 966.

MR GIGABA: Yes.

ADV MYBURGH SC: What you say at paragraph 17 is that:

10 “What puts paid to any suggestion on the part of Momoniat of my involvement in some broader conspiracy of state capture is the fact that notwithstanding the JCPS having sought certain clarifications about the FICA Amendment Bill when I became the Minister of Finance I was the driver and facilitated the resolution of those concerns thereby enabling the FICA Amendment Bill to be passed and not scrapped. (which would appear to be Momoniat’s hypothesis).”

You see that?

MR GIGABA: Yes.

ADV MYBURGH SC: You confirm that?

20 **MR GIGABA:** Yes.

ADV MYBURGH SC: Now this particular issue is dealt with over just a few pages in Mr Momoniat’s statement. Perhaps I could ask you to turn up...

CHAIRPERSON: I am sorry Mr Myburgh is there a signed version of this affidavit of Mr Gigaba? The one I have here

is not signed. Do you know Mr Gigaba if there is a signed version already or not yet?

MR GIGABA: Yes we have signed it Mr Chairperson. We first sent – because of trying to comply with the time.

CHAIRPERSON: With the time ja. Yes.

MR GIGABA: We first sent this – we indicated that we would subsequently email a signed affidavit.

CHAIRPERSON: And it was sent.

MR GIGABA: It was sent by the lead attorney.

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

ADV MYBURGH SC: We will take steps then to replace this.

CHAIRPERSON: Yes.

ADV MYBURGH SC: To supplement it DCJ.

CHAIRPERSON: Okay all right.

ADV MYBURGH SC: Now I was mentioning that Mr Momoniat deals with this issue over a few pages commencing at page 608. Perhaps I could ask you to turn. Now Mr Gigaba perhaps just in relation to your position as
20 the Minister of Finance and you have already touched on that in your statement you were the Minister of Finance when the FICA Bill was signed into law.

MR GIGABA: Yes.

ADV MYBURGH SC: By the former President on the 26th of April 2017, correct?

MR GIGABA: Yes – yes.

ADV MYBURGH SC: And you were the Minister of Finance who gazetted the commencement dates for the – the FICA Act.

MR GIGABA: Yes.

ADV MYBURGH SC: And some of those were on the 13th of June 2017.

MR GIGABA: Yes.

ADV MYBURGH SC: And would you also confirm that at the
10 time South Africa was under pressure from the financial action task force the so called FATF and international body for the FICA Bill to commence.

MR GIGABA: Yes

ADV MYBURGH SC: You confirm that.

MR GIGABA: Yes.

ADV MYBURGH SC: And in fact it could have been said that South Africa was in violation of its international commitments regarding its anti-money laundering legislation, would you confirm that?

20 **MR GIGABA:** Yes Sir but I think it is important to state that South Africa is also a sovereign nation that it reserves every right to satisfy itself that the legislation which is going to be passed is – is subject to our law and constitution.

There are many international bodies to which South

Africa belongs. Many of them would from time to time apply pressure on issues some of which we would have agreed to.

South Africa is not an exception in this regard that countries would still want to exercise their sovereign right not to pass any legislation or law or policy without scrutinising it and ensuring that it is a subject to the constitution and – and other laws of that country.

So this – there was nothing peculiar here. It would be a sad day if we would arrive at the conclusion that
10 international bodies can simply force upon us any policy or legislation that we must sign without satisfying ourselves.

We have a Parliament which is an arm of the state which does not just receive legislation and pass it without subjecting it to Parliamentary processes. We have cabinet which is not a rubber stamp for – for anything.

There were issues at the time that cabinet was concerned with that it needed clarified and once those things were clarified then we proceeded to sign the legislation. It was not because the FATF was forcing it
20 upon us. It was because we were now satisfied that the South African government's concerns had been addressed.

I think the sovereignty of our nation should at all times be understood and observed.

ADV MYBURGH SC: So before you took up your position as Minister of Finance you were the Minister of Home

Affairs and would you confirm then that in that capacity you were a member of the JCPS Cluster in 2016 and early 2017.

MR GIGABA: Chairperson I was a member of the JCPS Cluster and the JCPS Cluster does not consist of the Minister of Home Affairs alone or of Malusi Gigaba. And that is why the submission by Mr Momoniat is not only malicious it is disingenuous in that the – if the JCPS Cluster as a whole was concerned about certain aspects of the legislation of this FICA Amendment it was not me as an
10 individual and it was not the Department of Home Affairs that was concerned. There were a number of departments that were concerned they included State Security, the Department of Defence. They included a number of other departments that were concerned about this and that is why when I became Minister of Finance I sought to facilitate a meeting with the relevant department and the Department of Home Affairs was not one of those in order to resolve this issue and that is why subsequently the Bill went through.

ADV MYBURGH SC: So as a member then of the JCPS
20 Cluster you would have attended meetings and been privy to discussions within the cluster I take it.

MR GIGABA: Yes.

ADV MYBURGH SC: And I take it also that you would have been aware of the letter and submissions sent to the chairperson of Parliament Standing Committee on Finance

by the Minister of Defence and Military Veterans in her capacity as chairperson of the JCPS Cluster dated the 23rd of January 2017.

MR GIGABA: I would – I do not think I was but I do not recall Chair if I had seen that letter.

ADV MYBURGH SC: Well perhaps you could keep your finger at page 608 and let me take you to that document.

MR GIGABA: Page 608

ADV MYBURGH SC: Keep your finger at 608.

10 **MR GIGABA:** Okay.

ADV MYBURGH SC: Because we are going to come back there. Can you turn forward to page I think it is 912.

MR GIGABA: Page 912.

ADV MYBURGH SC: Ja. 912. So you see there is the covering letter to the Chairperson of the Standing Committee. If you go to 913 from the Chairperson of the Justice Crime Prevention and Security Cluster it is dated the 23rd of January and attached to it was a submission which you find at page 914.

20 **MR GIGABA:** Right.

ADV MYBURGH SC: You have seen that.

MR GIGABA: Yes.

ADV MYBURGH SC: And what this submission does is it makes the argument that Section 45(B)1(C) of the Bill regarding search and seizures is unconstitutional. You

would have seen that.

MR GIGABA: What paragraph is that?

ADV MYBURGH SC: Well I think it is the thrust of the – of the submission.

MR GIGABA: I think given that I have not seen the submission Chair and I do not recall seeing it it is difficult for me to confirm whether that the thrust of the submission or not.

ADV MYBURGH SC: Well have a look at page 936
10 concluding submissions paragraph 114.

“It is requested that the impugn provision of the Bill particularly Section 45(B)1(C) relating to search and seizures be removed as it not only usurps the powers of other law enforcement authorities but also is overly broad and in effect unconstitutional.”

You see that.

MR GIGABA: Yes.

ADV MYBURGH SC: So are you saying that you did not see
20 this submission from the Chairperson of the cluster – the JCPS Cluster albeit that you were a member of it?

MR GIGABA: A chairperson of the cluster would in drafting this letter forward it to Parliament summarising through the cabinet’s secretariat the issue which had been discussed by the – by the cluster and – and I do not think they would

have sent this letter to us. As I say I do not recall seeing it.

ADV MYBURGH SC: Yes but you no doubt were of the same mind. This comes from the Chairperson of the Cluster.

MR GIGABA: It was the collective opinion.

ADV MYBURGH SC: Yes.

MR GIGABA: Of the – of the cluster yes.

ADV MYBURGH SC: Correct. So if we could then go back to page 608 and I think there is only three paragraphs I
10 want to ask you about here. Paragraph 236 says Mr Momoniat:

“This was an unprecedented step for any
Minister let alone the entire cluster of the
cabinet to object to the legislature against a
Bill that was previously approved by cabinet
and passed by Parliament. I am not aware
of this having happened before since and to
do so without going back to cabinet first this
was a Bill that had been adopted by cabinet
20 after a series of meetings over almost a full
year. Most of the JCPS Cluster Ministers
had attended most if not all the cabinet or
its committee meetings in 2014/15 and were
certainly not passive participants on the Bill.
They did not take their new found concern to

cabinet and were now acting unilaterally to affectively reverse a cabinet decision of what they – of which they were part.”

Do you want to comment on that?

MR GIGABA: Chairperson the mere fact that something has not happened before does not mean that it cannot happen. South Africa has never had a commission of inquiry on alleged state capture and it has happened before – it has happened now. So if somebody were to argue that this
10 thing has not happened before therefore it should not happen they would be wrong.

We had a democracy for the first time in 1994 and it had not existed before in South Africa. So my view is that Mr Momoniat is expressing – you know Mr Momoniat was very passionate about this legislation. He is very passionate about these issues and – and so he took the view which in some instances was considered rude and arrogant towards his political principles.

When the political principles were engaging with the
20 issue with a view of resolving it what Minister Mapisa-Nqakula is suggesting here as the Chairperson or was suggesting as the Chairperson of the Cluster in this letter was not that the – the FICA legislation be scrapped altogether. She was saying there are issues we are concerned about which were considered – some of which

were considered unconstitutional.

South Africa has a constitution Chairperson and that constitution is sovereign and overrides any other letter of law that exists in this country.

Cabinet is the – is the – has to ensure compliance with the constitution when they adopt any legislation. In the South African – in the South African instance in most instances legislation originates from cabinet and therefore cabinet would exercise its mind with regard to any
10 legislation and even reserves the right to repeal existing legislation.

Now if Mr Momoniat says he is not aware of an instance where cabinet had decided to repeal existing legislation he is lying. He is lying. He knows that it has happened. There are many – there is a lot of legislation since 1994 which has been repealed through processes that cabinet would have undertaken.

And so there was nothing peculiar here. I think what was necessary was the engagement on the issues that were
20 being raised and that is why in 2017 we facilitated discussions which then resolved concerns around some of those issues and the legislation was passed and we complied with FATF expectations.

ADV MYBURGH SC: If I could just then take you in relation to the objection to the constitutionality of the Bill. In

paragraph 237 at page 609.

“At no stage at the many cabinet or its committee meetings where the FICA Bill was considered did any Minister object to the constitutionality of the Bill or raise concerns regarding warrantless searches and the phasing out of the counter money laundering advisory council which had not changed much during the Parliamentary process. Indeed the only constitutional matter that had emerged in the drafting of the Bill was the clause on warrantless searches which was guided by the judgment of the constitutional court in *Union of South Africa v. Grootboom* – in the *action alliance* case. There was no constitutional objections to the PEP’s or PIP’s clause as I explained above. The Bill submitted to President Zuma for assent in May 2016 did not substantially differ from the original Bill first submitted to cabinet in 2014 or the clauses related to the counter money laundering advisor council unlike the PEP/PIP clauses.”

Do you want to comment on that?

MR GIGABA: Though I do not understand Chairperson why

these issues are brought to me. I was not chairperson of the – of the committee at the time. I was only one of the members. I am not sure whether the same questions are being asked all other Ministers or former Ministers who were members of this committee.

But that notwithstanding it is important to point out that Mr Momoniat was not a member of the cabinet and so he cannot speak with authority on debates and discussions within the cabinet.

10 An issue it does happen that an issue can be discussed by a cab – a relevant cabinet committee – the JCPS Cabinet Committee for instance or the Cluster where the relevant officials would be invited to contribute and to sit in during discussions so that they can take note of the issues being raised by the Ministers.

 But when the matter serves before cabinet through the report submitted by the committee because what happens in the South Africa cabinet process – the cabinet committees meet this week and discuss issues. Then a
20 report is submitted the following week to the cabinet meeting which entails recommended decisions that need to be adopted by cabinet.

 But it does happen that when those decisions are being tabled – those recommendations are being tabled cabinet members some of whom might even have been at

the previous meeting would have applied their minds further – would have developed new opinions or done additional report and they would then raise – flag issues out and say though I was part of this discussion but I have an opinion on this matter that I would like to present.

The Presidents and I have served under four they do not curtail cabinet discussions. It is not in their habit to say no Minister you were part of a meeting last week therefore you cannot talk. They allow you to speak because they
10 want to create an environment where no member of the National Executive feels that they are being muzzled on discussions because the decisions in the end must constitute the collective opinion of all of us and therefore we are accountable for those decisions.

And so the process of discussion was allowed and Mr Momoniat would not have been part – party to all of those discussions because in the end he is not a member of the cabinet and we would not know who has raised what concerns.

20 There were serious concerns being raised about the concepts of PE – PEP's or PIP's even as the Bill was finalised those concerns still stand among many people as to who is a PEP, who is PIP, who designates these are senior executives of the – of business in South Africa and their families. PEP's also part of the PEP's or PIP's so

there were many discussions Chairperson which took place. Many of which were raised in relation to the constitutionality of the legislation before us.

CHAIRPERSON: My Myburgh what does Mr Momoniat evidence seek to show insofar as Mr Gigaba is concerned?

ADV MYBURGH SC: Well it ..

CHAIRPERSON: Bearing in mind what we are focussing on.

ADV MYBURGH SC: Mr Momoniat's evidence is really confined to this single issue and that is Mr Gigaba's role as
10 a member of the JCPS and...

CHAIRPERSON: Yes but as you understand his...

ADV MYBURGH SC: Well as I understand it what he ...

CHAIRPERSON: His affidavit. He wants to show what for what purpose?

ADV MYBURGH SC: Well what he ultimately says is that this was vexatious and the failure to pass this bill would have been convenient for the Guptas and their associates' attempts to launder money and in fact buy a bank if it had been delayed.

20 So, that is the conclusion that he – he comes – can I ask Mr Gigaba to comment on that?

CHAIRPERSON: Because if he says it would have been convenient, but he is not saying Mr Gigaba took steps with an agenda to assist the Guptas because the Guptas did not want this law to be passed. I am not sure ...[intervenes]

ADV MYBURGH SC: And I think that is in effect what he is saying.

CHAIRPERSON: Is that what you – ja?

ADV MYBURGH SC: Yes.

CHAIRPERSON: Yes. Okay, maybe you can focus ...[intervenes]

ADV MYBURGH SC: Ja. I will try and deal – I do not have a lot more questions for Mr Gigaba on this.

CHAIRPERSON: Yes, okay. Okay, alright.

10 **ADV MYBURGH SC:** In fact, let me take you to two more paragraphs. At 238:

“The JCPS(?) cast(?) the letter, did not have a formal legal opinion to support its view but instead the letter took the form of an informal legal opinion.

Although it was more a political opinion in my view.

Their letter purported to provide more detail on the concerns of President Zuma by stating:

20 “The President is further concerned...”

This is what the submission stated:

“...”The President is further concerned of the impact it would have on the rights of persons identified as foreign prominent officials. Domestic prominent influential person and

family members and known associates of the
aforementioned persons”.

So, they were now also raising the
constitutionality of the PIPS clause despite the
fact that this concept was extensively
discussed and amended by Cabinet.

They claim that all these clauses are
discriminatory and therefore unconstitutional.

10 They call for removing for these clauses and
concepts.

It was also odd to me that they appear to know
more of President Zuma’s concerns than the
Treasury and I wondered whether President
Zuma had in fact discussed these concerns
with the JCPS ministers when he did not do so
with the responsible minister, the Minister of
Finance...”

Do you want to comment on that insofar as you can?

MR GIGABA: Yes, I will comment, Chairperson, even
20 though I still do not see where and how this relevant to me.
No assertion has been made here about myself, other than
about ...[intervenes]

ADV MYBURGH SC: Yes, I have taken(?) it ...[intervenes]

MR GIGABA: ...President Zuma. Let me start by saying,
Chairperson.

ADV MYBURGH SC: Yes?

MR GIGABA: Mr Monyette(?) or any other official of government cannot describe to Cabinet how to conduct its business. It has got absolutely no right.

CHAIRPERSON: And I guess that as officials there may be – you may be aggrieved about how your minister has handled a certain matter or how Cabinet has handled a certain matter. Sometimes you are excited. Sometimes you are disappointed. That is part of life.

10 **MR GIGABA:** Yes.

CHAIRPERSON: And Cabinet plays the role that it plays and obviously in a commission such as this, if there is something concrete to be said that helps the Commission, that is fine, but there are situations where, even among yourselves as Cabinet Ministers, you might not be happy with how a colleague of yours is handling a certain matter that maybe is very much in the public domain, but sometimes you will happy, sometimes you will not be happy, and maybe you cannot even talk publicly. You have
20 to talk only within Cabinet. That is – these things happen.

MR GIGABA: And that continues. Chairperson, let me in support of what the Chairperson has just raised, site at least one example. In May 2014 I was appointed Minister of Home Affairs. A few days thereafter as part of the briefings which had been provided to me by the Director

General in the Top Officials of Home Affairs, the department announced new visa regulations.

A whole range of things were announced there, including the requirement for unabridged birth certificates, requirements for parents if they are travelling alone, whether out of the country or into the country, to produce supporting affidavit from one of the parents to allow them to travel with children, to produce unabridged birth certificates for the minor children and a whole range of
10 other things.

The Cabinet had discussed and passed this prior to the new administration being established. So what the department was doing through the Minister was to announce the visa regulations as having been agreed to by Cabinet previously and based on amendment to the immigration legislation which had been passed through Parliament and ascended by the President.

Now, after making this announcement the then Minister of Tourism raised serious concerns about the
20 impact of these regulations on the tourism sector. Our argument at Home Affairs was that but this had passed through Cabinet. Cabinet had adopted this. They have been – the legislation is passed by Parliament and nobody raised these objections because they are contained, not only in the current amendments of the Immigration Act, but

they were contained in the Children's Act because the Children's Act itself had said no child must be allowed to leave South Africa or enter South Africa without producing a full birth certificate of that child and without...

If the child is travelling with a guardian or with one parent, there must be consent, a written and signed consent by the other parent. After a long discussion, Cabinet decided to establish an Inter-administarial Committee which would be chaired by the former Deputy
10 President, which is now the President of the Republic, which arrived at certain amendments which sought to accommodate the Department of Tourism.

I never thought that by so doing, Cabinet was acting as a captured institution by interest. I never took that to mean Cabinet was now backtracking on its own decision which had been passed where nobody had raised concerns that the Department of Tourism was raising. And those amendments to the regulations were passed and we announced additional amendments a couple of years later,
20 I think in 2018, and additional amendments have been announced, I think it must be, if not last year, then it was in 2019.

So, it is within normal practise that Cabinet could, even though they had not – there had no objection to a particular item that Cabinet would say: We think that we

probably have been heavy-handed or for some other valid reason, we propose that we change here and there.

CHAIRPERSON: Ja.

MR GIGABA: And that was the experience here.

CHAIRPERSON: Mr Myburgh.

ADV MYBURGH SC: Can I ask you to go to paragraph 243, please?

MR GIGABA: [No audible reply]

ADV MYBURGH SC: This is at page 612.

10 “Given the letter from the JSCPS Custom(?) Ministers which shows that there were no open differences with the FICA Bill within Cabinet, the Chairperson of SCOPE, Mr Eunice Karim, decided to convene a Study Group meeting of the ANC SCOPE member on 24 January 2017 to resolve the differences between Cabinet Ministers...”

Do you see that?

MR GIGABA: Yes.

20 **ADV MYBURGH SC:** And then, can I take you to page 615 at paragraph 252?

MR GIGABA: [No audible reply]

ADV MYBURGH SC: It says:

“The ANC Finance Study Group emphasised that it did not agree with the points on

constitution anarchy(?) that Minister Mahlusha(?) has raised.

They told him that they had properly applied their minds to the issues that he was raising when they considered the bill.

They, in fact, pointed out that this submission made by the JSCPS cluster was embarrassing and requested it to be withdrawn and not serve on the agenda the following day...”

10 Do you want to comment on that?

MR GIGABA: I was not in the meeting, Chairperson.
Thank you.

ADV MYBURGH SC: So, can you dispute that they have described it as embarrassing?

MR GIGABA: I was not in the meeting, Chairperson.

ADV MYBURGH SC: Okay. I take it you cannot then?

MR GIGABA: [No audible reply]

ADV MYBURGH SC: So ...[intervenes]

MR GIGABA: Nor can I confirm.

20 **ADV MYBURGH SC:** Yes ...[intervenes]

MR GIGABA: I can neither deny nor confirm that such was said. I was not in the meeting.

ADV MYBURGH SC: Alright.

MR GIGABA: Mr Monyette has the pensions to omit certain crucial issues in this affidavit and that is why it

becomes difficult for me. Glaring in his affidavit is the mere fact the consideration that eventually in 2017 I facilitated meetings with the Department of Justice, State Security, Defence, and others which finally brokered an agreement. It is quite glaring that he omit this, and I am expected to take his view on this – on his submission to be true. I am unable to.

ADV MYBURGH SC: And then he mentions at paragraph 254 that the memo was withdrawn. That there
10 was a withdrawal of the memo. Are you in position to confirm or dispute that?

MR GIGABA: I can neither confirm nor deny.

ADV MYBURGH SC: Alright. Now, perhaps I can take you, Chairperson, to perhaps answer more directly the question that you asked of me.

CHAIRPERSON: Yes.

ADV MYBURGH SC: If you could please go to page 419 of the Rule 3.3. Notice. I have read paragraph 7.9 of Mr Monyette's affidavit. That there the specific allegation
20 is captured at page 419, paragraph 2.2. That you sought to recon ...[intervenes]

CHAIRPERSON: I am sorry. It is page 419?

ADV MYBURGH SC: Page 419, paragraph 2.2. Right at the top, Chairperson.

CHAIRPERSON: No.

MR GIGABA: No.

ADV MYBURGH SC: I am sorry. I beg your pardon. 491
...[intervenes]

CHAIRPERSON: Not the bundle.

ADV MYBURGH SC: I beg your pardon. Not 419, 491.

CHAIRPERSON: 491? Okay. Yes, okay, 2.2 at the top.

ADV MYBURGH SC: 2.2.

10 “...sought to weaken South Africa’s Anti-
Corruption and Anti-Money Laundering
Legislation and financial regulatory framework
by attempting to delay the passing of the
Financial Intelligence Centre Amendment Bill
to serve the interest of the Gupta family whilst
you were a member of the JCPS Cluster...”

You want to comment on that?

MR GIGABA: Chairperson, we have gone through this
affidavit, I think since we have started, the affidavit by
Mr Monyette. Nowhere does it point to me, Malusi Gigaba
...[intervenes]

20 **ADV MYBURGH SC:** I do not want to ...[intervenes]

MR GIGABA: ...as being responsible for delaying the
passing of the Financial Intelligence Sector Amendment
Bill and to serve the private interest of the Gupta family.
Obviously, this was being inserted here by the person who
wrote this 3.3. Notice to me. It is not in Mr Monyette’s

affidavit.

CHAIRPERSON: H'm, okay.

ADV MYBURGH SC: So, I think I have already put the proposition to you that what Mr Monyette says – or his proposition is that it would have been convenient for the Guptas and their associates' attempt to launder money and in fact buy a bank if the bill was delayed. Do you want to comment on that?

MR GIGABA: But what has that got to do with me?

10 Mr Monyette does not say that I, Malusi Gigaba, did what is being put to me. So what has it got to do with me?

ADV MYBURGH SC: We ...[intervenes]

MR GIGABA: Who is making this allegation because it is not Mr Monyette.

ADV MYBURGH SC: I think he is making the allegation in the context of you having been a member of the JSCPS Cluster, Mr Gigaba.

MR GIGABA: But in that instance, Chairperson, the chairperson of the cluster should have been called to
20 answer on behalf of the cluster, not a resigned member of Cabinet. The mere fact that I served in Cabinet at the time, does not mean – and I was a member of the cluster, it does not mean that I checked(?) the cluster, I deputised the cluster, nor does Mr Monyette point to me, Malusi Gigaba as being responsible for this.

It is quite clear that this is being deliberately inserted but it is not been said by Mr Monyette. So, why is it being put to me? And why is the assertion being made that I sought to delay the passing of the Financial Intelligence amendment Bill, Centre Amendment Bill to serve the private interest of the Guptas? Who is saying this? Mr Monyette did not say it?

CHAIRPERSON: Well, while somebody was speaking to you, Mr Myburgh, Mr Gigaba – one of the points he was making was, that he – when you look at Mr Monyette’s affidavit, he does not make any allegations of that with regard to him specifically.

ADV MYBURGH SC: I hear. He talks about him in the context ...[intervenes]

CHAIRPERSON: Yes.

ADV MYBURGH SC: ...of being a member of the cluster.

CHAIRPERSON: Yes, yes. I think we can move on.

ADV MYBURGH SC: Certainly.

CHAIRPERSON: Ja.

20 **ADV MYBURGH SC:** Can I then take you, please, to the same file, the Bundle 10? And let us go to Mr Bishop’s affidavit. That you find at page 6.

CHAIRPERSON: Page?

ADV MYBURGH SC: Page 6, Chairperson.

CHAIRPERSON: Of the same bundle?

ADV MYBURGH SC: Same bundle, under Tab 7.

CHAIRPERSON: Yes?

ADV MYBURGH SC: Now, perhaps we could
...[intervenes]

MR GIGABA: Chairperson, if I may raise this as well?

CHAIRPERSON: Ja?

MR GIGABA: You know, in the 3.3 which was served to
me ...[intervenes]

CHAIRPERSON: Ja.

10 **MR GIGABA:** ...on Mr Monyette - I would like to just go
back. On page 490.

CHAIRPERSON: Ja?

MR GIGABA: Paragraph 2.1.

CHAIRPERSON: H'm?

MR GIGABA: It says that:

20 "Mr Monyette made an allegation that I sought
to replace certain officials within the National
Treasury on the instruction of the Gupta family
whilst I was a member of the – whilst I was the
Minister of Finance..."

CHAIRPERSON: H'm?

MR GIGABA: I would like to be pointed to that section in
Mr Monyette's affidavit which makes this allegation.

CHAIRPERSON: H'm, okay.

MR GIGABA: Because if by the assertion of the evidence

leader, Mr Monyette confined himself to the FIC Amendment Bill process. Where did ...[intervenes]

CHAIRPERSON: Do you want to know?

MR GIGABA: ...this allegation?

CHAIRPERSON: Where it came from?

MR GIGABA: Yes.

ADV MYBURGH SC: Now where it is dealt – I mean, the 3.3. says there are two issues. I have dealt with one. It is the latter one. The first issue is dealt with – in paragraphs
10 15 and 16 of Mr Monyette’s statement. And, in fact, Mr Gigaba was directed to those paragraphs in paragraph 3 of the 3.3. Notice.

CHAIRPERSON: H’m?

ADV MYBURGH SC: 15 and 16. I deliberately decided not to question Mr Gigaba on this in the interest of time, but there are Mr Monyette’s allegations in relation to the first issue.

CHAIRPERSON: Yes.

MR GIGABA: And, therefore, these are the issues in 2.2
20 which implicates me and to which I have responded in great detail, because again, Mr Monyette in this regard makes an allegation and provides absolutely no evidence of the allegation that he is making. In my response, I have detailed all the people who were appointed whilst I was Minister of Finance, and no one – and I indicate there that

there was never an attempt on my part to replace anyone when – from the position of the Director General, the positions of Deputy Directors General, and the other positions that were appointed whilst I was at National Treasury.

I indicate that perhaps with the exception of the one person who was the Head of the FIC, who was appointed as the Head of the FIC, who had been the Head of MTA in the Free State and who is still occupying the
10 position now, an experienced public prosecutor. I indicate that all the people that we appointed in all the positions without fail were members of the National Treasury who had served in the National Treasury for more than ten years.

And so there was no one who was ever appointed from outside the National Treasury, except the Head of the FIC who was appointed in an attempt to replace anyone. The people who got appointed to those positions were appointed because there were vacancies which had been
20 either existing prior to my appointed or which got created in two or three instances when people were serving at the time resigned, but there was no one who was replaced or who sought to be replaced because we had been asked by the Guptas.

And I indicate that if these people in the National

Treasury who got appointed to these positions had been associates of the Guptas, then that is their problem because no one, not even the National Treasury itself, said to us that:

Oh, that these people who have served here for more than ten years are actually associates of the Guptas. And to my knowledge, and I can say this without any fair of contradiction, none of those people were ever associated with the Guptas, not even at any stage in their lives.

10 **ADV MYBURGH SC**: Thank you. If we can go back then, please, to Mr Bishop's statement which starts at page 6 and can I take you to page 18 and to paragraph 34?

MR GIGABA: [No audible reply]

ADV MYBURGH SC: And this was, as you know ...[intervenens]

MR GIGABA: Yes, I am there.

ADV MYBURGH SC: ...relates to Alexkor, Mr Gigaba.

MR GIGABA: Yes.

20 **ADV MYBURGH SC**: I just want to ask you a few questions in relation to a couple of issues. At paragraph 34, Mr Bishop says that:

“In the government media statement of 7 September 2012, media address by Malusi Gigaba, NP, et cetera, on occasion of the Annual General Meeting of the Board of

Directors had stated that...”

And can I take you to the second paragraph in this regard?

“I have appointed Mr Rafique Bagus as chairperson of the new board...”

And then the last sentence says:

“I have given the new board the responsibility to fill the vacancies of CEO and CFO forthwith by no later than the next three months...”

Would you confirm that?

10 **MR GIGABA**: Yes.

ADV MYBURGH SC: At paragraph 35:

“Key to these appointments was Bagus, the new Chairperson of the Board of Alexkor...”

And then it sets out that he was previously the Chief Executive, Trade and Investment South Africa, Deputy Director General of the Department of Trade and Industry and a Special Advisor to Alex Irwin. At 36:

20 “Bagus did not waste any time in commencing with the new strategic direction diversification into coal announced by Mr Gigaba.

Below is an excerpt from Bagus’ fort(?) to Alexkor’s 2014 annual report...”

And we will come back to that, but he announces there that there is going to be diversification by Alexkor into coal mining and the provision of coal to Eskom. You see that?

MR GIGABA: Yes, I see.

ADV MYBURGH SC: Now if I could take you, please, to page 21, paragraph 37?

MR GIGABA: I am there.

ADV MYBURGH SC: At paragraph 37, it says:

“On an examination or one is on examining the cell phone records of Bagus, we noted that he made telephonic contact with the Gupta brothers and their associates...”

10 At 37.1, you will see there is reference to Iqbal Sharma. At 37.2, Ashok Chwala, 37.3, Ajay Gupta, 37.4, Vanesh Gupta. At 38, it says that:

“Bagus attended the Sun City Gupta wedding and stayed in Room 1205...”

The dates are set out. And then at 39:

20 “According to the Amabhugane article, Bagus came to public attention in 2011 when he was linked to making political introductions to – businessman, Gaston Savvy(?), who is still battling corruption charges relating to government tender awards which had been dealt with in the evidence of Mr Trevor White and Colonel Piet du Plooy before the Commission.

Bagus is also featured during evidence led at

the Commission in relation to SAA and in numerous media articles concerning state capture and corruption...”

Now I just wanted to get your comments on this and here, Bagus is appointed as the chairperson, and you will see these references to links to the Guptas and their associates. Do you have any comments on that?

MR GIGABA: Well, of importance, among others, Chairperson, is that first, Mr Bagus had come with a very
10 good record in the Public Service and he – at the point that we appointed him as chairperson, we had not – we did not have the technology to examine his phone records as would happened thereafter, but if you look at the phone records, he spoke, apparently, to Mr Sharma between 2008 and 2013.

He spoke to Mr Ashok Chawla between 2008 and 2013. He spoke to Mr Ajay Gupta between 2015 and 2016 and spoke to Mr Rajesh Gupta between 2015 and 2016. In the two instances, they knew each other before I was even
20 a Minister and we are talking in the last two instances, they spoke after I had left Public Enterprises.

So, it is very important to establish that context. Now, going back to the issue of the coal, the diversification. I indicated and submitted extracts from the financial statements of Alexkor that at the time I was a – I

served as Minister of Public Enterprises, Alexkor financial records – financial performance, not records – financial performance was quite weak.

I think it must have been in 2011 that Alexkor posted a profit of R 84 million, but that performance was prior to the establishment of the pulling and sharing joint venture with the community of Alexander Bay which PSJV actually depleted the resources of Alexkor and showed over the next – and by so saying, I am not blaming the
10 community of Alexander Bay.

I am just saying that the effect of the pulling and sharing joint venture was that Alexkor, whose balance sheet was already weak, began to get into even more serious financial difficulties in the years that followed. And as we saw, the finances of Alexkor had depleting. The question that the board then raised with me, the out – the – I think to – it must have been the outgoing board, was: We need to find ways to reprioritise, to reposition Alexkor so that it becomes a successful entity.

20 Now, the main focus of Alexkor's business after the PSJV would have been Marine Dam on mining which became difficult for Alexkor because at that time they were competing with De Beers and Alexkor did not have the resources that De Beers had for... There was a technology which they apparently needed which would allow them to

mine even on windy days because the ocean in that part of Alexander Bay is quite windy and they have more windy days than they have calm days.

And so it became difficult for Alexkor to compete with De Beers because on most windy days we come to a hold because we could not risk putting workers into the ocean when we knew that they were not going to be safe. That became difficult for Alexkor. Now there were two options that we were faced with. Either we recapitalise
10 them to the tune of R 1 billion which they require for them to mine on these windy days to procure these technology, or they diversify so that without pulling out of Marine Dam on mining and pull it out of Alexander Bay.

They could then explore other opportunities and that is why they were saying, among others, they would look at developing line resources. And then they said to me: But Minister, you presented and have been discussing with Eskom the establishment of the emergent miners coal strategy. Given that you are looking at emergent miners.

20 And we have met with them at Eskom, I think on two occasions together with the leadership of Eskom because it was a strategy developed by Eskom in terms of which Eskom wanted black emergent miners to comprise 50% plus one of coal suppliers to Eskom by 2018. They were spending close to R 40 billion per annum on coal

procurement which was going to establish miners, some of whom who had long-term coal contracts.

And Eskom wanted to begin to bring that in line with the transformation objectives of the state. So, Alexkor then said: Can we enter into negotiations with Eskom so that we explore coal mining and we also become the supplier and perhaps the emergent coal miners could supply to Eskom through us or in partnership with us. That then was the basis of this diversification and the approach
10 that was taken. It was based ...[indistinct – word cut off] of the dwindling finances of Alexkor. As the Presidential Review Committee report of 2012 indicates, Alexkor was at that time one of the SOEs that were dependent on government funding in order to strengthen their balance sheet and there were serious going-concern status issues with regard to Alexkor and that was the reason why it became necessary to diversify its business not out of mining but to also take advantage of the fact that government had – the ANC and subsequently government
20 had taken a decision to establish a state-owned mining company so which in our opinion and in my meetings with the Minister of Minerals at the time, Ms Susan Shabangu.

We thought that once [indistinct] is established it would then take Alexkor over and we would merge the two mining companies so that we have one mining company

because, in my opinion, it did not make sense that you would have Alexkor continuing to exist but you have another state owned mining company which has been established.

I think the issue that would need to be discussed once that happens, would have been what do we then do with the pooling and sharing joint venture with the community of Alexander Bay and obviously, in our opinion, Alexkor or the new entity would not need to pull out its key
10 operations that remained in Alexander Bay so that the community of Alexander Bay continues to benefit from its existence. Thank you.

ADV MYBURGH SC: Perhaps I could just take you back to paragraph 39. Did you not know of these – it says that Bagus came to public attention in 2011 when he was linked to making political introductions to Gaston Savoy whose battling corruption charges relating to government tender awards been dealt with in evidence by Mr Trevor White, Colonel du Plooy before the Commission. Did you not
20 know about that?

MR GIGABA: I did not know about this, Chairperson, and I think – I do not know whether in 2012 Mr Savoy had been arrested, I do not even know what is his status at the present moment. So I did not know about this and even if Mr Bagus had introduced him to – I do not know who, who

are these political introductions, there had been no finding against him that would have made him ineligible. There are many people who, on a daily basis, face a lot of allegations and they fight those allegations and you only can take a decision on them on the basis that the allegations are proven to have been corrupt.

Had we been told that, no, Mr Bagus has been arrested or found guilty of corruption, yes, indeed he would either not have been appointed or if he had been appointed
10 he would have been removed from the board.

ADV MYBURGH SC: At paragraph 40, and we will come back to this.

“He...”

Bagus,

“...was instrumental in his capacity as the Chairman of Alexkor and the Alexkor PS JV board in awarding the tender to SSI granting it the exclusive rights to market and sell diamonds produced by the PS JV.”

But we will come to that now. Can I ask you to drop down
20 to paragraph 42?

MR GIGABA: Yes.

ADV MYBURGH SC:

“On 4 March 2013 Khoza was appointed as Chief Executive Officer of Alexkor. Prior to this he was the general manager at Optimum Colliery and was

clearly recruited in order to pursue the diversification into coal.”

Do you agree with that?

MR GIGABA: No, Chairperson.

ADV MYBURGH SC: Right?

MR GIGABA: The basis of saying he was clearly recruited, what was the basis in fact of saying he was clearly recruited to pursue Gigaba’s agenda to diversify into coal? Here you have a general manager of a mine, the issue we were looking for was a CEO of a mine and, you know, it happens, it happens, it is common practice that you could have a CFO of a bank – I mean, a CEO of a bank whose qualifications are in engineering. You could have Ministers of finance whose qualifications are in something else. You could have – because the leadership position – the leadership position has to do with more than this specific area of diamond mining. It has to do with the fact that he was a leader in mining, he had experience in mining and when the board recommended him they considered him to be experienced enough to become the CEO of Alexkor.

Now Mr Bishop makes the wild allegation that this was clearly – he was clearly recruited, without breaking it up with any evidence of fact.

CHAIRPERSON: Well, I must just mention, Mr Myburgh, that one has got to be cautious that Mr Bishop would not

have personal knowledge of [inaudible – speaking simultaneously]

ADV MYBURGH SC: Yes, certainly, he is an investigator from the Commission.

CHAIRPERSON: He is an investigator and I see that in some of the paragraphs he is referring to newspaper articles and so on.

ADV MYBURGH SC: Yes.

CHAIRPERSON: So one has got to be cautious about
10 what he says. So if you could have that in mind, ja.

ADV MYBURGH SC: Thank you, Chairperson.

CHAIRPERSON: Ja.

ADV MYBURGH SC: What Mr Bishop then deals with at page 23 was the announcement of diversity in coal mining which you have dealt with. I just want to take you please to paragraph 57 at page 27, says:

20 “Significantly, shortly after the announcement by Gigaba that Alexkor would be extending into the coal business to supply Eskom, the well-documented Gupta-linked entities and persons, Regiments and Wood, started engaging with Alexkor.”

This is evident from the email exchanges and then he sets out in some detail of that under the heading Wood and Regiments. Did you know anything about this?

MR GIGABA: I was not – Chairperson, I have stated repeatedly at this Commission that I had nothing to do with procurement processes in the SOEs and let alone in the department over which I was minister. I was very far from the supply chain and procurement processes, so I knew nothing about this. When ministers announce policies or policy changes whether in the departments or in the SOEs, various business people positioned themselves.

I am aware that when the announcement was made
10 with regard of the strategic equity partner at SAA or the restructuring of Eskom into three divisions, a number of business people began positioning themselves to take advantage of those opportunities. It has absolutely nothing to do with the ministers or in the instance an announcement is made by the President, with the President who makes the announcement and government policy cannot wait because there are business people who are going to be positioning themselves to take advantage of those.

20 I think what is then required is for the supply chain processes in the SOEs to be robust enough so that the rightful people who have complied with all expected requirements for such procurements are the ones who get appointed and not ones who may obtain such contracts through corrupt means.

ADV MYBURGH SC: And then if I could just get your comments similarly on the appointment of SSI? Could you turn to page 44 please?

MR GIGABA: Yes, I am on page 44.

ADV MYBURGH SC: At paragraph 74.

“On 25 November SSI submitted its ...[intervenes]

MR GIGABA: Sorry, sorry, sorry, I went to 49.

ADV MYBURGH SC: 74 at 44.

MR GIGABA: Ja.

10 **ADV MYBURGH SC:** Are you there?

MR GIGABA: Yes.

ADV MYBURGH SC:

“On 25 November SSI submitted a tender to the PS JV to provide exclusive diamond marketing and sales services. On 4 December Moodley and Nathan became directors of SSI. On 17 December the tender was conditionally awarded to SSI.”

Then over the page, 27 February 2015:

“The board approved the awarding.”

20 And then it says at 78:

“SSI which changes its name to ABDC had no licence or experience in the industry but still won the tender submitted in 2014 to be the sold agent to value, sell and market Alexkor entire diamond production. Alexkor’s Chief Legal Officer at the

time was Kellerman Moodley, the purported 60% BEE shareholder of SSI through its company to Momode(?) had no diamond industry background. The two directors of SSI appointed after SSI's bid was submitted were Nathan and Moodley."

Now this comes after you ended your stint as the Minister of Public Enterprises. That occurred, as I have it, in May 2014, is that right?

MR GIGABA: Yes.

10 **ADV MYBURGH SC:** Do you have any comment on this?

MR GIGABA: No, I have no comment on it, Chair, I think except to say of course to confirm that this was after I had left Public Enterprises and I do not even know who is Moodley and Nathan.

CHAIRPERSON: Ja. Well, if you were not involved, I do not think there is much you can say.

ADV MYBURGH SC: And I then just wanted to point out to you at page 51 that:

20 "There it was alleged by Mr Karobie(?), who was a member of the technical tender evaluation committee that Bagus put pressure on them to appoint SSI."

I do not suppose you can comment on that.

MR GIGABA: Ja.

CHAIRPERSON: Ja, if you would not...

ADV MYBURGH SC: And then similarly, if you go to page 55, there was then a report the Commission then undertaken by the board or when they found a whole lot of irregularities in relation to that set out at 132. I take it you did not know anything about that either?

MR GIGABA: No. In 2016, right?

ADV MYBURGH SC: Sorry/

MR GIGABA: You are on page 55?

ADV MYBURGH SC: Yes, at the foot.

10 **MR GIGABA:** You are referring to the audit and risk committee ...[intervenes]

ADV MYBURGH SC: Oh no, sorry, I am referring to the board or findings and recommendations.

MR GIGABA: Oh yes. I think this is based on what happened in 2016.

ADV MYBURGH SC: Ja.

MR GIGABA: Ja, no, no.

CHAIRPERSON: I think unless there is something that is directed at him.

20 **ADV MYBURGH SC:** Yes, certainly.

CHAIRPERSON: Or at a body in which he was a member or something.

ADV MYBURGH SC: What I think I just want to put, Chairperson, if I may, is that this is – perhaps I could put this proposition to Mr Gigaba.

CHAIRPERSON: Ja.

ADV MYBURGH SC: This is another appointment that potentially linked to the Guptas which goes wrong because of the conduct of Mr Bagus who then is instrumental in appointing SSI and SSI is also Gupta-linked through Mr Moodley.

CHAIRPERSON: Ja.

ADV MYBURGH SC: So that is really just a proposition that I want to put, so it is a kind of a legacy of the
10 appointment if you want to comment on that, Mr Gigaba.

CHAIRPERSON: Yes, okay, I think you can put it like that.

MR GIGABA: Thank you, Chairperson. I think it is important to bear in mind that at the time that I left Public Enterprises there had been no appointment of SSI and this happened after I had left. I am sure that the people who were there at the time would be able to provide answers as to what happened, how it happened, why it happened but insofar as I am concerned, it had nothing to do with me, I had left and the policy changes which I announced had no
20 Guptas in mind.

In actual fact, Chairperson, as a matter of record, in the two meetings I have referred to where we met with the junior miners at Eskom, the meetings were at Eskom, Mr Dames was there in both sessions and there was no Gupta company there, even Alexkor. I think to my recollection

was not there because when Eskom put forward the policy proposal for the emerging miners coal strategy, they were thinking of the various coal mining companies of black people and women and youth that came – that kept approaching them for opportunities to supply Eskom with coal. A lot of long term coal contracts were coming to an end and Eskom wanted to use the opportunity to begin to bring on board new players and in the meeting that I subsequently held with Mr Cutifane, the CEO of Anglo
10 American, we clearly clarified as to what this policy was, that it was not a mining policy because that was not within my jurisdiction. It was not a coal policy, that was not within my jurisdiction. It was an Eskom coal procurement policy and that is what was within my jurisdiction.

All these companies, the SSIs and whatever else were not there at the time that we were engaging with Eskom on this.

ADV MYBURGH SC: And then just perhaps one last question. If I can ask you to go to page 57? See that
20 sometime later in 2017 there was a proposal to establish Alexkor. I just want to put this to you. You got the wheels in motion in relation to the diversification of Alexkor into coal mining. Perhaps I can just direct you to paragraph 137 and ask for your comment insofar as you can. It says:

“The Commission’s investigation team have

established that the coal deal, arising now from the proposed establishment of Alexkor, was a Gupta-linked and associated network of companies positioning themselves to control Alexkor coal business which consisted of IPC Res Coal and Nungu. Should the deal have gone through the entire coal business for Alexkor would have been to the benefit of the Guptas and their associates.”

Do you have any comment on that?

10 **MR GIGABA**: Chairperson, can you please redirect me to where this paragraph is?

ADV MYBURGH SC: Page 57.

MR GIGABA: Oh, page 57.

ADV MYBURGH SC: Ja and I was – I picked up from paragraph 134 and I had read 137.

MR GIGABA: 137?

ADV MYBURGH SC: At 58, yes.

MR GIGABA: 137 at page 58? Oh, sorry, I am looking at – I am unfortunately looking at the page of the memorandum
20 itself and that is why I am getting confused.

CHAIRPERSON: Oh, okay.

MR GIGABA: Page 57 and the paragraph – okay.

CHAIRPERSON: Do you want to start afresh, Mr...?

MR GIGABA: No, no, I can it, Chairperson, thank you.

CHAIRPERSON: Ja, okay.

MR GIGABA: Chairperson, the investigating team, I do not know the basis upon which they arrived at this. Obviously I do not know any of these companies that are mentioned here and then decision to establish Alex Coal must have been taken after I had left because at the time that I left there was no such a decision, there was no even talk of such a decision to establish Alex Coal.

But what seems to be the narrative, the storyline of Mr Bishop, the other affidavit I will go to, I suppose Mr
10 Craythorne and what they based much of their findings on the so-called seven academics who published the book where they claimed that I set in motion the wheels for the capture of Alexkor. It is also contained, I think, in the statement by the evidence leader that he just put to me that I set the wheels in motion for the establishment of Alex Coal. I rejected. I reject it. I reject it, it is not true.

Policies are made not with the intention – or were made not with the intention to capture Alexkor. They were based, as I said, in my affidavit which I submitted before
20 the Commission on the financial statements of Alexkor and how the company was performing. What then would happen after I had left cannot be my responsibility. What we sought to achieve in 2012 when we made this because the other affidavit goes to say from the time of my appointment the intention was to capture Alexkor but – and

it says I changed the boards but the board was changed in 2012, not in 2010, not in 2011. It was changed in 2012 when its term of office – when the term of office of a previous board had lapsed and it was time to appoint a new board so there is a gap of two years in justifying this notion that from the time I was appointed the intention was to capture Alexkor and the diversification into coal and lime had to do with the financials of Alexkor not with a view for any individual or group of companies to take over
10 Alexkor.

Now, as a minister, you set the policy in motion but the management of a company must execute that policy and find ways to ensure that it gets executed. For example, if the minister says we are announcing a long term turnaround strategy for SAA, a number of companies would then come forward to say can we become the consultants for SAA in the execution of this turnaround strategy? Can we become the consultants for SAA or government in the execution of the strategic equity
20 partner? Now those decisions get implemented by the executors, by the operators. You, as the minister, you have announced the policy, what they do with the policy you expect that they are going to take ethically and that is what I expected but when I left there was no decision to establish Alex Coal, this new company, our expectation

was that Alexkor would continue implementing this decision itself.

ADV MYBURGH SC: Chairperson, sorry, I was going to say could we take tea now and I could then work out...

CHAIRPERSON: Ja.

ADV MYBURGH SC: Take stock and finalise my examination.

CHAIRPERSON: Ja, let us take the tea break. Which are the other affidavits that...?

10 **ADV MYBURGH SC:** Well, there is just Mr Craythorne left.

CHAIRPERSON: Ja.

ADV MYBURGH SC: He traverses very much the same ground in relation to the issues that implicate Mr Gigaba. It is not sure – I am not clear that I am necessarily going to take him to that separately.

CHAIRPERSON: Ja, ja, because the real focus must be, you know, how far does it help us.

ADV MYBURGH SC: Yes.

20 **CHAIRPERSON:** To what extent does it put up evidence.

ADV MYBURGH SC: Yes.

CHAIRPERSON: And implicate him and, if it does, then we focus on that. Okay, let us take the tea adjournment, we will resume at quarter to twelve. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV MYBURGH SC: Thank you. Mr Gigaba, could I ask you please to go to Bundle 7, page 996.101.

MR GIGABA: Page 996.

ADV MYBURGH SC: 996.101.

MR GIGABA: Yes, I am there.

ADV MYBURGH SC: I have directed you to this affidavit yesterday, the affidavit of Ms Rossouw. I really only have
10 one question for you. If you go to page 102 you will see there that it sets out a number of cash payments that were made for school fees over the years.

MR GIGABA: Yes.

ADV MYBURGH SC: Where did you obtain... [intervenies]

ADV SOLOMON SC: Mr Chairman.

CHAIRPERSON: Yes, Mr Solomon.

ADV SOLOMON SC: Sorry, Chair, if I could just – in regard to Ms Rossouw, I did indicate to my learned friend that we were still taking instructions from our client and
20 would deal with it subject to Chair's consent and imprimatur by way of an affidavit if necessary. I am not sure what the question is that Mr Myburgh wants to put, but I did tell him that it is something we have not had an opportunity of dealing with our client in respect of and we could just simply deal with it by way of an affidavit if

necessary.

CHAIRPERSON: Okay. Mr Myburgh?

ADV MYBURGH SC: Okay. Well, I know that my learned friend said that yesterday. I sent him an email yesterday saying I am going to deal with the affidavit today. I do not know how long Mr Gigaba needs to deal with this. Really the only question is does he accept cash payments were made and where did he get the cash from.

CHAIRPERSON: Yes.

10 **ADV MYBURGH SC:** If he feels he cannot answer that now and it must go into an affidavit, well I do not think we have any particular objection to that, Chair.

CHAIRPERSON: Ja. You have heard the two questions... [intervenes]

ADV SOLOMON SC: Yes, Chairperson, just to tell... [intervenes]

CHAIRPERSON: Ja, Mr Solomon, I was saying you have heard what the two questions are – what the two questions are that he wants to ask. If you say no, he can –
20 Mr Gigaba can deal with them, that is fine, but if he says if you still have a concern because you have not had enough time, then it is fine, they can be dealt with from his point of view by way of affidavit and I do not have a problem if you have not had enough time. But it may well be that it is something that can be dealt with quickly, at least now that

you know what the questions are.

ADV SOLOMON SC: Yes. We appreciate that, Chair. We will deal with it by way of an affidavit relatively quickly. Thank you.

CHAIRPERSON: Okay. Okay, alright. Can we just so that we do not forget, can we put a deadline for that affidavit, Mr Solomon?

ADV SOLOMON SC: Could we do it by Friday, Chair?

CHAIRPERSON: Ja, Friday this week is fine. Ja. Okay,
10 alright. Okay, thank you.

ADV MYBURGH SC: Thank you, Chairperson. Mr Gigaba I want then in conclusion just to put some general propositions and perhaps observations to you. I do not know if you followed the evidence of Mr Holden yesterday.

MR GIGABA: No.

ADV MYBURGH SC: Well, I suppose from what you have heard already you would accept that on the evidence that has been presented by Money Flows... [intervenes]

MR GIGABA: By who?

20 **ADV MYBURGH SC:** By Money Flows, the money flow evidence presented in the Commission. The extent of the looting by the Guptas is quite mind boggling. You would accept that.

MR GIGABA: Yes, from what I have heard, yes.

ADV MYBURGH SC: In fact yesterday, and Chairperson

you will correct me because you heard it live, I think that the cost to the State... [intervenes]

CHAIRPERSON: Yes.

ADV MYBURGH SC: ...increased from 50 billion to now 57 billion.

CHAIRPERSON: Ja, from 49 billion to 57, ja.

ADV MYBURGH SC: And it is quite apparent from that evidence if it were accepted that the Guptas were engaged in a coordinated project and they have missed few, if any, opportunities to loot the State. Would you agree with that if that evidence is accepted?

10

MR GIGABA: I am not sure, Chair, whether I am able to just agree with it. I do not also want to dispute anything. I presume that the evidence leader is making statements.

ADV MYBURGH SC: Alright. Well, perhaps closer to you, a significant part of that looting occurred during your tenure as Minister of Public Enterprises in relation to SOEs that were subject to your oversight, particularly Transnet. Would you agree to that on that evidence?

20 **MR GIGABA:** Well, it has been alleged that evidence has been presented, but surely that does not mean that I was involved in it and I think I have responded sufficiently to questions which were presented here to indicate that I myself was not involved in any of that.

CHAIRPERSON: I think wait for Mr Myburgh to finish his

propositions.

ADV MYBURGH SC: So – I beg your pardon, Chair.

CHAIRPERSON: Ja, no I am... [intervenes]

ADV MYBURGH SC: So the proposition is simply that on that evidence a significant, very significant part of the looting occurred during your tenure as Minister of Public Enterprises in relation to SOEs that you had oversight of, particularly Transnet. Do you have any comment on that?

MR GIGABA: I think as I have stated, Chairperson,
10 nothing, absolutely nothing which has been presented here places me anywhere near the money, not seen the money. I have not taken the money. I have not delivered money anywhere. I have not been part of the contracts. And so to the extent that it happened during my tenure, it would be purely coincidental.

ADV MYBURGH SC: See, Mr Gigaba, again you are, with respect, running ahead of yourself, but then let me just put the proposition to you. And the proposition is that the Guptas could not have pulled off a looting project of this
20 size and sophistication without you being on sides in some way or the other. Do you want to comment on that?

MR GIGABA: Chairperson, I think let us establish the principle here that if I am asked a question I am not in Court. I can respond to the question as I think the question – as I think I can respond. But secondly,

Chairperson, that I have not been told that there is a prescribed way in which I should respond.

CHAIRPERSON: No, no. Nobody has said that, but Mr Myburgh is not saying that either. Excuse me. All he was saying earlier on I think you may be referring to the remark that you were going ahead of yourself or something like that. I think all he was saying is he is still to come to a proposition that he wants to put to you which will talk about how do you come in if it has not been said that you
10 took cash or you were part of a contract or whatever.

So what you were doing is you were saying he asked you a question – he asked the question whether you would accept that a significant portion of that looting in relation to the SOEs, particularly Transnet, happened during your term and I think earlier on you had indicated that you accept that, but then you added that there has been no evidence that says you took cash or whatever. But he is making certain propositions.

In the end you are right to say tell me where I come
20 in and that is where he was still going. So he was not seeking to say do not answer this way or that way. It was not that.

MR GIGABA: In that respect, Chairperson, may I then request that he gets to the proposition so that I respond to it, because the difficulty with responding to parts of the

proposition is that when I respond to it he says I am jumping ahead of myself. Now I do not know what is it that I am expected to wait for.

CHAIRPERSON: This is where I can say to you just answer the question that he is putting to you. If having answered it you want to see where he is going or if ultimately you do not see where he was going with all of these questions, I will give you a chance to say but maybe this is the way to put it. The dots cannot be connected
10 here, you know.

So I will give you an answer – an opportunity before you leave if there is anything that you did not answer adequately, were not given a chance to either answer adequately or deal with adequately so that you can deal with it. But he does not want to put everything together because it can be confusing. He wants to ask one question at a time and see whether you go along with that particular question. Okay. Mr Myburgh.

ADV MYBURGH SC: The proposition just to repeat it is
20 that the Guptas could not have pulled off a looting project of this size and sophistication without you being on sides in some way, Mr Gigaba. Let us address that.

MR GIGABA: That is not true. That is not true. Absolutely not true.

ADV MYBURGH SC: But how could they possibly have

pulled something off of this magnitude and sophistication without you being involved in some way? How is it possible?

MR GIGABA: In what way?

ADV MYBURGH SC: In any way, being complicit, having some knowledge, being aware, being indirectly, directly involved. How is it possible?

MR GIGABA: I do not know. Is this the point, Chair, when I respond without jumping ahead of myself?

10 **CHAIRPERSON:** I think you are entitled to say – look, I think the question requires you to look at what your responsibilities were as Minister during that time to say look, as Minister this was my role and do these responsibilities and this role suggest that there was no way I could not have been aware or do they suggest that something as big as this could have happened without me being aware because of the responsibilities and the role of the Minister.

20 So I think the question seeks to say if this evidence of the looting that has been given is accepted and it is accepted that it involved as much as R57 billion taxpayers' money being given to this family and their entities, how could this happen? How was it possible?

We had the executive – you remember I asked you one of these days to what extent there would be reports to

Cabinet. How is it possible that the whole Cabinet would not be aware of this? If it was not aware, how is it possible that the Minister of Public Enterprises would not be aware of this? If he was not aware, how was it possible that the CEOs that were at Transnet, at Eskom, at these SOEs, how could they not pick this up and the CFOs and everybody?

So we are bound to ask ourselves the question, if so much money could be siphoned off to the benefit of one family and their friends and entities, what is it that did not work the way it should have worked for this not to happen, prevent it from happening?

So I think you must view the question in that context as I understand it and as I see it it calls upon you to say okay, what was my role as Minister, you know. Did you play oversight over the board? Were you given reports that should have set alarm bells to say there seems to be something that is not going right? What about the reports that were coming from CEOs or the boards, that kind of thing? I think it calls for that kind of assessment.

MR GIGABA: Thank you very much, Chairperson. I guess it is just in the manner that the questions are asked here, you know. We lay people may not really understand how they are being presented.

CHAIRPERSON: Yes. No, no, I understand.

MR GIGABA: But I think, Chairperson, it would still be important because if I were to reflect I do not want the evidence leader to again feel like I am jumping ahead. Am I at the point now when I can reflect or there are still further propositions which are still coming so that I... [intervenes]

CHAIRPERSON: I think that is fine, just now that you understand the context just answer the way you believe is correct to deal with it. He will not take offence. I will not
10 take offence. That does not mean it is his last question, but just answer, ja.

MR GIGABA: Thank you. Chairperson, the difficulty with our SOEs lies a great deal in the challenge that on the one hand they are commissioned enterprises, they need to be run according to established regulations, the Companies Act, the King Code and so on, but on the other hand they are entities of the State.

Now as commissioned enterprises there is a formal way of reporting to the Minister as the executive authority
20 which formal way would entail reports, the monthly reports which are submitted via the department, the quarterly reports which would include financials, as well as the annual reports which would now be tabled at the AGM.

Those reports are – they report on specific specified issues. Either the annual report would contain

the report of the company secretary on how the board has functioned. It would contain reports on the chairperson's remarks, the CEO's report, the CFO's report, the report of the auditors and the various other committees such as your Social and Environmental Committees and others.

By their nature they are not going to point you to issues which have been the subject of this Commission. To the extent that you are looking at these, you are looking at what are regulated reports which come to you in the
10 manner that they are expected to come to you as the shareholder.

Without being broad, and let me try because I think in my previous submissions I have been broad enough to address a number of strategic issues with regard to SOEs, but the reports therefore even when the annual financial report talk about irregular and fruitless expenditure, it would be what you would then ask the entity through the board at the AGM and the auditors would have asked them what is this irregular and fruitless expenditure and they will
20 explain it.

It will not bring out the issues which amount to this alleged R57 billion so that you can then say, no wait a minute, let me look into this, how has this money left, where did it go to and so on. So it would be in the normal business of the company and therefore it does not get

reported specifically so that it raises an alarm with you. When you sit with the board or even on occasions when you can meet with the executive directors, they do not report to you on specific contracts. We have this contract, it is going to those ones.

There would be instances when after the contracting if it was a big project you are invited to now come and speak. It is an official handover. It announces the fleet locomotives. It announces a major BEE project
10 for the SOE. You get invited to come and speak, but you were not involved in the whole process of the contracting right until the end and you are not going to ask those questions because in the end the question that they will ask, as I said I think in reference to one or few other things, is that if I were to ask this question, what would I explain to the board to be my interest. How would I explain my interest in this matter?

So the reports that come to you as the Minister do not entail contracts and tenders that have been entered
20 into by the relevant SOE. I would argue that we need to keep it that way to insulate the executive authority from even having to be tempted to want to direct the outcome of contracts and tenders within SOEs, because then the problem we are dealing with here would be far larger than the one that the Commission has to sit and look at.

Because it is not only these issues, Chairperson, which have to do with State Capture or allegations of State Capture that ought to concern us. It is just a whole range of things.

You would talk about PPEs. I think there have been concerns to a point where Government even established investigations into PPEs, people taking advantage of an entire pandemic. You would have to look at what I referred to earlier as the two or three contracts at Eskom, Medupi, 10 Kusile and Ingula. You would have to look at the long term coal contracts in the SOEs.

I am saying, Chairperson, the information that comes to the Minister is limited. You rely on the people who are running the institution and the entities, doing what they have to do and doing it in the correct manner that they have to. You, you do not get yourself involved in these contracts in the tenders that take place and therefore you would not know or even be briefed unless you are really lucky to be briefed about money which is 20 being, what is the word, which is being laundered. If you are really lucky then you get that briefing and then you can, you know, establish an investigation, look at the matter and have it dealt with.

Now insofar as I was involved during the time, I have said that really it is purely coincidental. It is an

unfortunate coincidence, because I have lived for a long time with vilification, with innuendos, with my name being tarnished and associated with these incidents, claims being made to which – and that is why, Chairperson, when I first came – no, not first, when I came here for the second time I really prayed that I be allowed to start answering because as the evidence lead have indicated there were 15 affidavits which had implicated me.

They had gone on over a period not just of three
10 years of the existence of the Commission but even prior. I needed to respond to these in order to state my case to explain my understanding of what happened and to position myself in relation to what was happening.

And so to the extent that this happened, which is referred to as a looting exercise of this magnitude, the reports that were coming to me, Chair, would not have indicated this. And I think that is part of the reason why a Commission, because even Cabinet would not have received this.

20 All different Ministers responsible for entities do not get these types of briefings and it would be on a few occasions, as I have said, where you do and you can then ask the President to commission the SIU to investigate an issue. But as the executive authority you do not get these reports. They happen really far away from you.

As you could see a company, I mean I did not know what is (indistinct) Investments or something like that. I did not know this and it cannot be true that the people who were involved in these things appointing SSI would then go to the Minister and say Minister we have appointed SSI which has the following directors, blah, blah, blah. No, they do not do that and you do not ask.

And you could very well attend a function with a company that one day would be subject to an investigation.

10 It does not mean that you yourself were complicit in its appointment or in whatever wrongdoing they may have been involved in. But as the executive authority the reports that come to you are regulated. You focus yourself on those reports and ensure that you provide the strategic directive assisted by the department to (indistinct) that the collective of SOEs in your portfolio or individual SOE that you are dealing with.

CHAIRPERSON: Mr Myburgh?

ADV MYBURGH SC: Thank you. Let me put another

20 proposition to you and that is that it is improbable that you did not know, Mr Gigaba, because this looting was not being conducted by some unknown entity. It was being conducted by the Gupta brothers, one of whom was your friend. You were part of this Gupta environment.

MR GIGABA: Chairperson, I have responded to this

before that I knew Mr Ajay and there are many people that we all know and many get involved in wrongdoing and knowing a person does not make you complicit in their wrongdoing if they are involved in wrongdoing.

I separated and I did it deliberately. I not only in relation to Mr Ajay Gupta but in relation to any other business person I know, I separate myself from their business activities. I do not need to know what they are doing and I have not – I have never been in business. I
10 am not in business even right now. And so whatever that they were doing, the fact that I knew them or knew Mr Ajay does not in any possible way – that can only be established through fact, not through an inference, not through suppositions, certainly not through propositions.

It can only be established through fact which says that in this laundering of this money this is where you come in, this is what you did, this is what you benefited. And so that proposition is also not correct.

ADV MYBURGH SC: Well, let us see where you did come
20 in and perhaps I can just confine myself for a moment to Transnet. You appointed Mr Sharma as a director and you then tried to make him the chairperson of the board. Mr Sharma went on to become the chairperson of the BADC and we know what happened from there. That is how you come in, Mr Gigaba. You were the gatekeeper to the

appointment of directors.

MR GIGABA: But that is also, Chairperson, that is also wrong appointing somebody as the Chairperson at the time. You know, if there was something wrong with Mr Sharma at the time, then let the people who had appointed him right up to the level of DDG at trade and industry who had appointed him CEO of trade and investment South Africa.

Let them also be alerted or accused of having done wrong, because appointing someone, not knowing that
10 there is something wrong, they intend doing. you know, it would be something different if it is alleged that I appointed somebody straight from prison, but if you appoint someone who has served at the highest levels of the public service of our country and there are no allegations against them at the time, not unless you know that there is something they are going to do in the future.

This proposition cannot stand, because it presupposes that I should have known, and it also ignores the fact that when we presented to cabinet that he should
20 be Chair, what were the reasons and cabinet said no, do not take this direction.

Not because cabinet said he is wrong or is going to do something wrong, but cabinet felt that the existing Chair had only been in office for about six months and there was no reason to appoint him, to remove him from the board?

We were acting on the basis of the issues that we were facing at the time.

Not on the basis of what would probably happen in the future. That we did not know.

ADV MYBURGH SC: But let us look at it then cumulatively because at Transnet you appoint Mr Molefe and Mr Shama. At SAA you appoint Ms Monemi. At Alexkor you appoint Mr Bagus. At Eskom you appoint Mr Malija, correct?

MR GIGABA: Ms Monemi had been a board member of
10 SAA appointed by Ms Hogan prior to my appointment. So she already was on the board of SAA.

ADV MYBURGH SC: Did you appoint a Chairperson?

MR GIGABA: Yes. But that was, I think 2012 or something like that. Mr Molefe was appointed CEO of Transnet, after having assisted the PIC to grow its capital from about 100 million to over a trillion by the time he left and when he became CE of Transnet, he was an advisor I think to Investec or Bidvest, one of the two companies.

He came highly recommended. Mr Malija had
20 extensive experience in electricity, and he was also a person of high repute in the energy sector and Mr Bagus also. Chairperson, you do not appoint people on the basis of supernatural power to see and I make no allegation because they have not been found guilty of anything.

I make no allegation or I am concurring with no

allegation ...[intervenes]

CHAIRPERSON: Sorry. Okay, continue.

MR GIGABA: Thank you Chair. I am concurring with no allegation of wrongdoing on their part. All I am saying is when you appoint someone, you do not have any foresight as to what they may be accused of at a later stage. I think it could just very well be that we had reached a stage maybe in our SOE's, and it was not really the first time that SOE's were, there were concerns that there were problems
10 of corruption in the SOE's, but it perhaps we had reached a stage of accumulation of culmination, let me put it like that.

Of culmination of the problems that were confronting our SOE's so that you know, the system would begin to indicate that there are difficulties here that we now need to deal with, hence the Commission. My being Minister of Public Enterprises was honestly coincidental in this regard, and therefore I also do not accept the proposition that it was because of my complicity, these are
20 people you appointed who did this.

It certainly had nothing to do with that, and I presume those people have come here to explain their roles, and would still maybe in the future be expected to explain their roles in certain instances, but I was not the reason why those things to which they have answered or

will still answer happened.

ADV MYBURGH SC: You see, what I want to put to you in relation to all of those people that I have mentioned, is they all to a greater or lesser extent had become implicated in State Capture and corruption and to a greater or lesser extent took decisions that may be seen to be in favour of the Guptas.

Would you then chalk that down also to an unfortunate coincidence?

10 **MR GIGABA:** Many people knew the Guptas, I am not the only one. Many people knew the Guptas prior to me being Minister of Public Enterprises during my tenure, after my tenure and that does not mean that there was anything wrong that you did with them simply by knowing them.

ADV MYBURGH SC: And then finally I just want to put the proposition to you. Your evidence that you were unaware of what was going on, is improbable because you appointed Mr Masango to be your eyes and ears. He was there. We have seen where he was.

20 We have seen where he popped up. We have seen what he did.

MR GIGABA: Chairperson, Mr Mahlangu himself has denied many of the allegations which had been made against him. I think we should not ignore that fact that there are many things which have been alleged against

him, which he says I did not do this and so on and Mr Mahlangu has himself made an ascertain that I conducted myself professionally in this regard, and so in that case, he has said that there are many things, I think I have said that, which I did ... which are alleged that I did, which I did not do.

Even when he would have been in certain meetings, he has made it clear that but I did not put any pressure here in regard to anything. Mr Mkwanazi says I asked Mr
10 Mahlangu to accompany me so that he would listen in. Mr Khona says Mr Mahlangu was there, but when this thing was put to me that I need to support TNA, I said follow the procurement processes of SAA.

So Mr Mahlangu did what you know, he says. He conducted himself as he says in a professional way. What I had asked him to do was to ensure that he insulates me. Perhaps my concern at being removed from influence and other things, you can say with hindsight perhaps I should have done it differently, but at the time I had asked
20 someone whom I expected because of his legal knowledge would be able to say but the Minister cannot be involved in this, the Minister cannot be involved in that.

There was no instance that Mr Mahlangu came to me and said Minister, can I influence you to influence the following decision in favour of so and so. when he did

come to me, which he said it in his own affidavit and I confirmed, was to bring to me a discussion on strategic policy issues, with people from the legal fraternity, the accounting profession as well as the advertising and marketing agencies.

That marketing and advertising agencies. That much he brought to me. That much we sat and discussed. Not only with the relevant organisations, but with the department. There we were dealing with a policy issue of
10 transformation.

There was no State Capture or any specific transaction which related to a particular person which he brought to me and asked me to influence. He did not do that.

ADV MYBURGH SC: And then just one final point perhaps on that. Was Mr Mahlangu managing the Guptas or was he assisting the Guptas?

MR GIGABA: I had said managed to the extent that they may want, because they were influential in the ANC. They
20 were in many platforms and sessions of the ANC. I had said that look, there are these different stakeholders. Please manage them away from me.

ADV MYBURGH SC: Chairperson, that completes our leading of Mr Gigaba's evidence.

CHAIRPERSON: Okay. No, that is fine. I think what I

was, yes Mr Solomon. I will come back to you just now.

ADV SOLOMON SC: Sorry to interrupt you Chair.

CHAIRPERSON: Yes, Mr Solomon?

ADV SOLOMON SC: Do you want to hear from me now?

Chair, there was just one ...[intervenes]

CHAIRPERSON: No, before ...[intervenes]

ADV SOLOMON SC: Issue I wanted ...[intervenes]

CHAIRPERSON: Before you come in, I will let you come in just now. I wanted to say I was tempted to paint a part of
10 the scenario that I am looking at when it comes to State Capture, but I think I may have already painted it to Mr Gigaba.

Maybe not once, maybe twice and therefore I should not, you know it just concerns that the Guptas may have identified certain people in SOE's maybe government departments as well. Maybe as well as certain ministers and they may have identified Mr Zuma, maybe quite early on before he became actually president, and so to come close to him and make whatever friendship.

20 He gave his evidence and I do not know whether, I cannot remember whether he put it the other way like he was the one using them rather than them using him, but they may have identified certain key people in SOE's, government departments and maybe some minister in certain key political portfolios, and tried to see how they

could achieve whatever they wanted through making use of those connections, with or without those ministers and other people realising.

I do not know, you know. Maybe some would be knowing and some would be you know, complicit. Maybe some might not have realised that they were being used, I do not know, but you just see this situation where you hear Mr Themba Maseko say what Mr AJ Gupta said to him in October 2010.

10 You see how he gets removed from his position and Mr Manyi gets put into this position and Mr Manyi does say well, I had a relationship with the Guptas, I am not apologising for that and I thought it was important. I think it is the black companies or something like that, and the evidence that was given, was included how the sales or money spent on the new age roles by the GCIS or certain government departments after Mr Manyi came in and you have of course during your term Mr Gama, being reinstated as CEO of TFR under very unusual circumstances.

20 I am not saying that that was necessary because of the Guptas, but it is just very strange circumstances. Of course the Commission has heard evidence which he has denied that later on, I think after he was back at some stage that he got some money from the Guptas.

He has denied that. Then you have the new age

saying in December 2010 Mr Brian Molefe is going to be the new CEO of Transnet. It says that at a time when he has not even applied for a position, and he gets nominated by Mr Shama, who is part of the board of Transnet and then in interviews he is number two.

There is somebody else who is number one, but somehow he is the one who gets appointed to be group CEO, and so you sitting in the Commission you try to make sense of all of these things and it is important to ask
10 everyone to make their own input so that if and when any final view is taken, one has the benefit of the views from different witnesses.

But I am not inviting you to say anything because I think I have asked you and you have said unless that is, you feel a particular urge to say anything I am not necessarily asking you to say anything.

MR GIGABA: I think perhaps Chair, not except that it would also be important to check at what stage were certain individual targeted and influenced when prior to
20 their appointment ...[intervenes]

CHAIRPERSON: Yes.

MR GIGABA: Or after their appointment when they were viewed to now occupy critical positions. So ...[intervenes]

CHAIRPERSON: Ja, no the time, I mean all the evidence must be looked at and the question of timing when certain

things happened, who was in certain positions and so on would be an important factor. Okay.

ADV MYBURGH SC: Chairperson, before Mr Solomon addresses you, can I say this?

CHAIRPERSON: Yes.

ADV MYBURGH SC: We I think have one or two questions that we would like to put to Mr Gigaba that can perhaps be dealt with in an affidavit, on non-contentious issues.

CHAIRPERSON: Okay, okay.

10 **ADV MYBURGH SC:** At the same time Mr Gigaba can answer to Ms Rossouw's affidavit.

CHAIRPERSON: Yes.

ADV MYBURGH SC: And then although it is not something that I have discussed with Mr Solomon, we would be happy for Mr Gigaba to then also put in an affidavit dealing with any re-examination that may be required. So we would propose one affidavit, answering our questions and Rossouw ...[intervenes]

CHAIRPERSON: Yes.

20 **ADV MYBURGH SC:** And re-examination.

CHAIRPERSON: Yes.

ADV MYBURGH SC: And then the other point I just wanted to make is you would have noticed that in relation to these various 33 applications, some of them have not yet been determined and on a number of occasions Mr Gigaba has

asked for leave for his statement to be introduced.

When leading him, it has been on the assumption that those statements will be allowed in. Perhaps just to regularise it from a procedural point of view, might I suggest that just before Ms Mangoma gives evidence, I might hand up to you ...[intervenes]

CHAIRPERSON: Ja.

ADV MYBURGH SC: That Chairperson an order that you can then ...[intervenes]

10 **CHAIRPERSON:** Ja.

ADV MYBURGH SC: Or a ruling ...[intervenes]

CHAIRPERSON: Admit them, ja.

ADV MYBURGH SC: That you can then make, just admitting them all. It will be quite a tedious process to go through that now.

CHAIRPERSON: Ja, no that is fine. That is fine. Mr Solomon?

ADV SOLOMON SC: Thank you Chair. I think Mr Myburgh has answered my untimely interjection which I apologise
20 for.

CHAIRPERSON: Yes.

ADV SOLOMON SC: That is in order. We will deal, there is just one question I wanted to deal with in re-examination.

CHAIRPERSON: Yes.

ADV SOLOMON SC: Which we can do by way of an affidavit.

CHAIRPERSON: Okay, okay. No, that is fine. I also had wanted to check with you whether you were going to wish to re-examine or whether you were going to wish to have whatever issues you wish to have clarified, have them clarified by way of an affidavit, but if you are happy with that, then that would be fine.

I think that from my point of view Mr Gigaba
10 ...[intervenes]

ADV SOLOMON SC: Thank you Chair, thank you for that.

CHAIRPERSON: Yes. I think from my point of view, the one thing that I would like you to deal with also, either in the affidavit that is contemplated or in a separate affidavit, is the decision to appoint Ms Myeni as Chairperson of the SAA board.

What it was informed by, and to the extent that you are able to, it would also be helpful to assist me by giving me a picture of the skills spread within the SAA board at
20 the time. What kind of skills and qualifications and experience were possessed by other board members.

I ask that question in particular because the evidence that has been placed before the Commission, suggest that Ms Myeni may have played a very significant role in challenges at SAA, and as I said to you the other

day, one is forced to ask the question how were board members appointed.

How was somebody made the leader of the board, Chairperson of the board. So I ask you to deal with that, because of that context. Ja, okay. Alright. I think we are going to, I am going to excuse Mr Gigaba and Mr Solomon now.

As I understand it we, the only outstanding matter is the, apart from the affidavits that must still come in or
10 affidavit, is the issue of the cross-examination of Ms Mangoma.

ADV MYBURGH SC: Yes.

CHAIRPERSON: Is it now accepted by everybody that is coming up on, is it Tuesday next week or ...[intervenes]

ADV MYBURGH SC: Yes, it is Tuesday, subject to you ...[intervenes]

CHAIRPERSON: Yes.

ADV MYBURGH SC: Informing us at what time ...[intervenes]

20 **CHAIRPERSON:** Yes.

ADV MYBURGH SC: You would be available.

CHAIRPERSON: Yes, I think at this stage let us work on the basis of ten o'clock, but I might indicate and ask that we start earlier if need be. Mr Solomon, you probably do have an idea of how much time you think you will take with,

I think when I granted, usually when I grant leave to cross-examine, I say I will determine the time, the amount of time for cross-examination just before the cross-examination starts.

Do you have an idea, I have worked on the assumption that because most of, a lot of her evidence is evidence that Mr Gigaba says is fabrication, I worked on the basis that you should not take long with her. Have you got an idea of what you think you, how long you might
10 take?

I will still determine, but it would be good to know in advance what your own thinking is.

ADV SOLOMON SC: Yes, certainly Chair. Well I had not thought about it, because I was going to be guided by you, but I thought two hours ...[intervenes]

CHAIRPERSON: Well, if you say two hours that coincides with what I thought you would not exceed. You know, I thought you would either be shorter than that but not exceed that. So maybe we can work on the basis that you
20 would work towards completing it earlier or at least not more than two hours.

ADV SOLOMON SC: Yes Chair, can I say happily that you and I were of the same mind?

CHAIRPERSON: Yes, I think we are. Okay, alright. We will ...[intervenes]

ADV SOLOMON SC: Thank you Chair, no I will try and be less than that, but not more.

CHAIRPERSON: Ja, okay no that is fine. Mr Gigaba, I will excuse you now. I see Mr Myburgh that we are at quarter to one.

ADV MYBURGH SC: Yes.

CHAIRPERSON: Let me excuse Mr Gigaba so he can leave. Yes, okay. What do you propose? We have Brigadier Xaba who must give evidence. He is not cross-
10 examining anybody. He must give evidence at some stage this afternoon.

My recollection is that he should not be long. So we could, if Mr Benjamin is here we could start with him maybe 15 minutes, maybe we go up to quarter past if it is going to take 30 minutes and then take the lunch break after that.

ADV MYBURGH SC: Yes.

CHAIRPERSON: Or break at two, at one o'clock.

ADV MYBURGH SC: Chairperson, if it is in order with you
20 could I propose that Mr Benjamin give evidence now? I am quite sure that his evidence will be less than half an hour.

CHAIRPERSON: Yes.

ADV MYBURGH SC: With your leave, my colleague Ms Seegels Ncube is going to lead Mr Benjamin.

CHAIRPERSON: Yes.

ADV MYBURGH SC: So we just need to shuffle our papers.

CHAIRPERSON: Yes.

ADV MYBURGH SC: But we can certainly, I am sure deal with him in 20 minutes.

CHAIRPERSON: Okay, no that is fine then. Shall I adjourn for five minutes or ...[intervenes]

ADV MYBURGH SC: Thank you Chairperson.

CHAIRPERSON: Yes, we will adjourn for five minutes. We
10 adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: I have greeted everybody who was here in the morning but in case some were not here you are greeted as well. Good afternoon.

ADV SEGEELS-NCUBE: Good afternoon Chairperson.

CHAIRPERSON: And we have not seen you in a long time.

ADV SEGEELS-NCUBE: Yes Chairperson, I have been
20 working behind the scenes, happily so.

CHAIRPERSON: As long as you are still with us.

ADV SEGEELS-NCUBE: Yes.

CHAIRPERSON: Good afternoon Mr Benjamin.

ADV SEGEELS-NCUBE: Chairperson before Mr Benjamin takes the oath I just thought for the benefit of the public

explain what his evidence would be about this afternoon.

CHAIRPERSON: Yes, yes.

ADV SEGEELS-NCUBE: Mr Benjamin is one of the Commission 's investigators dealing with the Transnet stream, and he will be giving evidence today on a review of an MNS Report and his further investigation into the relationship between Mr Salim Essa and Mr Iqbal Sharma who was appointed a Transnet Board member by former Minister Malusi Gigaba at the time.

10 The evidence is largely based on documentation that Mr Benjamin procured as well as a diagram in the MNS presentation which he will take the Commission through.

CHAIRPERSON: Okay, thank you.

ADV SEGEELS-NCUBE: If he may take the...[intervene]

CHAIRPERSON: Yes, please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record?

MR BENJAMIN: Clarence Benjamin.

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

MR BENJAMIN: No.

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

MR BENJAMIN: Yes.

REGISTRAR: Do you solemnly swear that the evidence

you will give will be the truth, the whole truth and nothing but the truth. If so, please raise your right hand and say, so help me God.

MR BENJAMIN: So help me God.

CLARENCE BENJAMIN: [duly sworn, states]

CHAIRPERSON: Thank you.

ADV SEGEELS-NCUBE: Thank you, Chair.

CHAIRPERSON: Hold on, the technicians must just switch off this screen here, okay, yes, continue.

10 **ADV SEGEELS-NCUBE:** Thank you, Chairperson. We will be using Transnet Bundle 7B, this afternoon.

CHAIRPERSON: Yes.

ADV SEGEELS-NCUBE: And I just like to get Mr Benjamin to confirm his affidavits contained in there.

CHAIRPERSON: Ja.

ADV SEGEELS-NCUBE: Mr Benjamin, if you could go to Transnet Bundle 7B, page 1178.

MR BENJAMIN: I am on 1178.

ADV SEGEELS-NCUBE: And if you could go to page 1183.

20 **MR BENJAMIN:** 1183, yes.

ADV SEGEELS-NCUBE: Do you confirm that this is your affidavit?

MR BENJAMIN: I do.

ADV SEGEELS-NCUBE: And on page 1182, do you confirm that that is your signature?

MR BENJAMIN: 1182, yes that is my signature.

ADV SEGEELS-NCUBE: Do you confirm the correctness and truthfulness of your affidavit?

MR BENJAMIN: I do.

ADV SEGEELS-NCUBE: And then if we can just deal with the annexures from page 1185 to page 1199.

MR BENJAMIN: Yes.

ADV SEGEELS-NCUBE: Do you confirm that those are the annexures to your affidavit?

10 **MR BENJAMIN:** I do.

ADV SEGEELS-NCUBE: And then there is the second affidavit that you deposed, which is a supplementary affidavit on page 1200, can you go there please?

MR BENJAMIN: I am there.

ADV SEGEELS-NCUBE: To page 1203.

MR BENJAMIN: I am there.

ADV SEGEELS-NCUBE: Do you confirm that this is your supplementary affidavit?

MR BENJAMIN: I do.

20 **ADV SEGEELS-NCUBE:** Do you confirm on page 1202 that that is your signature?

MR BENJAMIN: I do.

ADV SEGEELS-NCUBE: Do you confirm the correctness and truthfulness of this affidavit?

MR BENJAMIN: I confirm that.

ADV SEGEELS-NCUBE: and then insofar as the annexures are concerned from page 1205 until page 1215, do you confirm that those are the annexures to the supplementary affidavit?

MR BENJAMIN: I confirm that.

ADV SEGEELS-NCUBE: Okay, thank you Chairperson if these affidavits could be admitted into the bundle as Exhibit BB30.

CHAIRPERSON: Take on – let us take one at a time and
10 we will have it admitted and then the next one.

ADV SEGEELS-NCUBE: Okay.

CHAIRPERSON: Which one do you want us to start with?

ADV SEGEELS-NCUBE: The first affidavit on page 1178.

CHAIRPERSON: What should we mark that one as the exhibit ones?

ADV SEGEELS-NCUBE: BB30.1.

MR BENJAMIN: And the affidavit of Mr Clarence Sydney Benjamin, that starts at page 1178 is admitted as an exhibit and will be marked as Exhibit BB30.1 together with,
20 oh there and no annexures with it?

ADV SEGEELS-NCUBE: The annexures are included in this it is until page 1199, Chair.

CHAIRPERSON: Two, together with its annexures, okay is the next one, the one at 1200?

ADV SEGEELS-NCUBE: Yes, Chairperson, that is the

supplementary affidavit, Chair it is until page 1203.

CHAIRPERSON: So, this one will be BB30.2?

ADV SEGEELS-NCUBE: Correct Chairperson.

CHAIRPERSON: The supplementary affidavit of Mr Clarence Sydney Benjamin, that starts at page 1200 is admitted together with its annexures and will be marked as Exhibit BB30.2.

ADV SEGEELS-NCUBE: Thank you, Chairperson.

CHAIRPERSON: And those are the only two?

10 **ADV SEGEELS-NCUBE:** Those are the only two affidavits, Chair.

CHAIRPERSON: Okay, alright.

ADV SEGEELS-NCUBE: Mr Benjamin if we could start with the first affidavit which is on page 1178. Are you there? Can you just return your microphone, are you there?

MR BENJAMIN: I am there.

ADV SEGEELS-NCUBE: Okay. Can you just explain to the Chairperson how it came about that you prepared this affidavit?

20 **MR BENJAMIN:** Yes, Chairperson, I was requested by the Evidence Leader with the Transnet stream to verify the accuracy of MNS report that was prepared on October 2018, and specifically, the aspects of the MNS report that dealt with the conflict of interest regarding the state with Sharma and Mr Salim Essa and that is where I started, you

know, just to verify the accuracy of the information contained in the MNS report.

ADV SEGEELS-NCUBE: And just for clarity, your affidavit does not necessarily deal with the conflict of interest. It simply deals with the business relationship between Mr Sharma and Mr Essa.

MR BENJAMIN: That is correct, yes.

ADV SEGEELS-NCUBE: You make no findings about any conflict of interest?

10 **MR BENJAMIN**: No.

ADV SEGEELS-NCUBE: Okay, correct. If we can then proceed with the affidavits in particular at page 1179 we are operating with the black numbers. There you set out what you have just indicated to the Chairperson now about how it came about that you investigated as the - you prepared this affidavit. Now, in particular, you refer to at the foot of the page, paragraph 8 referred to an annexure CB1 that would be the extract from the MNS report, is that correct?

20 **MR BENJAMIN**: That is correct, yes.

ADV SEGEELS-NCUBE: If we can then go to Annexure CB2 – in fact CB3 which is the relevant annexure that you want to take the Chairperson through, that is to be found on page 1199 Chairperson. Can you identify this document for the record?

MR BENJAMIN: This document on page 1199 is an extract from a presentation given by MNS and for the purpose of my affidavit, I used this as a background because it is a good diagram explaining the co-directorship and the co-shareholding in the various companies for both Mr Essa and Mr Sharma.

ADV SEGEELS-NCUBE: Okay, and keeping your hand on that page if we can go to page 1180. That is where you deal with the business relationship between Mr Sharma and
10 Mr Essa, is that correct?

MR BENJAMIN: That is correct, yes.

ADV SEGEELS-NCUBE: Can you just set out for the Chairperson the various companies that you identified where there is a business relationship between the two?

MR BENJAMIN: Yes, Chairperson on page 1180 on paragraph 11 I have listed six companies in which Mr Sharma and Mr Essa had a share interest either as co-directors or co-shareholders, and I have listed them in paragraph 11 and I will just go through the list and I will go
20 into detail at a later stage.

The companies are Agrasolve Pty Ltd, VR Laser Services Pty Ltd, VRLS Properties Pty Ltd, Essa Capital Pty Ltd and over the page on 1181, the National Agricultural Development Project Pty Ltd and lastly, a company called Taku South Africa Pty Ltd.

ADV SEGEELS-NCUBE: Okay, can we then go back to our diagram on page 1199 and perhaps let us start with Agrasolve and in particular, the second - the first block in blue where it deals with Mr Essa and Mr Sharma's directorship, if you could just read that into the record.

MR BENJAMIN: Yes, Chair the diagram on page 1199 the block indicating Agrasolve Pty Ltd it is stated there that Mr Essa was the active director in that particular company and Mr Sharma declared the 50% interest in Agrasolve on the
10 28th of the 2nd, 2013.

ADV SEGEELS-NCUBE: Okay, now if we can go to the supporting documents in respect of that on page 1192, which is Annexure CB2 of your first affidavit.

CHAIRPERSON: What is the page number?

ADV SEGEELS-NCUBE: Page 1192 Chairperson.

CHAIRPERSON: Thanks.

ADV SEGEELS-NCUBE: Can you identify this document for the record?

MR BENJAMIN: Yes, this is the subsidiary report for
20 Agrasolve Pty Ltd and it indicates who the directors were in that particular company, on particular time periods.

ADV SEGEELS-NCUBE: Who prepared this report, who extracted this report?

MR BENJAMIN: Sorry?

ADV SEGEELS-NCUBE: Who extracted this report from

the...[intervene]

MR BENJAMIN: I extracted this report from the subsidiary records.

ADV SEGEELS-NCUBE: Okay and what does it indicate?

MR BENJAMIN: It indicates in the middle of that particular page Chair that the active director there in the Agrasolve is Salim Aziz Essa and he was appointed on the 2nd of the 12th, 2013 which reconciles with the diagram on page 1199 which we referred to.

10 **ADV SEGEELS-NCUBE:** Okay, and then in respect of Mr Sharma, Annexure CB4, which is on page 1205, Chairperson.

CHAIRPERSON: 1205.

ADV SEGEELS-NCUBE: 1205.

CHAIRPERSON: Okay.

ADV SEGEELS-NCUBE: Can you identify this document?

MR BENJAMIN: Ye, Chair the document on page 1205 is the declaration of interest in contracts submitted by Mr Sharma to the Transnet corporate secretariat and I
20 obtained this document from the corporate secretariat at Transnet.

ADV SEGEELS-NCUBE: Now, what is the date when is it signed by him?

MR BENJAMIN: This is signed on the 28th of February 2013.

ADV SEGEELS-NCUBE: And what is it that you want to identify on this document?

MR BENJAMIN: What is the one identifying this document is just above, where Mr Sharma indicates his interest in Agrasolve Pty Ltd under the column percentage he indicates a 50% interest in Agrasolve Pty Ltd which again reconciles with the diagram on page 1199, the block relating to Agrasolve Pty Ltd.

ADV SEGEELS-NCUBE: And what is the date of
10 appointment identified by Mr Sharma for the Agrasolve Pty Ltd?

MR BENJAMIN: Sorry, Chair?

ADV SEGEELS-NCUBE: What date of appointment does he identify in his conflict, declaration of interest, it is the second last column.

MR BENJAMIN: 2012.

ADV SEGEELS-NCUBE: Then if we can go back to the diagram on page 1199 and to the right of the block that we were dealing with, if you could just explain about the
20 ownership of the shares of Agrasolve?

MR BENJAMIN: Yes, Chair Agrasolve owns 74.9% of the shares in a company called VR Laser Services Pty Ltd and we will look at the block on the right hand side of that page that Mr Essa was the active director of VR Laser Services Pty Ltd from the 14th of January 2014.

ADV SEGEELS-NCUBE: Okay, if we can first just deal with the first submission that you made, which was that Agrasolve own 74.9% shares in VR Laser, if we go to CB5 of your supplementary affidavit on page 1207.

MR BENJAMIN: Yes.

ADV SEGEELS-NCUBE: Can you identify this document?

MR BENJAMIN: Yes, this is a share register for VR Laser Services Propriety Ltd.

ADV SEGEELS-NCUBE: And what does it indicate?

10 **MR BENJAMIN:** It indicates Chair, on the far right column of the share register that in the third row that Agrasolve Propriety Ltd owned 749 shares in VR Laser Services and if you look at the total shares on page 12909, the issued capital of VR Laser Services is 1000 which means that Agrasolve owns 74.9% of the shares in VR Laser Services Propriety Ltd, which again reconciles with the diagram on page 1199.

ADV SEGEELS-NCUBE: Okay, and then if we go back to the diagram on page 1199, the next block is what you just
20 told us about now VR Laser Services and that Mr Essa is an active director. In that regard, can we go back to Annexure CB2 of your original affidavit and that is on page 1193.

MR BENJAMIN: I am there.

ADV SEGEELS-NCUBE: Can you again, identify this

document?

MR BENJAMIN: Yes, Chair this is again an extract from a subsidiary report for VR Laser Services that I extracted from the database of the subsidiary company.

ADV SEGEELS-NCUBE: And what does it indicate?

MR BENJAMIN: Chair, in the middle of that extract under active directors, the first director that is mentioned there is Salim Aziz Essa and this date of appointment is the 14th of January 2014, which again reconciles with the diagram on
10 page 1199.

ADV SEGEELS-NCUBE: Okay, and then back to the diagram on page 1199. If we look at - to the left of the first block, which says Agrasolve owns 80% shares in NADP Pty Ltd, what is NADP Pty Ltd?

MR BENJAMIN: It is the National Agricultural Development Program, company.

ADV SEGEELS-NCUBE: Okay and in that regard, you indicated that in NADP if you can just read into the record the block that refers to NADP active directors?

20 **MR BENJAMIN:** Yes, the active directors in NADP was Mr Sharma from the 7th of the 11th, 2013 and Mr Essa from the 7th, of the 11th, 2013.

ADV SEGEELS-NCUBE: And in that regard, can we then go back to CB2 page 1196 and on page 1196.

MR BENJAMIN: I am there.

ADV SEGEELS-NCUBE: Okay, on page 1196 can you identify this document?

MR BENJAMIN: This is again an extract from the database from the subsidiary and I have extracted the subsidiary report for the National Agricultural Development Project.

ADV SEGEELS-NCUBE: And can you tell us what does it indicate?

MR BENJAMIN: At the bottom the last paragraph on that
10 page discloses of the active directors in the NADP which are Mr Salim Aziz Essa appointed on the 7th of the 11th, 2013 and Mr Iqbal Meer Sharma also appointed on the 7th of the 11th, 2013, which again reconciles with the diagram on page 1199.

ADV SEGEELS-NCUBE: Okay, and in respect just back to page 1199, you then also deal with Agrasolve shares in NADP.

MR BENJAMIN: Correct, yes that Agrasolve on page 1199 indicated that Agrasolve owns 80% of the shares in NADP.

20 **ADV SEGEELS-NCUBE:** And in that regard, can we go to Annexure CB6 in your supplementary affidavit which is on page 1211.

MR BENJAMIN: I am there.

ADV SEGEELS-NCUBE: Okay and can you identify this document for us?

MR BENJAMIN: Yes, again Chair that is also an extract of the share register for the National Agricultural Development Project Pty Ltd.

ADV SEGEELS-NCUBE: And where do we see the ownership of Agrasolve?

MR BENJAMIN: That will be in the second block of page 1211 it states say there that Agrasolve Propriety Ltd in the far right hand corner owns 80% or 80 shares in the NADP and if one goes to the last page of the share register which
10 is on page 1213 the total issued share capital of NADP is 100 which means that Agrasolve owns effectively 80% of the shares in NADP.

ADV SEGEELS-NCUBE: Okay and then if we go back to our diagram on page 1199.

MR BENJAMIN: I am there.

ADV SEGEELS-NCUBE: There is the block dealing with Essa Capital.

MR BENJAMIN: Correct, Essa and it indicates there that the active directors in Essa Capital are from the 17th
20 December 2010 to the 22nd of May 2014 is Mr I Sharma.

ADV SEGEELS-NCUBE: Okay, in that regard, can we go to CB2 of your original affidavit on page 1195.

MR BENJAMIN: I am there.

ADV SEGEELS-NCUBE: Can you again identify the document and tell us what it depicts?

MR BENJAMIN: It is again an extract that I made from the subsidiary records and this extract relates to a company called Essa Capital.

ADV SEGEELS-NCUBE: And what does it depict?

MR BENJAMIN: It indicates the second last block on that page that the director of the company is Mr Iqbal Meer Sharma, he was appointed on the 17th of the 12th 2010 and he resigned on the 22nd of May 2014.

ADV SEGEELS-NCUBE: Okay, and then back to page
10 1199, you then deal with Essa Capital's ownership in VR Laser Properties.

MR BENJAMIN: Yes.

ADV SEGEELS-NCUBE: And what does the diagram indicates?

MR BENJAMIN: The diagram indicates that Essa Capital owes 100% of the shares in VRL Properties.

ADV SEGEELS-NCUBE: And in that regard, can we then go to Annexure CB7 in your supplementary affidavit on page 1215, can you just identify that document?

20 **MR BENJAMIN:** Yes, Chair this is the share certificate issued by VRLS Properties.

ADV SEGEELS-NCUBE: And what does it indicate?

MR BENJAMIN: It indicates that Essa Capital owns a 100 shares in VRLS Properties.

ADV SEGEELS-NCUBE: Okay, and then in so far as Essa

Capital - back to page 1199 my apologies, to the left of the block dealing with Essa Capital there is also its ownership in NADP, can you indicate what that says?

MR BENJAMIN: Sorry, just repeat that question?

ADV SEGEELS-NCUBE: NADP, Essa's...[intervene]

MR BENJAMIN: Oh, yes Essa Capital owns 20% of the shares in NADP.

ADV SEGEELS-NCUBE: If we can then go to ...[loss of audio 00.25.54 to 00.30.00 – Session 3 Part 2 – no audio up to 00.01.00]

10

CHAIRPERSON: ...the allegations against them maybe could be done so that one would be able to say when one could look at certain transactions that are tainted had happened during certain periods and look at who the Board members were and see if they had interest in certain entities where one could do that with Eskom, Denel and I know for example with Denel that – at least I think according to the MNS report there were certain members who had some interest connected with the Gupta Family or entities but one would like to have a clear picture and I would imagine that it shouldn't be a job that would take too much but you would know better.

20

MR BENJAMIN: No I am talking specifically about the Transnet stream Chair but I mean various other streams have done similar exercises so it is not that we have to do

an exercise like that from scratch, I think a lot of the information is available, one just needs to consolidate it into one report or something.

CHAIRPERSON: Yes, well the Transnet work stream, legal team is listening you are here, I think the issue could be looked at and you could share the information with the head of the investigation team but I think it would be good to have that situation, something along those lines. The physical one could have an affidavit like this in regard to
10 each SOE work stream, I mean SAA, SABC I know that the members of the legal team relating to those might no longer be around, but there are lots of things that the investigation team is able to do on their own, but Eskom definitely, Denel definitely, and Transnet you have already done, but you focused on Mr Sharma here only and I don't know whether that is because we didn't do the others or you did do them but there was nothing, but it would be good to have some picture, even if it didn't cover everybody, so if it can be done, I know it is late in terms of
20 our timeframes but whatever can be done might be helpful, if it is possible.

Okay, alright.

MR BENJAMIN: Thank you Chair.

ADV SEGEELS-NCUBE: Thank you Chairperson.

CHAIRPERSON: Thank you, you are now excused.

Thank you for availing yourself to assist. We will take the lunch adjournment now, you will not be coming back?

ADV SEGEELS-NCUBE: No Chairperson Mr Myburgh will take over.

CHAIRPERSON: Well I think even he won't be coming back.

ADV SEGEELS-NCUBE: Won't be coming back.

CHAIRPERSON: Ja, and I guess he is - he must be happy, he has been on his feet these days for very long periods, okay alright, we will take the lunch adjournment and we will resume at twenty five, past, let me just make it half past two, that is when we will hear the evidence of Brigadier Xaba I think.

We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Good afternoon Mr Hulley and good afternoon everybody.

ADV HULLEY SC: Good afternoon Mr Chairperson.

20 **CHAIRPERSON:** Are we ready?

ADV HULLEY SC: We are ready to proceed.

CHAIRPERSON: Yes.

ADV HULLEY SC: Mr Chairman today is the evidence of Brigadier Xaba. He was implicated by Major General Booyesen and Mr Innocent Khuba. He has deposed to

affidavits which are before the commission. They form part of the LEA9 bundle that should be before you. So he has been given leave to come and testify but no other – no leave in respect of anything else. Thank you Mr Chairman.

CHAIRPERSON: Good evening Brigadier Xaba. Good afternoon.

BRIGADIER XABA: Evening Chairperson. Good afternoon.

CHAIRPERSON: We allocated a date for you and time for you to come and testify and be questioned even though
10 there might have been reasons to say maybe this should not be pursued but I think the difficulty was that you had already been granted leave.

Now the reason why I am saying there might have been a reason to say this should not be pursued is that your evidence would fall within the allegations that are made in connection with personnel in law enforcement agencies and I indicated last week when we had a lot of applications for leave to cross-examine in regard to law enforcement agency personnel that there might be no sound reason to pursue
20 those cross-examinations in the light of the fact that the commission will make recommendations for matters relating to law enforcement agencies to be dealt with through another process or forum or separate inquiry as provided for in the Terms of Reference of the commission.

But because you have – you had already been

granted leave you were one of the people that I thought might feel aggrieved if you were not called because you might feel you wanted to respond to allegations that had been made against you.

So I am giving you this explanation so that you understand but also so that others who are in – who fall within the law enforcement agencies would understand how come you are here and you will be giving evidence when others have been told that there might not be much purpose
10 in pursuing that.

You understand.

BRIGADIER XABA: I understand Chairperson.

CHAIRPERSON: Yes. Okay. You do wish to give evidence and to deal with whatever questions you may be asked, is that right?

BRIGADIER XABA: That is correct Chairperson.

CHAIRPERSON: Yes. Okay all right. Mr Hulley.

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: Maybe for the benefit of the public you
20 can indicate what the context of Brigadier Xaba's evidence and questioning will be and what topics will be covered.

ADV HULLEY SC: Thank you Mr Chair. Mr Chair Brigadier Xaba was as I indicated at the outset implicated by Major General Booyesen and he was also implicated by Mr Innocent Khuba insofar as Mr – insofar as Major General Booyesen is

concerned he raised in effect what were three topics only one of which I will pursue today.

One is – one related to Mr – the arrest of Mr Vlok Symington and I understand that Brigadier Xaba has been informed that because that falls under the SARS work stream that it would not be pursued and he has been asked if he would agree to that and he has in fact through his attorney sent correspondence to that effect.

That is in the case I will not pursue the allegations
10 relating to Mr Vlok Symington. Then there is the investigation into the case of Mr McBride, Mr Khuba and Mr Sesoko and that related to allegations of their alteration of a report which led to charges of defeating the ends of justice and – and fraud.

Insofar as that is concerned the issue has been dealt with quite extensively before the commission. The people that were behind the formulation of those charges who form part of the NPA officials they have been asked to agree and have in fact been afforded the opportunity to
20 provide summaries but have been told pursuant to – to an instruction given by yourself Mr Chairperson that they will – they will – no final decision will be made against them or findings will be made against them.

That being the case I think that insofar as Mr – insofar as Brigadier Xaba is concerned that it would be

pointless trying to cross-examine him on issues that relate to the – to people that were above him and when I say above him it is people who made the decisions not – they were in different departments as it were.

And then there is the one issue that I will pursue with him and that is the issue relating to an allegation made by Mr – or rather by Major General Booyesen who questioned the reason as to why he had been appointed or his unit had been appointed to deal with the investiga – some of the
10 investigations because they did not typically fall within the parameters of the problems of his unit and that is the crimes against the state. So I would ask him questions relating to that.

CHAIRPERSON: Okay no that is all right. You understand what Mr Hulley has just said Brigadier?

BRIGADIER XABA: Yes Chairperson.

CHAIRPERSON: If he said that there are issues that he will not ask you questions on if you feel that one of the – one or more of the matters that he is not intending to cover are
20 matters where you would like to put your side of the story do indicate and – and then I can give you a chance to deal with that. You understand.

BRIGADIER XABA: I understand Chairperson.

CHAIRPERSON: Okay all right.

BRIGADIER XABA: Yes.

CHAIRPERSON: Yes okay all right. Let us do the oath now or affirmation.

REGISTRAR: Please state your full names for the record.

BRIGADIER XABA: Yes.

REGISTRAR: Please state your full names for the record.

BRIGADIER XABA: I am Nyameka Xaba.

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

BRIGADIER XABA: No objection.

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

BRIGADIER XABA: That is correct.

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

BRIGADIER XABA: So help me God.

CHAIRPERSON: Thank you. Okay Mr Hulley.

20 **ADV HULLEY SC:** Thank you Mr Chair. Brigadier Xaba if you could turn with me to a bundle which is marked LEA9. You have the bundle Sir.

BRIGADIER XABA: Yes I do have the bundles.

ADV HULLEY SC: If you looked – turn to page 6 of that bundle.

BRIGADIER XABA: Page 6. Yes.

ADV HULLEY SC: If you could hold that page open and turn with me to page 34 of the same bundle.

BRIGADIER XABA: Page 34.

ADV HULLEY SC: Pardon me my ...

BRIGADIER XABA: Where actually it says.

ADV HULLEY SC: My apologies. It is page 24 my sincere apologies.

BRIGADIER XABA: Yes page 24 yes.

ADV HULLEY SC: Now there is a signature on that page
10 above the word deponent, is that your signature?

BRIGADIER XABA: That is correct Chairperson.

ADV HULLEY SC: And is this document your affidavit?

BRIGADIER XABA: That is my affidavit.

ADV HULLEY SC: Thank you very much. And do you see the – or do you – do you confirm that the contents of this affidavit are true and correct to the best of your knowledge?

BRIGADIER XABA: Yes that is correct.

ADV HULLEY SC: Thank you very much. Mr Chair this – this is part of the old series but I would ask that you mark
20 this as Exhibit Y9.1 or if you have it admitted as Exhibit Y9.1.

CHAIRPERSON: The affidavit of Mr Nyameka Xaba which starts at page 6 of Bundle LEA9 is admitted and will be marked as Exhibit – what exhibit?

ADV HULLEY SC: Y9.1

CHAIRPERSON: Y9.1.

ADV HULLEY SC: And it includes annexures Mr Chair.

CHAIRPERSON: Together with its annexures.

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: Okay all right.

ADV HULLEY SC: Now Brigadier Xaba if I understand correctly the – some of the allegations that have been made against you specifically by Major General Booysen relate to the work that was performed by the unit within the DPCI of
10 which you were a part. Is that correct? Is that your understanding as well?

BRIGADIER XABA: That is correct.

ADV HULLEY SC: Now just to be specific the DPCI is the directorate for priority crime investigations which is commonly referred to as the Hawks, is that correct?

BRIGADIER XABA: That is correct.

ADV HULLEY SC: When did you join this unit – the DPCI that is?

BRIGADIER XABA: I joined the unit actually the DPCI I
20 joined the DPCI in 2009.

ADV HULLEY SC: And when – and you were a member of the unit or you were the head of the unit crimes against the state, is that correct?

BRIGADIER XABA: Yes from 2011.

ADV HULLEY SC: Now just explain to us very briefly the

various components and how each of these components fit together and how you fit into that structure within the DPCI?

BRIGADIER XABA: The DPCI by that time was having a structure that is not the same like now where having a structure from 2014/15/16/17/18 but now we have got a new structure. But now I am going to deal with the structure of 14/15/16/17/18.

According to the DPCI structure at the head there the top we were having a national head of the directorate of
10 priority crime investigation unit. Under the National head we were having another layer of the component heads. I do not want to put the Deputy National head because the Deputy National head is dealing with administrative issues. I want only to confine myself on the operational issues.

From the national head having five components. The first one was serious organised crime. The second one was priority crime centre. The third one was serious corruption and the fourth one – hello.

ADV HULLEY SC: I think you meant serious anti-
20 corruption.

BRIGADIER XABA: The fourth one was serious commercial – yes – and then the fifth one was priority crime management centre.

ADV HULLEY SC: I think you have left one out. You have mentioned priority crime management centre twice. I think

you meant the financial asset forfeiture investigations, is that correct?

BRIGADIER XABA: Yes we call it 00:15:55 by that time yes.

ADV HULLEY SC: Very well. And then below the – within each component there were different sections, is that correct?

BRIGADIER XABA: That is correct. I will just deal only with the different sections under serious organised crime
10 where actually I am working.

ADV HULLEY SC: So you – the crimes against the state was one of the sections under that component. Is that right?

BRIGADIER XABA: Under serious organised crime.

ADV HULLEY SC: And what were the others?

BRIGADIER XABA: We were having operations. Another one policy standards and procedures.

ADV HULLEY SC: Very well. Now when we speak about serious organised crime what do we – within the DPCI
20 language of course what do we mean by serious organised crime? I would imagine in the first place that is has got to be serious and in the second that it has got to be organised crime, is that correct?

BRIGADIER XABA: Yes before actually it was organised crime that time but now it serious organised crime.

ADV HULLEY SC: Well at the time and we are talking now specifically in the period of 2016 which is the period to which these allegations against you relate. Was it called serious organised crime at the time?

BRIGADIER XABA: Yes.

ADV HULLEY SC: Or was it simply called organised crime?

BRIGADIER XABA: It was serious organised crime.

ADV HULLEY SC: Now could you just give us a brief indication of what was meant and what were the type of
10 investigations that would be conducted under serious organised crime?

BRIGADIER XABA: Just to – sorry – just to give a background. The DPCI actually was established through Section 17 of the Police Act whereby our functions are very defined. I will just go straight to Section 17D whereby they are telling us what are the functions of DPCI.

According to that Section 17D that 17D talks about a national priority offences that must be investigated by the DPCI. The section also gives the national head a discretion
20 on what prerogative to decide which cases must be investigated by the DPCI.

Although in Section 17B they are saying we will be dealing with national priority offences in particular serious organised crime, serious commercial and serious corruption. But that 17D is explaining more what actually

the core functions of the DPCI whereby it is saying we will be investigating national priority offences which at the discretion of the national head will be assigned to a relevant component or section to deal with those crimes.

And we are not talking about the crimes against the state now not the whole mandate of the DPCI. We as crimes against the state we investigate any criminal conduct that impacts into the security of the Republic of South Africa and its territorial integrity including national priority
10 offences.

That is why I want to go straight to our mandate because the issue here according to the people who are implicating me or the office I am working from they are saying we were not supposed to investigate the cases that we were investigating of which I do not agree with them.

ADV HULLEY SC: And I appreciate that. But I want to take it one step at a time less we eventually lose alignment with each other and we do not follow what you saying. I am worried about serious organised crime. I want to know
20 would it be fair to say that if we talking about serious organised crime that the crime must in the first instance be organised crime and in the second instance must be serious organised crime. Would that be fair to say?

BRIGADIER XABA: Yes it should be like that but if you take the CATS mandate it is saying the CATS mandate is

the exclusive mandate of the DPCI irrespective of the complexity or triviality of the crime it must be investigated by the crimes against the state which means if that case is in the public interest we must irrespective of whether it is a minor or the perpetrator is someone who is known or not known but it is in that public space we must investigate that case.

ADV HULLEY SC: Well...

BRIGADIER XABA: In terms of the National Priority
10 Offence Definition.

ADV HULLEY SC: Are you – and lest I misunderstand you are you suggesting that as the – as the CATS unit or the CATS section you have got to investigate even crimes that the police are – ordinary police officers within the broader South African Police Service are required to investigate as well.

BRIGADIER XABA: No it is not like that. It depends. As I said we look at the priority of the case. As I said National Priority Offence.

20 **ADV HULLEY SC:** Yes.

BRIGADIER XABA: That actually is in the public interest as well as the position of trust of those people who are involved irrespective of the complexity of the case.

ADV HULLEY SC: So the complexity of the case is irrelevant if it involves somebody of which is – who is

regarded as high priority then that would warrant an investigation into the person or warrant an investigation by the CATS unit – section into that person. Is that what you saying?

BRIGADIER XABA: Well I say we look at the case and then we check actually the case how it fits in the society.

CHAIRPERSON: Maybe it is going to speed things up maybe Mr Hulley if you let him – you tell him what the evidence who is against him that was given and let him put
10 up his version and see whether the issue about whether it falls within the mandate or not at a factual level comes up.

ADV HULLEY SC: Thank you Mr Chair. Now Mr...

CHAIRPERSON: Because the main purpose of today is to let him put his side of the story.

ADV HULLEY SC: Indeed. You will recall of course that one of the people who will – who implicated you was Major General Booyesen.

BRIGADIER XABA: That is correct

ADV HULLEY SC: And he says now you also recall that
20 Major General Booyesen was himself a member of the Hawks. Is that correct?

BRIGADIER XABA: He was.

ADV HULLEY SC: Now as a member of the Hawks I would imagine that he is familiar with the – with the National – with the mandate of the CATS unit and he is familiar with

the mandate the broader mandate of the Hawks. Would that be fair to say?

BRIGADIER XABA: I do not know that one I cannot answer for him or 00:25:01 for him if he is aware of the mandate for CATS.

ADV HULLEY SC: Well he says...

BRIGADIER XABA: Because the CATS by that – sorry and then the CATS by that time was at the national level not in the provinces.

10 **ADV HULLEY SC:** Thank you Mr Chair. Mr or rather Major General Booyesen says the following of – of your investigation. He says he finds it unusual that a person a Brigadier who is in charge of the Hawks crimes against the state would involve himself in a – with a complaint from SARS he is now talking about the Vlok Symington investigation and the larger SARS investigation and the commissioning of statements of Ms Jiba in civil litigation against me.

20 So what he is saying is that in his understanding of the type of work that you would be doing he finds it rather surprised and shocking perhaps that you would be involved in an investigation relating to SARS or any of the other investigations that you were involved in – that you have specifically been implicated in.

BRIGADIER XABA: Thank you very much Sir. That

accusation by General Booysen that we were involved in the investigation of SARS I want to prove that the way he thought is not the way we also thought – thought about the case. The case of SARS when it was opened it was opened by the SARS commission and then that case it was having various charges or crimes for that charge or the case whereby there was espionage, money laundering, racketeering, 00:27:21 of intelligence legislation including corruption. That case with no doubt falls under our
10 mandate. I say it to understand Sir you were not supposed to attend to that case and secondly we as the CATS or the DPCI we do not choose who is the complainant, who is the suspect. We treat people equally. What we do we only investigate. After we are done with the investigation we take the docket to NPA to decide. Furthermore if we investigate we request the prosecutor assist in the investi – I mean to say by means of guiding the prosecution. But that case of SARS it falls within or it fell within our mandate.

20 **ADV HULLEY SC:** Now just to get back to the mandate if we might. The – the crimes against the state would presumably include an investigation into crimes such as terrorism, would that be correct?

BRIGADIER XABA: Yes in terms of our – there is another act actually that we actually deal with all the contraventions

that – in that act we call it 00:29:02 Prevention of Constitutional Democracy against terrorism activities. If we can underline terrorism and associated activities it goes away from the word terrorism that protocol. So if they do not understand the terrorism and the 00:29:29 I do not understand why now they are implicating my knowledge.

ADV HULLEY SC: Sorry but what is it that they should understand about those acts?

BRIGADIER XABA: They must understand what is – what
10 is meant by the 00:29:49. As I have alluded earlier that we investigate any criminal conduct that impacts to the security of this country and then are also also used in other acts, including the protection of constitutional democracy against terrorists and other associated activities, not ...[indistinct] [Speaker unclear – distortion in video link]

ADV HULLEY SC: Now getting specifically – or coming specifically to the investigation against Mr Kuba, Mr Sesoko and Mr McBride. What are the charges there? What charges, what crime or alleged crime are you
20 investigating?

BRIG XABA: The charges there were fraud and defeating the end of justice.

ADV HULLEY SC: And how did that fall within your mandate?

BRIG XABA: The way the docket was channelled to us. I

went through the docket, and I could see the docket falls within our mandate. Why I am saying that. It emanated from that case of Zimbabwe/Rhodesian case. Should that case that was investigated by IPID, I want to say the people who were involved or who were suspects, who were not the DPCI members or SAS members, would have taken that docket.

But since all the acts that are actually wrong that are committed by the SAPS are investigated by IPID, it was
10 confiscated by IPID but that case, as I said earlier, it emanates – no one could investigate that case other than us. And the referral of that case was referred to the national head by the minister. [Indistinct] would not take that case back to the station level and look at the people who were being investigated. They are in a position of trust.

ADV HULLEY SC: Sorry, which – when you say that case and I remember you have just identified two different cases. There is the defeat and the ends of justice against
20 the IPID officials and then you spoken about the rendition phase, but the rendition phase does not involve the IPID officials although they were investigating that case. So, to which case you say clearly falls within your mandate of the two?

BRIG XABA: The fraud and the defeating. As I said,

emanates from the Rendition(?) case. The Rendition(?) that was going to be investigated by us, if the people who were involved there were not the SAPS members, if the people who were involved were not SAPS members, we were going to investigate that case.

Now this one of fraud and defeating, it emanates from that Rendition case. That is why it was referred to our office for investigation. I see nothing that was sinister for taking that case and investigate. And further, if you are
10 given a task by the national heads through the proper channels, we have to comply with the South African Police Services. My core function is to investigate any alleged offence in South Africa in terms of the constitution.

So, if I am even now tasked by my superior – at the police services, you do not defy the instructions. As long they are unlawful we have to comply. I complied and I have seen that the case was in the right unit to be investigated.

ADV HULLEY SC: Were you investigating ...[intervenes]

20 **BRIG XABA:** ...if you can say that your general I cannot investigate this case because it is not my mandate. You do not work like that.

ADV HULLEY SC: Yes. Were you investigating the officials?

BRIG XABA: [Indistinct]

[Parties intervening each other – unclear]

ADV HULLEY SC: Pardon me. Sorry, are you finished?

BRIG XABA: No, I do not investigate ...[indistinct]
[Speaker unclear – distortion in video link] ...but Mr Kuba
said I was complicit to that investigation of which I deny
that.

ADV HULLEY SC: Sorry, can I – let me repeat my
question because I am not sure – I think we were speaking
over each other. Were you investigating the Rendition
10 matter as well?

BRIG XABA: No.

ADV HULLEY SC: So, I am just struggling to understand.
I understand your point that the allegations of fraud and
the allegations of defeat and the ends of justice arose out
the Rendition matter?

BRIG XABA: [Indistinct]

[Parties intervening each other – unclear]

ADV HULLEY SC: But if you want to investigate the
Rendition matter, I do not understand why you were
20 responsible to investigate the defeat and the ends of
justice and the fraud case.

BRIG XABA: I said the fraud and defeating emanates
from the Rendition case that would have been investigated
by us if the people who were involved were not SAPS
members. And then two, the IPID members were involved

in that Rendition case cannot investigate themselves. Who must investigate IPID?

ADV HULLEY SC: When you say if they were not SAPS members, S-A-P-S members?

BRIG XABA: When I say SAPS, I mean S-A-P-S, yes.

ADV HULLEY SC: Now, and the instruction to ...[intervenes]

BRIG XABA: [Indistinct] [Speaker unclear – distortion in video link]

10 **ADV HULLEY SC:** ...did you conduct the investigation, if I understand correctly?

BRIG XABA: [Indistinct] [Speaker unclear – distortion in video link]

ADV HULLEY SC: Sorry, mister – sorry, Brigadier. You want to say something?

BRIG XABA: No, I was asking if I am audible?

ADV HULLEY SC: You are.

BRIG XABA: I was... I do not know what...

20 **ADV HULLEY SC:** The instruction to conduct the investigation against the IPID officials, if I understand correctly, that came from the National Head of the DPCI, referring to Lieutenant General Mthandazo(?) Ntlemeza. Is that correct?

BRIG XABA: That is correct. It came from him through proper channels until it reaches the component(?) head

where I received the docket.

ADV HULLEY SC: But if I understand correctly. You accept that the docket fell within your mandate?

BRIG XABA: Yes, I perused it and I could see: Oh, this one emanates from the Rendition case. It falls within my mandate.

ADV HULLEY SC: Thank you, Mr Chair. Those are the questions.

CHAIRPERSON: You are done?

10 **ADV HULLEY SC:** We are done as far as that is concerned.

CHAIRPERSON: As far as ...[intervenes]

ADV HULLEY SC: I mean, the other questions ...[intervenes]

CHAIRPERSON: Ja ...[intervenes]

ADV HULLEY SC: ...questions, we are not ...[intervenes]

CHAIRPERSON: ...the one that you are not covering. Okay. Brigadier, the matters that Mr Hulley has not canvassed with you were allegations were made against
20 you that you wish to deal with, or you are happy to leave things where they are?

BRIG XABA: I want to understand to deal with them how?

CHAIRPERSON: Well, in terms of putting your version or responding or if Mr Hulley says he is done, you are happy to say, you can go home.

BRIG XABA: I think from my side, I am done.

CHAIRPERSON: You are done? Okay. No, that is fine. I just wanted to make sure that you do not go away complaining that you were not given a chance to deal with certain allegations. So, that is why I was asking you. Okay?

BRIG XABA: Yes, Chairperson.

CHAIRPERSON: Yes.

BRIG XABA: What I want to highlight but I am repeating
10 what I am saying.

CHAIRPERSON: Do not repeat what you have already said.

BRIG XABA: Ja.

CHAIRPERSON: Ja. Do not repeat what you have already said. Okay, alright.

BRIG XABA: Thank you, Chairperson.

CHAIRPERSON: Okay, alright. You are therefore excused, Brigadier. Thank you for availing yourself. You are now excused.

20 **BRIG XABA**: Thank you, Chairperson.

CHAIRPERSON: Okay, Mr Hulley. So, that is where we end for today?

ADV HULLEY SC: That is as far as today takes us for the purpose of Brigadier Xaba.

CHAIRPERSON: Yes.

ADV HULLEY SC: There are certain outstanding matters relating to Friday's – to the summaries that were to be provided on Friday.

CHAIRPERSON: Yes.

ADV HULLEY SC: And those are the MK officials.

CHAIRPERSON: Yes.

ADV HULLEY SC: I have spoken with Mr Matabedi who appears on behalf of the MK officials.

CHAIRPERSON: Ja.

10 **ADV HULLEY SC:** And there is the question of an application that has been brought and Mr Ford appears for Mr Innocent Kuba and Mr Matthew Sesoko, but briefly, insofar as Friday's proceedings were concerned.

CHAIRPERSON: H'm?

ADV HULLEY SC: The understanding of Mr Matabedi who is counsel who appears for the MK officials, was that a summary would be provided and that he would read out the summary all on Friday.

CHAIRPERSON: H'm?

20 **ADV HULLEY SC:** But I have transmitted to him that your understanding might have been different ...[intervenes]

CHAIRPERSON: Oh, he says his understanding was that they would present the summaries in terms of – in an open hearing on Friday?

ADV HULLEY SC: Ja, on Friday, the summaries would be

presented, and they would read it out at the same time.

CHAIRPERSON: Ja. Well, we might not all have – maybe I did not clarify everything because I wanted to see the summaries ...[intervenes]

ADV HULLEY SC: First.

CHAIRPERSON: ...beforehand, but maybe because we dealt with this matter over two days, there was the day when he was here and then there was a day when he was not here but there was, I think an attorney, when Ms
10 Wentzel was also there. So, it may well be that I am the one who has got these facts wrong.

But if the understanding from their side too is that they would present the – you have made the presentation, they would deliver the written submissions, the summaries on Friday and make their presentation in an open hearing on the same day, then we can work on that basis.

Now, I guess the understanding could only have been that in that case, the oral presentation would happen in the afternoon, which is the time when, I think, Mr
20 Pretorius was supposed to cross-examine Mr McBride.

ADV HULLEY SC: I did say... on the afternoon.

CHAIRPERSON: That – because – I think in the morning in terms of the schedule, we are meant to have another witness on Friday.

ADV HULLEY SC: At the top of my head, I cannot recall.

CHAIRPERSON: Ja.

ADV HULLEY SC: But I would imagine that is the case.

CHAIRPERSON: Ja. No, no I do know. That is the witness we have been – I have been looking at in terms of what is going to happen. Okay, alright.

ADV HULLEY SC: But perhaps ...[intervenes]

CHAIRPERSON: What ...[intervenes]

ADV HULLEY SC: ...Matabedi is present and perhaps he should be the one to convey what his ...[intervenes]

10 **CHAIRPERSON:** Oh, I did not know he is here. Okay, let him do that. He can come to the podium or if his mic is working but maybe he should come to the podium. Let him come to the podium.

MR MATABEDI (COUNSEL): Good day, Chairperson.

CHAIRPERSON: Good afternoon.

MR MATABEDI (COUNSEL): Chairperson, I was not present in the meeting that held, but I spoke to members of the team who were present during that meeting.

CHAIRPERSON: Yes.

20 **MR MATABEDI (COUNSEL):** Their understanding is that if there was no requirement that the summary should be submitted tomorrow to the Chairperson.

CHAIRPERSON: You see, one is not young anymore. So, sometimes one is reluctant to insist on what one believes one said because you might just be shown to have

forgotten, but my understanding until I think this afternoon, was that the day that you would be coming to read out the summaries for your respective clients was Monday, 28.

But that is – sometime this week, I cannot remember well, sometime this week, the summaries would be provided because they would help me decide how much time I would allocate. Because I think from your side there was an indication that in case you do not finish on the first day, you might wish to have another day.

10 Now, when I say from your side, it might not be you who said that. It might be whoever was here the other day, but – and I was indicating that I did not think that we should go into a second day.

So, but now I understand that both Mr Hulley and yourself, your understanding is that the presentation in an open hearing of the summaries was meant to be – is going – is meant to be on Friday.

MR MATABEDI (COUNSEL): That is correct, Chairperson.

CHAIRPERSON: Now, I do not have a problem to allow
20 that arrangement to stand. It is just that something else arose which sought to interfere with what I believed was the arrangement and I wanted clarification as to what it is that has been arranged. So, I do not mind us sticking to Friday for the purposes of the oral presentation of the summaries.

But as things presently stand, you could only have begun with the oral presentations in the afternoon, because in the morning – because the afternoon, I think, is the time when mister – you would have cross-examined Mr McBride.

But in the morning, in terms of the current schedule of the hearings, we do have another witness. Now, I am checking now whether that was your understanding as well that we would start in the afternoon?

10 **MR MATABEDI (COUNSEL)**: Chairperson, in the last sitting, we indicated that we do not have a problem in coming ...[intervenes]

CHAIRPERSON: In ...[intervenes]

MR MATABEDI (COUNSEL): ...to make the presentation in the afternoon.

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

MR MATABEDI (COUNSEL): If we could just be told the – what time?

20 **CHAIRPERSON**: What time. Ja. Okay, no, that is fine. Let us leave it on the basis that it could be in the afternoon, but because now I know that we are looking at using Friday, it might be possible to make some arrangements that might open up space in the morning as well.

But it may well be that because you were asking for more time, it may well be that you would welcome the opportunity of only coming in the afternoon so that you use whatever time in the morning. I am not sure. But you might say: Look, by end of tomorrow we will be ready. So, if you say morning, Friday will be fine.

MR MATABEDI (COUNSEL): Chairperson, we will, obviously, come in on Friday in the afternoon.

CHAIRPERSON: In the afternoon?

10 **MR MATABEDI (COUNSEL)**: That is correct, yes.

CHAIRPERSON: Okay, alright. Okay, let us leave it on the basis, therefore, that we will start on Friday at two p.m. But in terms of receiving the summaries, I would be very happy if there is a chance that I could get them, even if it is in the morning on Friday.

MR MATABEDI (COUNSEL): Yes.

CHAIRPERSON: Just so that – because when you start, I would like to be able to say: Look, this is the time that I think is reasonable to be used. But if I get them at two
20 o'clock, it might make that difficult.

MR MATABEDI (COUNSEL): Chairperson, we will try our level best.

CHAIRPERSON: You will try your best.

MR MATABEDI (COUNSEL): To send them the latest, let us - it should be ten o'clock.

CHAIRPERSON: Ja, okay. No, that is fine. No, let us leave it at then for – we will start at two o'clock and you try and send them through latest ten a.m. on Friday.

MR MATABEDI (COUNSEL): As it pleases, Mr Chair.

CHAIRPERSON: Thank you very much. Thank you.

ADV HULLEY SC: Mr Chair, if I could interject?

CHAIRPERSON: Yes.

ADV HULLEY SC: Because it might be an application that is presently before you that might impact upon the
10 arrangement that is being made. I believe ...[intervenes]

CHAIRPERSON: It will not impact. I have looked at it.

ADV HULLEY SC: As it pleases. I just thought to mention that when you say application.

CHAIRPERSON: Yes, yes. No, no. I think you are doing well to mention but I did get a chance to have a look. We – I will make a decision in terms of what should happen. Okay, alright.

ADV HULLEY SC: Chair ...[intervenes]

MR FORD (COUNSEL): Forgive me for interrupting
20 Mr Hulley. I am representing Mr Sesoko. My name is Bart(?) Ford

CHAIRPERSON: Where are you speaking from?

MR FORD (COUNSEL): [No audible reply]

CHAIRPERSON: Oh, okay. Yes?

MR FORD (COUNSEL): Forgive me for not having

introduced myself to you at any point as yet, Mr Chairperson.

CHAIRPERSON: Yes.

MR FORD (COUNSEL): As I said, I am instructed by the state attorney ...[intervenes]

CHAIRPERSON: Ja.

MR FORD (COUNSEL): ...in the matter. The application is to, obviously, when the representations and the summaries ...[intervenes]

10 **CHAIRPERSON**: Ja.

MR FORD (COUNSEL): ..are in fact made available to you ...[intervenes]

CHAIRPERSON: Ja.

MR FORD (COUNSEL): ...that the same summaries be made available to us for purposes of considering whether or not we may seek an opportunity to respond therefore to the extent necessary.

CHAIRPERSON: I am aware of the application. You should be given a decision tomorrow. It will not be
20 necessary to have oral argument. I thought on it. Is that alright?

MR FORD (COUNSEL): As the Chairperson pleases.

CHAIRPERSON: Ja, okay, alright. Okay, we will then adjourn for the day. Tomorrow, I think, Mr Agrizzi will be testifying at some stage. He would be cross-examined by

Mr Wakeford's legal representatives. I think there are other witnesses as well. So, I just mention that for the benefit of the public.

ADV HULLEY SC: Thank you. Chair, I will approach you in chambers, as it were, to speak about the fund for Mr Mzila's testimony as well.

CHAIRPERSON: Okay. We adjourn.

INQUIRY ADJOURNS TO 24 JUNE 2021