

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

11 AUGUST 2021

DAY 427



Gauteng Transcribers
Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN



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PROCEEDINGS RESUME ON 11 AUGUST 2021

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

ADV PRETORIUS SC: Morning Chair.

CHAIRPERSON: Good morning. Mr Pretorius are we ready?

ADV PRETORIUS SC: Yes we are Chair.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: May the President be sworn in?

10 **CHAIRPERSON:** Yes. Thank you Mr President for availing yourself again to come and assist the commission so that you could complete your evidence relating to the – your position as former Deputy President of the party and President of the party and continue or start evidence relating to your position as former Deputy President of the country and current President of the country. Thank you for availing yourself.

Let us do the oath. I think last time it was the oath Mr President it was not an affirmation. May I ask you
20 please to rise so that we can take the oath.

Please state your full names for the record Mr President.

PRESIDENT RAMAPHOSA: Cyril Matamela Ramaphosa.

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

PRESIDENT RAMAPHOSA: No I do not have any objection to taking the prescribed oath.

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

PRESIDENT RAMAPHOSA: Yes I consider the oath binding on my conscience.

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

PRESIDENT RAMAPHOSA: So help me God.

CHAIRPERSON: Thank you. Please be seated. Yes Mr Pretorius.

ADV PRETORIUS SC: Thank you Chair. Good morning Mr President. If you would agree please to remove your mask because the sound will not carry to the transcription – the social distancing is sufficient we think to protect all concerned and if you could just switch on your microphone please.

20 Is it on? Good. Thank you. Just to give an overview Chair of the proceedings today and tomorrow. I will conclude questions hopefully within an hour in relation to the previous appearance of the President in his capacity as President and Deputy President of the African National Congress.

When that has been done the President has asked to make an opening statement to introduce the next phase of the questioning dealing with the President's capacity as President of the country.

After that there will be questions from evidence leaders of certain of the state owned entities concerning which evidence has been led.

Advocate Seleka will question on affairs related to Eskom. Advocate Soni in relation to affairs related to
10 PRASA and Advocate Myburgh in relation to Transnet.

That should conclude the proceedings today and then tomorrow I will ask questions of a general nature in relation to the President and his capacity as President of the country.

We have agreed under your direction Chair to begin at nine o'clock every day and go hopefully at least until but as far as I am aware until five o'clock every day.

CHAIRPERSON: Okay. The stopping time Mr President is that fine with you – five o'clock?

20 **PRESIDENT RAMAPHOSA:** I was told that stopping time for the commission is usually four pm.

CHAIRPERSON: Yes. Yes.

ADV PRETORIUS SC: So.

CHAIRPERSON: So there might have to be some discussions to see whether you would be available beyond

four o'clock.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: Okay all right.

ADV PRETORIUS SC: We can have a discussion yes.

CHAIRPERSON: Okay, no that is fine.

ADV PRETORIUS SC: Thank you Mr President.

CHAIRPERSON: That discussion can happen during the tea break and lunch break. Ja.

PRESIDENT RAMAPHOSA: Okay.

10 **ADV PRETORIUS SC:** Yes.

CHAIRPERSON: Thank you.

ADV PRETORIUS SC: And Chair and Mr President although every attempt has been made to distinguish clearly between questions relating to your capacity as President of the party and questions relating to your capacity as President of the country there may be some grey areas where it is not possible to define the distinction clearly but we can deal with that when the time comes.

20 We have provided your office Mr President with a substantial volume of documentation. I am not going to go through the detail but they contained in the bundles behind you in addition certain documentation has been provided to us from your office and elsewhere. Those document are also provided in the bundles behind you.

But your statement is in Bundle 3 behind you and

documents annexed in Bundle 4. And then as preparation proceeds a further bundle entitled the Reference Bundle has been compiled. There is at least one document that you have not had an opportunity to read I understand but by tomorrow I think sufficient time has been agreed to be made available. I will not deal with any documents that you have not looked at unless we discuss it first.

Then Chair I am conscious of constraints of time. In order to conclude the evidence relating to the issues raised at the President's last appearance ideally one would
10 have wanted a lot more time but I am going to try and complete that in an hour to give the other evidence leaders sufficient time today to complete their questions.

CHAIRPERSON: Yes. Okay.

ADV PRETORIUS SC: Mr President there are two issues really that remain to be dealt with in general terms from your last appearance.

The first issue is the issue of deployment and questions related to deployment.

20 The second issue is the issue of accountability and discipline within the party and hopefully we can conclude those questions within the hour.

But you will recall during your evidence there were at least three forms of appointment at the hands or related to the Deployment Committee that we discussed.

There was the hard definition – the definition which illustrates that the Deployment Committee in effect instructs and commands in relation to appointments.

Then there was the soft definition where according to evidence given before the commission on behalf of the ANC the deployment merely makes a recommendation to the appointing authority or entity and no more.

Then we discussed that there was a space in between those extremes where in substance and reality the
10 Deployment Committee did impose its will on the appointing authority although not in so many words simply by their exercise of its leadership and power.

And then we also discussed other forms of appointment where there is no intervention by the Deployment Committee at all in accordance with its own principles but simply an appointment.

For example an appointment by the former President and I think you conceded once on one occasion by yourself and in the Deployment Committee minutes to
20 which we will refer in due course you apologised in the Deployment Committee for having done that.

But as I understand it that is the framework within which the issue of deployment was discussed last time around.

The position of the legal team or certainly in

relation to the questions we are going to put is that the soft definition of employment mere recommendation and no more is not borne out by the facts. There is strong evidence that has been led before the commission that in fact the Deployment Committee commands or instructs or in fact makes the relevant appointments.

The SOE evidence leaders will put this to you in the context of government in relation to state owned entities but there has been other evidence which we discussed last
10 time around from Messrs Ngubane or the Late Ngubane, Brown and others.

I am not going to repeat that.

But the answer to any disagreement between yourself and Mr Mantashe on the one hand and the evidence led before the commission on the other would lie in the Deployment Committee minutes.

There we would have a contemporaneous record of the decisions that the Deployment Committee actually made in any particular period.

20 And we have requested those from the attorneys for the ruling party.

We have been told firstly that there are not minutes for the period 2012 to 2017 and I would just like to ask a question or two about that.

When we are told that there are no minutes are you

aware whether there were minutes kept but they have somehow been lost or destroyed or whether simply when you were Chair of the Deployment Committee no minutes were taken – what is the position?

PRESIDENT RAMAPHOSA: Chairperson on the question of the minutes when I was Chair of the Deployment Committee I do not recall ever having to go through the minutes of the previous meeting. We always tended to deal with the issues at hand on a contemporaneous basis
10 as they were presented and quite often it would be either you know Ministers who would come and say, we have shortlisted so many applicants and we will deal with that and that would be done.

And so I do not recall when I was Chair any minutes being put forward for adoption which is what often happens when you are a member of a committee that minutes would be submitted, gone through and approved and adopted.

So I do not recall and I think you can ascribe that to rather unfortunate record keeping processes because in
20 the main the ANC has so many meetings one after the other. So many committees and I think those who are in charge will just take notes and just record a decision and it is then communicated. So that would be my answer.

But it has come to light now that latter Deployment Committee process which is I guess now being – not guess

but which is being chaired by the Deputy President. There are proper processes and minutes are kept and I think it would be those minutes that may have been submitted.

ADV PRETORIUS SC: Two questions in that regard if I may Mr President. The first is that generally I understand that in the ruling or governing party and its history there is a practice of taking minutes in matters or meetings of import, is that not correct?

PRESIDENT RAMAPHOSA: Yes it is.

10 **ADV PRETORIUS SC:** And secondly it would be particularly important in the affairs of a Deployment Committee where Ministers would meet with the committee over a period of time and over the period of more than one meeting to have a record. It seems rather strange that

- a. There were no minutes or no minutes available and as I understand your answer you are not saying there were no minutes as a matter of fact but not – you – just that you do not recall minutes being taken.

PRESIDENT RAMAPHOSA: Yes.

20 **ADV PRETORIUS SC:** Do you have any comment on that? It just seems improbable that there were no minutes.

PRESIDENT RAMAPHOSA: That – they will sound improbable but the Minister or the person bringing names or proposing names would rise from that meeting either immediately or thereafter having been told by the SGO and

it would usually be the Deputy Secretary General that the committee discussed this and it is comfortable with this and this proposition or proposal and that is what would then happen.

So I think the lapses of not really having those minutes should be understood within the context of the organisation that is always on the go – that is always handling so many other processes.

And indeed yes I mean there are minutes that are
10 also kept of either the Working Committee or the National Executive Committee those are like bigger and overarching structures.

And we also have other committees like what we call NEC Committees and those deal with policy matters and if one were to dig you would find that even those who deal with the paper and no real substantive minutes would be taken.

It is clearly something Chair that needs to be improved and it is part of what I have dubbed the Renewal
20 Process that we have dubbed the Renewal Process we need to renew our own internal processes at an organisational even administrative level as well as our own political processes to deal with challenges that the organisation faces from time to time on an on-going basis rather – really.

ADV PRETORIUS SC: We did then request the minutes of the Deployment Committee for the period post 2017 in other words 2018 to 2021 and we received those – we requested them a month ago and received those on Friday evening. I am not going to go into the reasons for the delay it is collateral issue but the records we have and they are in the bundle before you and I would like to ask some questions about that.

But before I do can I ask as far as you are
10 concerned was there any shift in policy or practice between the time when you were Chair of the committee and the time where Mr Mabuza was Chair of the committee? Was there a change in policy known to you?

PRESIDENT RAMAPHOSA: No there would not have a change in policy. I think maybe a change in practice because the Deputy President Mabuza has tendered to – to send you know Ministers back and say, go back and process this again and they would go back sometimes pulling their hair out and yet in my time the committee
20 always found a way. But I guess his way maybe much more effective.

So the practice yes but the policy broadly no. The policy largely in line with what I would say described which was also what the National Chairperson of the ANC Gwede Mantashe also described.

ADV PRETORIUS SC: The description you have just given of the approach of Deputy President Mabuza is in fact consistent with evidence you gave last time around about Ministers coming back in frustration to the committee several times and in fact that evidence is consistent with the minutes and I will explain how we see it in a moment.

But we can go through the minutes. It will take much longer than an hour and I am not sure that I have the time or capacity to do so.

10 **PRESIDENT RAMAPHOSA:** I have not read them as well that is the problem.

ADV PRETORIUS SC: Well perhaps we can spend a few minutes tomorrow on them by leave of the Chair because I do think it is important.

We have reviewed those minutes and certain themes emerge from those minutes. Now we cannot obviously deal with the merits of each case because we do not have those facts. We only have the minutes and what emerges as a practice or policy from a reading of those
20 minutes at face value.

So of course it is subject to the facts of each particular case and I must concede that and ask any of these questions.

But on a view a general review of the minutes indicates that in a large part not always but in large part

the hard definition that I have referred to is the correct one.

The Deployment Committee decides and instructs. That is the first proposition. Perhaps I can go through the propositions – you can consider them and then we can decide what to do about it in a moment.

The second issue is that the recommendation does not go from the committee to the appointing authority it is the other way around. The Minister or the appointing
10 authority recommends and it is the Deployment Committee that in its wisdom and according to its practice makes a decision and that decision is then communicated.

It is not universal but it is by far the predominant way the Deployment Committee goes about its work in relation to appointing authorities.

The third point that emerges is that on several occasions certainly on more than isolated occasions Ministers come to the Deployment Committee and seek permission – permission is the word that is used to
20 proceed with the appointment process and then the Deployment Committee will give the Minister permission to proceed with appointments.

Ministers are called to account by the Deployment Committee for presenting a fait accompli or presenting names to cabinet not approved by the Disciplinary

Committee.

There is a strict procedure that is often referred to that the Ministers are called to account to follow under the supervision and direction and I stress direction of the committee – Deployment Committee.

There are several occasions on which loyalty to the ruling party, party membership and cordance or hesitate to use the word subservient but a compliance with party prescripts is an issue which is relevant to the appointment.

10 On occasions and you have testified to this yourself Mr President Ministers recommendations are not approved – they are sent back to the Minister for the word is refinement – refine your proposal – we are not accepting it – we will consider it again when you come back to us and that is consistent with your evidence and we will go back to that in a moment.

20 There is even an occasion or occasions where the Deployment Committee insists that even before posts are advertised that the Deployment Committee should be notified. But consistently throughout the minutes during this period after you became President to the present – to 2021 decisions are made and regarded to appointment by the Deployment Committee.

Final decisions which are imposed on the appointing authority. That is the language used. We can

go through examples of the minutes or you can perhaps take an opportunity to read overnight and we can revert to it briefly tomorrow.

PRESIDENT RAMAPHOSA: That is all right.

ADV PRETORIUS SC: But what is your comment in that regard?

PRESIDENT RAMAPHOSA: No I think we should deal with it now with respect. Chairperson it is said that maybe the hard definition of the Deployment Committee's work is what
10 has always prevailed and as Mr Pretorius says maybe not all the time but most of the time.

I would like to say that much as it may appear like this the hard approach where it is instruct and command in the end there is even if that were so which – which I would like to dispute in a minute. In the end there is some safety net or process because in the end even the ANC concedes this even in its conference resolutions and its – its internal processes that for government positions in the end the legally mandated process must be followed. And the
20 legally mandated process would be that it is that institution that has to decide.

In some cases it is cabinet where a Minister may well go to the Deployment Committee and say, I – I need a chairperson of this entity and some names are put forward. In the end it is cabinet that will decide.

You may well argue that well cabinet is largely ANC persons but not entirely because there are – there is in the current cabinet a non-ANC member and there – they are independent and they raise issues and questions and for the most part some of their questions would be about competence – would be about ability for the person to do the work or not.

So much as it could be said that the hard approach which is instruct could have been used when it goes
10 through to cabinet that is the filter – the filter then will finally come out with an outcome that may not have been say commanded by – by the Deployment Committee.

But I would like to dispute this hard definition and say as far as I am concerned it is more the soft one and it may well appear like it is the hard one. It is the soft one by share operation because the Deployment Committee is – is not an appointing committee. It does not appoint by definition and by its own existence.

In the last evidence I gave here I said it is a
20 recommending committee. It recommends and proposes. And Chair this – this is what happens in if you like the political landscape also for our country.

I did refer to an incident of another party which is government in one province in our country where the person who was supposed to make the submission or the

appointment giving evidence to the Public Protector said and the Premier also said before this person and it was a lowly person appointment that is – an appointment of a Director of Corporate Services it was said that before this is finalised it must go to the Federal Committee of the party.

Meaning that as political parties we do want to have that filter that process to ensure that yes of course we want competence and I did concede in my evidence that at 10 times we may well have glossed over the issue of competence and it is something that even our own conference has insisted we should now do which is currently underway. But as political parties we do want people who will go and implement the political mandate and I also refer to the OECD paper on this matter that the political involvement in administration it was said in that paper is essential for the proper functioning of democracy.

And I would still insist that that is a consideration that we need to have in mind. Whilst saying that we – we 20 – the Deployment Committee would always use the soft approach which to Mr Pretorius appears like it is a command and instruct approach I would say even if that may well be so in the end the safety of this process is that the appoint – the final appointing entity in government or even on a board of directors because in the end a board of

directors is the one that will say yay or nay for some appointments. So that provides the safety net or process. So I know that the issue of Deployment has arisen as a major issue but I would like to suggest that much as it has where the Deployment has resulted in people who are incompetent I will concede that that was an error. But where Deployment leads to people who are competent but who are also able to execute the mandate that the governing party has as I have alluded to the OECD
10 recognises that and other political parties in the country also recognise that.

As political institutions we are elected to execute a particular mandate and when you appoint people you want people who are well synchronised or will synchronise their work and activities for that mandate.

But people who will also have competence and exercise independence and I think that is the most important part where they will have independence of action and execution but within the broad framework of a
20 particular mandate to fulfil what their organisation will have set itself to achieve.

ADV PRETORIUS SC: All right. Perhaps just to illustrate the general point I was making by relation to specific wording in the minutes Mr President on the 20th of January 2020 in relation to appointments in the Department of

Environment, Forestry and Fisheries it is recorded in the minute:

“The committee resolved to accept the three proposals.”

In other words final decision. Under the head the Department of Public Service and Administration:

“The committee resolved to accept the first woman and it had it to be a Director General that left.”

10 Under the Department of Mineral and Energy:

“The committee resolved to accept the Minister’s proposal and that the Minister must further engage with the DSG.”

Under Defence:

20 “The board proposed the name of the current acting CEO to be considered which is what the Minister came to present. The committee allowed the Minister to go ahead with the process but was also reminded that in future she must work with the Office of the DSG.”

The opposite happened on the 30th November 2020 – Department of Transport Minister Mbalula.

“The presentation was not accepted by the Deployment Committee. There were issues

raised with regard to processes being followed and the candidates in the makeup of the board the item was sent back to be refined.”

Plenty of examples of that but if you wish to debate it again tomorrow we can do so. That is just one aspect of the evidence.

The other aspect of the evidence of course is the contemporaneous evidence given by various people before
10 the commission which the Chair will take into account in making his decision.

There are two other matters that arise. I do not know that we can go into the issue of political theory too much but there is an interesting minute in the bundle where a member of the ...

CHAIRPERSON: I am sorry Mr Pretorius are you moving away from the Deployment Committee matters?

ADV PRETORIUS SC: No I am dealing with two more issues.

20 **CHAIRPERSON:** You are still – you are still work – okay, all right.

ADV PRETORIUS SC: If I may Chair.

CHAIRPERSON: Yes, no that is – that is fine. But maybe let me ask this question Mr President.

PRESIDENT RAMAPHOSA: Yes please.

CHAIRPERSON: Within the context of the practices of the Deployment Committee how it deals with matters what would be the role of I do not know whether it is the principle or what it is but namely that there is only one centre of power which is the party. If that is still the position. I know at some stage there were issues about whether there are two centres of power – government and party but it seems to me that it may well be that if that is the principle that it would contemplate that the real
10 decisions are taken within the party. So what would be the role of that principle within the context of the work of the Deployment Committee?

PRESIDENT RAMAPHOSA: Well Chair yes the party is where the power resides. Our democracy is such that it (indistinct) political parties as the vehicles through which the masses of our people demonstrate their support through their votes for a party that then finally has representatives in Parliament, in the Cabinet and so forth.

So the party then plays a key role but the party is
20 just one of the actors in our democracy. It is not the only actor and in the end when we talking about the state you look at the state what makes up the state is the three arms of the state so the executive, the judiciary and the legislature and there are a whole number of other institutions that finally make up the broader state that we

talk about. So the party does play a role and when it comes to matters of governance that impact either on executive or the legislature it does play a role. So therefore its decisions I regard as proposals as they finally go forward either to the executive or to Parliament.

For instance a party will take a decision that we need a piece of legislation say on gender base violence that those who get involved in either murdering or raping women should be sentenced to twenty life sentences. It becomes a proposal by the party that has to be filtered through another institution which would be your Parliament and to the extent that it enjoys support then it becomes the order of the day.

Similarly even with the cabinet. Not every member of the cabinet sits on the decision making structures of the party and they may well have views that are not completely in line with – with what the party well be saying particularly when it comes to other key principles such as competence, such as integrity and all those values and they may well raise an issue and say but this person that is being proposed much as they have been proposed by the party is not the best person that we should have and -

I give you another good example and this I encounter all the time where yes the party may well – well the proposal may well come from government to the party about

appointing certain people.

And you will find that there is not any gender balance. Maybe there is just one female and others are male. It will be send back and the party will so no this is – and this is where the party's insistence has counted for a lot. It may well – it will say: Send it back. We are not prepared to adopt this.

And when it comes to the youth deployment as well that we need more young people to be brought into
10 structures. So the party then for a lack of a better word then becomes a filter and a very positive filter and now more and more focussing on competence, professionalism, and capability to do the work but finding a balance.

And another balance would be on demographic balance of our country. And sometimes the temptation is, we will just take – or mostly male and mostly African and the party will say: No, this is – does not represent a demographic composition of our country. So send it back and then you – you have to juggle again.

20 So the party then plays an important role and it is standard bearer and it wants to insist on the values of itself. It has got values and values that are representative of what the people of South Africa would like to see.

CHAIRPERSON: Thank you. Mr Pretorius.

ADV PRETORIUS SC: In that regard and in fairness to

you, Mr President, there is at least one occasion in the minutes where demographics is emphasised as a principle in favour of a white candidate in fact. So, I understand that point. And it may be that the process of appointment is secondary to the quality of the appointments that are ultimately made but that is another issue that we will deal with later.

But an interesting point in relation to the question that the Chair asked. There is a passage in the minute
10 which illustrates the frustration on the part of a member of the Deployment Committee saying that people accountable to the Committee do not really understand the principle of democratic centralism. What does that mean?

PRESIDENT RAMAPHOSA: Well, democratic centralism is a political concept that is a fairly straight forward one. It basically means that when a higher body takes a decision and I can give it to you more colourfully in terms of the field that he operates in, acting Chief Justice. When the Constitutional Court takes a decision on any matter. That
20 is the end. Every other court will follow the dictum or the decision that has been taken by the Constitutional Court.

So being a political organisation, in order to have discipline, in order to have proper organisational processes, democratic centralism means that when a higher body take a decision. Like in our case, when

Conference takes a decision it is binding on everyone, on all the structures. When the National Executive takes a decision, even if you may not agree with it, just like the Constitutional Court takes a decision.

Even if you have different views and you may not agree with what the Constitutional Court has decided, it is binding because as a society we have signed a contract with one another that there will be one arbiter of all our matters and disputes. And similarly in a political
10 organisation and certainly in the ANC, that is the case.

The contract that each one of us signs when we join is that the upper structure on taking a decision is binding on everyone. And that is why it is a sign of indiscipline in the African National Congress for anyone to then want to use a word like disobey and not follow the decisions of a higher structure.

It is looked upon in a very dim way and it should not happen because that is how we balance our activities in society in relation to judiciary and also in relation to our
20 own organisation. So that is what democratic centralism means.

ADV PRETORIUS SC: And the term was used, in fact, in the context of, in this case, the centre being the Deployment Committee. But if we may move on. There is one issue that I should raise with you, Mr President, in

relation to a meeting of the Deployment Committee of 22 March 2019. You want to look at it. It is in the bundles in front of you but I am just going to summarise what the meeting determined.

The meeting noted that the Judicial Services Commission was considering the filling of vacancies in the judiciary. The Deployment Committee recommended to Justices, two seats to fill vacancies in the Constitutional Court. It recommended a judge to fill a position on the
10 Supreme Court of Appeal and in other capacities as well including Deputy Judge President in a province.

So the question arises is. What is the Committee doing recommending appointments to the judiciary?

PRESIDENT RAMAPHOSA: Chairperson, I go back to my earlier explanation that the Deployment Committee particularly in a case like this would play the role of saying there is a vacancy and it often happens when another person was being deployed in government who would normally be your Minister of Justice say: Hey, there are
20 vacancies.

But the Deployment Committee knows that at best all it can ever do to note that, one, that there is a vacancy. Two, that there are certain names that could, you know, be proposed. And having done that, it also knows very well but it is not the appointing structure. And by definition, by

the way our constitution works it could never ever have a judge appointed because that is a process that is done through the JSE and what comes out of the JSE is the will of those people who sits on the JSE.

But what that Deployment Committee has often insisted on, acting Chief Justice, is that we need to have a gender balance. We need to have a demographic balance. And that message often, you know, is raised more regularly and more pointedly by the African National Congress.

10 And I can say as a depoyees of the ANC that the fact that today we have got so many female judicial officers is because the ANC – and you could say, you know, through various structures, has been insisting - it could be the ANC Women's League, it could be the ANC itself and so on, has been insisting that we must have more female judicial officers but we must also have a balance.

 There must be a demographic balance. We must have people of Indian origin, Coloured, Africans and Whites. And that has been, without any doubt or
20 equivocation, been the insistence of the party that I lead. And in - so in that regard I think we should look at it positively. Positively because it has really insisted on this approach.

 To the extent that people want to look at it negatively, you need to be alive to the fact that, if

anything, it was just identification of names and being aware but in the end, the ANC does not decide and cannot decide.

And I would be the first to say you cannot as the ANC choose judges. And that is why it was the ANC itself that insisted that the constitution should be crafted in the way that it is, to be able to have that level of non-partisanship, independent and you must have all those people who sit on the JSE. And it is something that I feel
10 strongly about.

CHAIRPERSON: Well, there is the question, Mr President, whether if the ANC or the Deployment Committee – maybe let us say the ANC wants to influence the appointment of certain people within government whether it should not do that transparently.

PRESIDENT RAMAPHOSA: H'm.

CHAIRPERSON: So that everybody knows rather than do it in some office somewhere where there is no transparency and you end up with, in the case of a
20 Minister, a Minister who may be coming to an interview to interview candidates for a certain position on the basis that the Deployment Committee has said it should be so and so and yet there are a number of candidates.

But apart from the Minister, nobody else knows that there is this influence that has been given to the

Minister that it should be so and so. And so there is the questions whether if they want to influence appointments, they should not do it transparently as opposed to doing it ...[intervenes]

PRESIDENT RAMAPHOSA: In hiding.

CHAIRPERSON: ...in this way. [laughs]

PRESIDENT RAMAPHOSA: [laughs]

CHAIRPERSON: Maybe I should not describe what this way is.

10 **PRESIDENT RAMAPHOSA:** [laughs]

CHAIRPERSON: But in this way. I mean, if you talk about what Mr Pretorius was referring to where there is – were discussing candidates for various courts as judges. You have in the JSE members of Parliament ...[intervenes]

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: ...who are members of the ANC.

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: And one would have thought that the ANC would take the position that says members of
20 Parliament who are members of the ANC know what the ANC stands for.

PRESIDENT RAMAPHOSA: H'm.

CHAIRPERSON: Know what the ANC would like to see happen in the judiciary, those issues of demographics and whatever, whatever. So in making their own contribution in

a transparent way because the JSE process is transparent.

PRESIDENT RAMAPHOSA: H'm.

CHAIRPERSON: They will be doing so knowing what the ANC would like to see.

PRESIDENT RAMAPHOSA: Sure.

CHAIRPERSON: And therefore you do not have this situation where in some office in Luthuli House the candidates for a judge is being discussed by people whose views will not be subjected to public scrutiny as would
10 happen with members of the JSE. And candidates will not get a chance to defend themselves or say: But you know, I should be appointed because of A, B, C, D. When the Deployment Committee said: No, no. We think so and so is the right one.

PRESIDENT RAMAPHOSA: Chairperson, I would – I think it is a suggestion that in a number of instances does get implemented and I would cite one recent example where, for instance, the officials of the ANC decided that a particular person should be employed as – and I can speak
20 about it now – as Speaker of Parliament and the caucus of the ANC then meets and then decides that yes we want to propose this person. So that is transparent.

The one that may not have been transparent is where the officials decided. [laughs] It could only be transparent if after the officials have been taken the

decision and publicise it that we are going to suggest that to caucus that this person should be nominated.

I think it is an interesting proposition which, as I said, does get implemented at times. And I recall, and I will recite another example, I recall the question that was put to me when we had to appoint an NDPP of NPA and the question – I decided as President that I wanted to open it up to make it transparent and to have an interview process and nominations should be made which was quite new but
10 it happened and maybe I will talk about it later.

It was a process where names were being put forward. And the question was asked of me whether I as President want to single out one person and I held back and I said it might be a difficult one because let me let the process unfold because in the end I have to make the call or the decision.

So it is a proposition that is interesting where to remove this shroud of secrecy. Maybe the party should be able to show its hand that this is how we would like to do
20 it. And I guess it happens in other environments worldwide. Because in the end, political parties do have their preferences when it comes to various positions.

And I know that in the US, for instance, you know parties do say: We prefer this one as the Chief Justice and this one as a Judge of Appeal and all that. And we do

that. And maybe we need to grow up and see how best the democratic process can mature on that level.

CHAIRPERSON: Thank you. Mr Pretorius.

ADV PRETORIUS SC: Just to refer, finally, back to the meeting of the 22nd of March of the Deployment Committee in relation to appointments to the judiciary. This is not a case, Mr President, of the party recommending or even insisting that certain principles be followed in the composition of the judiciary.

10 This is a case where the Committee actually recommended named judges which is something different, or candidates for the bench. And in the context of the policy of democratic centralism, clearly, the recommendation of a particular name for a particular post must have been intended to influence the decision of the Judicial Service Committee. Otherwise, what would be the point?

 These recommendation would be clearly and probably communicated to the members of the Judicial
20 Service Committee in order to influence them in their decision.

PRESIDENT RAMAPHOSA: Well, I would say – I would go back to where I said – where I say the real safety for the processes that the Deployment Committee is not the appointing entity. You may well say influence. Yes,

political party will always seek to influence precisely what you were also saying. That maybe if you want to influence, do it transparently. And I would buy into that. Do it openly and say we support this one and that one.

And in the end, even the public does get involved sometimes when there is, you know, nominations for judges or top positions. They will say this one is preferable. And when that person is not been appointed there is an outcry that: Ah, they left out this one. And so on.

10 So influence, yes, but appointment, no. Because in the end, the ANC Deployment Committee is not the appointing structure and whatever the appointing structure is including the President when finally names, as process dictates, names are presented to the President, the President will also take into account the processes that took place in the Judicial Services Commission.

20 So I can hear Mr Pretorius is going very hard on this issue of influence but I would like to say whatever the influence would be it would always be tempered by the inability of the ANC Deployment Committee to appoint. It does not appoint and should not appoint.

ADV PRETORIUS SC: H'm.

CHAIRPERSON: Of course, what is quite obvious, Mr President. When we discussed this, is that the influence of the Deployment Committee may be quite

weighty particularly on those members of the JSE who are ANC MP's and they might not want to go against such an important structure of the ANC if it has already indicated its preference. And that is – that maybe unsatisfactory because...

Well, I do not know at what stage that recommendation was made in that case but if it is made before the interviews for example, it may well be that it would have the effect that some ANC members who are
10 MP's who are in the JSE might be unduly inclined towards a particular candidate in circumstances where they should be quite open, you know.

So I am just saying. It is one thing to say the Deployment Committee is not the appointing authority.,

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: But the reality might be that once the Deployment Committee has made its preference clear, already a member – maybe I should say a disciplined member of the ANC, you know, would be inclined to put a
20 lot of weight on that recommendation ...[intervenes]

PRESIDENT RAMAPHOSA: H'm.

CHAIRPERSON: ...where he or she should approach the interviews in a very openminded manner.

PRESIDENT RAMAPHOSA: Chairperson, I think we must accept that we live in a world where lobbying takes place

for placement of people anywhere where lobbying – there is sometimes lobby groups, lobbyist and all that. People who for one reason or other would prefer certain persons or candidates to be placed in certain positions. That happens all over the world all the time.

It – you know in a low position or a high-placed position. So if one accepts that there will be people and groups of people who will articulate their preferences. It should not be seen as something that is evil or wrong. If it
10 is meant to achieve illegal, unlawful and, then there is a problem.

But if it is meant that there should names that can be put forward for instance to achieve a particular purpose like we want more women in the judiciary. And we know this Gloria and that Gloria and that person who should be put forward, I do not necessarily think that there is anything wrong with that.

Because otherwise how do we achieve the transformation that we seek to achieve? Will it happen of
20 its own volution or how will it happen? It will happen because people are lobbying or articulating those positions. And I would like to suggest that unless the proposition that has been put forward is that this resulted in unlawfulness and something completely wrong and should not happen at all, then I will take the point.

But the proposition you put forward that maybe it should happen transparently appeals to me because then it is no longer done in the dark corners if one wants to say the Committee operates in those, it is done openly and transparently. And it is certainly something that I would like to take up for debate and discussion in my party because to me it makes a lot of sense.

CHAIRPERSON: No, I think the – what was put to you is more in the context of there being no transparency.

10 **PRESIDENT RAMAPHOSA:** Yes.

CHAIRPERSON: So if there is no transparency, this lobbying or whatever is happening secretly. [laughs]

PRESIDENT RAMAPHOSA: Yes, yes.

CHAIRPERSON: But where it is transparent ...[intervenes]

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: ...so it can be debated.

PRESIDENT RAMAPHOSA: Yes.

20 **CHAIRPERSON:** It can be looked at. It can be scrutinised.

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: That might be – that might stand on a different footing, you know, where there is transparency. I think part of the problem is where it is – maybe secret is the right word, I am not sure.

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: Ja, ja, ja.

PRESIDENT RAMAPHOSA: Well, you and I have never agreed on anything acting Chief Justice. On this one we agree. [laughs]

CHAIRPERSON: [laughs] Thank you, Mr President. Mr Pretorius.

ADV PRETORIUS SC: In your recent answer, Mr President, you raised the issue of international practise. It
10 may well be for example – the example that springs to mind is the appointment of the Supreme Court in the United States of America.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: But the point, I think, is that our constitution demands the highest standards.

PRESIDENT RAMAPHOSA: Indeed.

ADV PRETORIUS SC: Even compared to international jurisdiction.

PRESIDENT RAMAPHOSA: Indeed, indeed.

20 **ADV PRETORIUS SC:** And it is those standards that we apply here. But in relation to constitutionality of the deployment policy and practise, the Chair will decide. It is a legal question, ultimately, but I am not sure it should be debated. But would you concede that loyalty to the party or party membership should never be a determinant or

determining factor in appointment of public office?

PRESIDENT RAMAPHOSA: Yes, I would say that.

ADV PRETORIUS SC: Right.

PRESIDENT RAMAPHOSA: And even the decision that was taken by the party at its conference was that we should lay more emphases and capacity, professionalism and also non-partisanship because that is the best way any civil servant would be able to serve the people of South Africa. So, yes, I would.

10 **ADV PRETORIUS SC**: And one is conscience, of course, of evidence in relation to loyalty or party loyalty again in relation to appointments to public office that has been given by the former President but that is a matter of record. I need not debate that with you. If I may go to the second issue, unfortunately, briefly. And that is the question of discipline and accountability.

You gave quite stark evidence last time around, Mr President, in relation to corruption within the ranks of the ruling party and its prevalence over a period of over
20 20-years. That is a matter of record and I am not going to go back there. But there are two issues arising out of that evidence. The one is specificity and the second is accountability.

In relation to specificity. The Chairperson did ask last time around. The Chairperson said:

“I would like you to identify the actual areas where you say as a party we have done our homework. We think this is where we did not do what we were supposed to do properly. This is where we did something we should not have done. So we identify exact areas where as a party you say here we did not do things the way we should have and we acknowledge...”

And the point of that question is highlighted by the
10 Chair when he says:

“Then one can look at what should be put in place for the future so that there is no repeat...”

And that has been partly discussed now in relation to the issue of transparency. And perhaps in relation to specificity, we can talk more tomorrow when you give evidence in the capacity as your role as President because there are certain issues that must be discussed in regard.

But again we asked for documents. We requested the ANC disciplinary records and what we received were
20 records of the ANC’s National Disciplinary Committee and the National Disciplinary Committee of Appeal for the period 2014 to 2021.

And although there are occasions where party members are disciplined for a range of internal party matters, we did not find in those documents a single case

of an ANC member being disciplined in relation to corruption in those documents. Now given the prevalence of corruption which has been conceded and given the period of time over which this corruption has been identified since the 1990's to date, not to 2017/2018, to date.

Is it not a matter of concern that the party has not generally – there may be single exceptions – generally called to account in the context of the part itself people
10 found guilty, accused of corruption? It is a matter of concern, I put it.

PRESIDENT RAMAPHOSA: Yes, it is a matter of concern. It is a matter that I sought to address in my appearance here. And I did say that there has been contestation within the part on a number of matters but especially this one. And in that regard, I did concede that the party, for the most part, did not really live up to the value system that is the bedrock of its existence which was put in place by the founding fathers and mothers of the organisation and in
20 latter days there was a lapse.

And in addressing my letter as President of the ANC to members, I did decry this and I have raised it and it is on issues of dealing with corruption that I said that we must draw a line in the sand. We must now decide as the ANC that we are now going to take the issue of corruption

seriously.

And the diagnostic report that was tabled at our 54th Conference also speaks to this. The renewal process that we have been involved in, that we are involved in now, also talks to this. Yes, there have been some cases which may not have surfaced at the level of the NDC and NDCA where yes discipline was taken on corruption matters but they have not been as robust as they should be and they have not been overarching as they should be.

10 But we have now said we will draw a line in the sand and with the resolutions that were taken at the 54th Conference as much as there has been contestation within the party itself, the membership has embraced this and the issue of discipline and accountability has been taken up much more seriously.

And we as a party have also realised what our lackadaisical approach to this has meant to the party in terms of support because our surveys, our research has told us that people, ordinary people are corruption and
20 they have to always seen the ANC as taking action against those in its own ranks who have been involved in corrupt acts.

But now the game has changed. The line has been drawn in the sand and the ANC is saying that we are renewing ourselves and we are, Chairperson, possibly the

only party in the land which has borne its own chests and said that we are prepared to hang out our linen in the open and now having drawn the line in the sand we are now going to be very serious about dealing with corruption because we have realised that corruption actually militates against the interest of our people.

You may well say: Well, why did you not do so over a period of so many years? But it is better late than never and in this case we are serious about what we are saying. Thank you.

ADV PRETORIUS SC: We will... Thank you, Mr President. We will deal with one pertinent series of examples in this regard and in your – deal with your capacity or in your capacity as President of the country but that will be tomorrow. For the moment, I must retire to the bench and the bomb squad must take over.

PRESIDENT RAMAPHOSA: The bomb squad?

ADV PRETORIUS SC: The three other evidence leaders.

PRESIDENT RAMAPHOSA: So they are the bomb squad.

20 [laughs]

ADV PRETORIUS SC: [laughs]

PRESIDENT RAMAPHOSA: Okay.

ADV PRETORIUS SC: I am sure they will be very gentle.

[laughs]

PRESIDENT RAMAPHOSA: [laughs]

ADV PRETORIUS SC: May we take five minutes of the change over?

CHAIRPERSON: Before we do that, Mr Pretorius. I am not sure I understood where you would like the President to deal with that question that I had raised with him namely that I wanted the President to identify the areas where they say as the party who have reflected and who have identified that this is where we did not do what we were supposed to do, this is where we did what we were not
10 supposed to do.

Because I did when I looked at the affidavit that has been prepared, I did not pick up where he deals with that. So I am not sure whether you were suggesting that that be dealt with tomorrow. I just want to make sure.

ADV PRETORIUS SC: Yes, Chair. It may be disturb the order of things and the neatness of the categories that we are dealing with but I have drawn that to the President's attention to the specific question you asked.

CHAIRPERSON: Ja.

20 **ADV PRETORIUS SC:** Perhaps we could spend some time tomorrow dealing with the answers.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: So that the President can consider it.

CHAIRPERSON: No, no that is fine. I am quite happy for

it to be dealt with tomorrow. I just want to make sure we do not forget about it.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: Ja. Okay, we will deal with it tomorrow.

ADV PRETORIUS SC: And then, Chair. Of course, before my learned friends ask their questions.

CHAIRPERSON: H'm?

ADV PRETORIUS SC: The President does wish to make an opening statement in relation to his capacity as
10 President of the country.

CHAIRPERSON: Okay, alright. Just to make sure we are all on the same page. Will your colleagues be questioning the President in his capacity as former Deputy President of the country and current President of the country.

ADV PRETORIUS SC: Yes, Chair.

CHAIRPERSON: Or not for the party?

ADV PRETORIUS SC: As I said, there may be some grey areas.

CHAIRPERSON: Ja, okay.

20 **ADV PRETORIUS SC:** But they are minor in quantity.

CHAIRPERSON: Yes. No, that is fine.

ADV PRETORIUS SC: And it is, as you stated
...[intervenes]

CHAIRPERSON: Ja.

ADV PRETORIUS SC: ...the President of the country.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: And Deputy President of the country.

CHAIRPERSON: Okay. No, that is fine. Let us take then about five minutes to enable whatever logistical arrangements need to be made. I intend that we take a tea break, our tea break at normal time which is quarter past eleven. So that would be 15 minutes. That is at quarter past eleven. For now, we are looking at five minutes or so.

10 **ADV PRETORIUS SC:** Sure.

CHAIRPERSON: Okay. We adjourn.

INQUIRY ADJOURNS FOR A SHORT BREAK

INQUIRY RESUMES

CHAIRPERSON: I understand, Mr Seleka, that I need to allow the President to make a statement first before you can ask any questions.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Mr President, you may make your statement.

20 **PRESIDENT RAMAPHOSA:** Thank you, Chairperson, I welcome this opportunity to address you as I now appear before you in my capacity as the former Deputy President of the Republic, as well as – that is the former Deputy President from May 2014 to February 2018.

And in the statement that I have submitted to the

Commission I outlined the roles and the responsibilities of the Deputy President and my knowledge of matters under consideration by the Commission.

I am also here, Chairperson, in my capacity as the President of the Republic of South Africa from February 2018, having taken office soon after the establishment of the Commission.

While the Commission is tasked to investigate and report on events that took place before I assumed office of
10 President, I describe in my statement some of the measures taken to right the wrongs of state capture, the state capture period, in the hope that it may be of value to the Commission.

My approach is informed by an understanding that a Commission is meant to focus on establishing the veracity of specific instances of alleged state capture and identify the systemic weaknesses in state institutions that allowed state capture to occur.

Chairperson, in my statement I outline when I
20 became aware of the nature and extent of state capture. It is important to note that few people even at the best of times have had line of sight of everything taking place in the state and that happens to be the case even today and this, Chairperson, applies even to members of cabinet and the Deputy President particularly with respect to activities

that were deliberately hidden from view.

Many of the incidents of corruption that would in time be described as state capture became known to me, as they did to the general public, through the work of journalists, civil society organisations and institutions such as the Public Protector and the Auditor-General.

Reports of court cases and disciplinary proceedings together with the commendable work of investigative journalists and whistle blowers did help to give insight into
10 corruption in both government and in the private sector.

As it became increasingly clearer through the so-called Gupta Leaks and other revelations that a network of individuals was seemingly colluding with a number of people in government to occupy key positions and capture key institutions, the question that arose was how best one should respond to all this.

I guess, Chairperson, this was a question that not only I myself had to grapple with but also other members of the executive who were deeply concerned about these
20 developments as they saw them unfolding.

In my case, and I guess it also affected a number of other people, I would say I had five options.

The first option for me was to resign.

The second would have been to speak out.

And the third would have been to acquiesce and

abet and just go along.

And the fourth would have been to keep quiet and to remain silent.

And the fifth option would have been to remain but to resist, hoping that we can turn things around.

The first option for me Chairperson that was available to me was to resign from the executive. While I would have earned quite a lot of praise from many quarters, this action of resignation would have significantly
10 impaired my ability to contribute to bring about what I would call an end to state capture. It would have caught the big headlines in newspapers and that would have been the end of it.

Had I and like-minded individuals resigned from executive, we would have had no ability to resist some of the excesses that were taking place and there was a clear danger that without some measure of resistance there would have been even fewer impediments to the unfettered expansion of the state capture project.

20 It was also important to pursue and sustain the many government programmes that were vital to the transformation of our society and the improvement of our people's lives.

The second option was for me to be more confrontational, to speak out publicly against certain

decisions or actions of the government as they were happening in that captured way.

While there were instances where I did make public statements, there was also a limit to how confrontational one could be in the position that I held.

The more confrontational approach would most likely have led to my removal from office, the same consequences as resignation in that my ability to effect change would have been greatly constrained, if not brought
10 to an end.

The third option was to acquiesce and thereby abet the committing of the misdeeds, just to go along and be part of it all. This I would not and could not do, it would have been a violation of my principles and a profound betrayal of my responsibility to the government, my own organisation and the people of South Africa.

The fourth option available to me was to remain in my position as Deputy President and keep silent. This may have been the path but it was, in my view, not much
20 different from acquiescing and going along.

The final option for me, which is what I chose, was to remain in my position as Deputy President, not to resign, not to acquiesce and go along and join it or not to be confrontational but to work with others in the executive to resist the abuses and bring about change where we could

and to sustain the work of social and economic transformation.

Now this meant staying in the arena with the challenges and limitations and frustrations inherent in doing so but it was the course of action that had the greatest likelihood of bringing state capture to an end, restoring the institutions of state and defending our democracy.

It needs to be remembered that governance is not
10 merely a technical function, it is an inherently political function which is influenced by the dynamics and the exercise of political power.

My ability and the ability of others to resist and ultimately to bring about changes that would end state capture relied to a large measure on the political balance of forces within the executive itself, within the government party and within society, more broadly.

That was among the reasons why I chose to remain in the position of Deputy President, why I worked with
20 others through the democratic process to shift the balance of forces and why ultimately I agreed also to make myself available for the position of the President of the African National Congress at its 54th National Conference in December 2017.

Now with the benefit of hindsight I am certain that

this was the necessary and correct course of action that I took. Others may not agree but, for me, this was the better and the best course of action that I could take.

Fundamentally this approach enabled the far-reaching changes the country has gone through over the past three years, including the disruption of state capture project and the rebuilding of damaged institutions.

It was also possible through this approach to resist some of the more egregious and obvious abuses of power
10 and maybe one will cite just a few.

For instance, the replacement of Mr Nhlanhla Nene as Minister of Finance with Mr Des van Rooyen provides a useful illustration of this.

On the evening of 9 December 2015 former President Zuma announced the removal of Mr Nene and the appointment of Mr van Rooyen.

This had an immediate impact on the financial markets. Shortly after Mr van Rooyen was sworn in, the Director General of Treasury, Mr Lungisa Fuzile, asked to
20 meet me urgently. He expressed grave concern based on his interaction with the new minister and his advisers, great concern about the impact this development would have on the ability of National Treasury to properly exercise its function.

Concerned by what I considered the capture of

National Treasury because to me the capture of National Treasury was almost the final culmination of state capture because you capture National Treasury, then you have basically captured the entire state because that is where the money is, that is where it is controlled.

And after having that meeting with the then Director General who described to me in fairly graphic terms how he feared that now National Treasury had been captured, I also got concerned.

10 I immediately contacted the then and now ANC Deputy Secretary General Jessie Duarte and indicated in a meeting with her that this is what had happened and I was now really concerned that state capture had reached this level and I said to her that I would resign my position, Deputy President of the Republic, and I believe that message was conveyed to the then President and maybe that would have raised a concern, I do not know.

20 Then there was a flurry of consultations that involved some of the ANC officials expressing disquiet about the appointment of Mr Des van Rooyen, the then ANC Secretary General, Gwede Mantashe, Ms Duarte and myself urged the President to appoint another person as the finance minister because the reaction in the financial markets was turning to be quiet horrific and it is then we urged that he should appoint Mr Pravin Gordhan to calm

the markets and also for me to remove this spectre that I saw of state capture, capturing Treasury.

I believe the decision by President Zuma to replace Mr van Rooyen with Mr Gordhan was critical in preventing further damage to the economy and safeguarding the integrity of National Treasury.

And there were other instances which I detailed in my statement where it was necessary to make public statements on decisions which I considered contrary to
10 national interest.

One such instance was the removal of Mr Gordhan and Mr Mcebisi Jonas as Minister and Deputy Minister of Finance respectively on 30 March 2017.

At the meeting when former President Zuma informed the ANC officials of his decision I raised my concern that the Minister and Deputy Minister were being removed on the basis of unsubstantiated intelligence reports and I told the former President that I disagreed with his reasons and that when asked, as I expected I would be
20 asked by the media and other people, I would publicly state my objection. And I said that to him upfront and as did other officials who also spoke out.

While I reiterated that the President has the constitutional prerogative in terms of Constitution to appoint and dismiss members of the cabinet, I felt it was

necessary to speak out especially because of the serious consequences this decision would have on our economy and on our country.

Since assuming the office of President in 2018 February, the government that I lead has undertaken several measures to end state capture, to rebuild damaged institutions and to foster a culture of ethical public service and accountability.

10 In the main the measure have aimed at changing the way that cabinet functions, strengthening institutions that had been captured, starting with changes in the leadership of some of these institutions, changing the way in which our state owned enterprises also work and they way they were managed and overseen by government as shareholders - shareholder, rather - and making necessary policy decisions to address shortcomings and to reinforce oversight.

20 One of the critical projects currently underway to strengthen the state involves the professionalization of the public service. Now this aims to ensure that the public service has shorn off political partisanship and that the most qualified individuals enter its ranks. This is a very current development that we are fostering.

As this Commission has heard, law enforcement agencies were deliberately weakened to limit their ability to

act against those involved in corruption and state capture. It has therefore been a priority and remains an ongoing task of the administration I lead to rebuild and to restore the integrity of these institutions.

I therefore decided that the appointment, for instance, of the new National Director of Public Prosecutions should be undertaken through a public and transparent process.

10 This was the first time NDPP was appointed in such a manner which did much to restore the confidence of South Africans in the institution.

We have established the investigating directorate in the office of the NDPP to work on the high-profile complex cases of corruption and fraud. Its members have unique expertise in this field and it has shown this entity the capacity to speed up investigations and see prosecutions do take place. The NPA has started to make significant strides in combating corruption and I am confident that it will continue to do so.

20 In May 2018 I established the Nugent Commission of Inquiry to investigate governance failures at SARS and to propose ways to restore confidence of taxpayers. Its recommendations are now being implemented to redress the wrongs of the past and to ensure that SARS never again falls prey to the improper motives of a privileged few.

The impact of this work is already evidenced at SARS.

Other areas of progress include the work with the NPA's Asset Forfeiture Unit, the work that it has done to recover the proceeds of economic crimes, re-capacitating the NPA with more qualified personnel and changes in the leadership of entities such as the Public Investment Corporation.

Chairperson, this has been supplemented by the work of the fusion centre where all relevant law enforcement entities share information and support each other in investigating these kinds of corruption, discussion of how to institutionalise this form of cooperation are now underway.

The SIU tribunal started its work in October 2019 and since it started its work has shown its value in recouping monies wrongfully taken from state coffers.

As has been made plain in this Commission, our intelligence services are in dire need of attention. To this end the implementation of the recommendation of the high level review panel which was chaired by Dr Sydney Mufamadi is at an advanced stage.

I am assured by the leadership of the relevant agencies that illegal operations identified both by the panel report and the investigations conducted by State Security Agency leadership are being identified and they are also

being terminated. The investigations continue on these and other wrongs within the SSA and in collaboration with law enforcement agencies.

Covid activities are now subject to scrutiny by the auditor general, something that we welcome. Late in December 2019 I also reconstituted the National Security Council which is chaired by the President to ensure better coordination of intelligence and security-related functions of the stage.

10 Political responsibility of the State Security Agency now resides in the presidency and deliberations continue on the panel's recommendations to split up the SSA into distinct domestic and foreign intelligence services.

Government envisages a fundamental overhaul of state owned enterprises model that addresses not only the deficiencies that permitted widespread corruption but that also enables these companies to effectively fulfil their social and economic mandates in a sustainable manner.

20 To this end cabinet has established a presidential state owned enterprise council to reposition our SOEs as effective instrument of economic development through stronger oversight and strategic management.

Government is working towards and SOE ownership model that clearly separates the responsibility of ownership, policy development and regulation. Effective

ownership will become more centralised to enable greater transparency, accountability and oversight and subject all strategic SOEs to more rigorous requirements for financial as well as operational performing.

We are implementing standard guidelines on the appointment and remuneration of SOE boards and executives that prioritise the recruitment and retention of the appropriate skills and experience and competencies that we need in these bodies.

10 This includes a clear delineation of authority and responsibility between elected public officials, non-executive directors as well as executive leadership.

Chairperson, we are working to ensure the rigorous implementation of controls over the use of public money as the best way to protect the abuse of these funds. The national anticorruption strategy which was developed together with the representatives from business, trade unions, academia and civil society including religious organisation was approved by cabinet. The health sector
20 anticorruption which was launched in September 2019 is a critical element of our fight against corruption also.

Now legislative changes have been made and others are underway to fight corruption and they reduce the likelihood of recurrence of state capture.

Now the amendment of the Public Audit Act is a

good demonstration of this, to give the Auditor-General more power. Now this is a significant step in the fight against state capture as it targets the perpetrators of fraud and theft.

Now other set of powerful measures to prevent corruption and state capture include changes in the way that the public service is managed. Critical sections of the Public Administration Management Act have now commenced.

10 These include the prohibition of all public service employees conducting business with the state, the development of norms and standards of integrity, ethics and discipline in the public service and the in establishment of the office of standards and compliance.

Further sections will be commencing this year and legislation meant to entrench greater checks and balances in public procurement is in the pipeline and will be finalised as soon as possible.

20 Now, Chairperson, the Commission has asked me to address several other matters including allegations made by witnesses against me before this Commission. These are addressed in detail in a statement that I have submitted to the Commission.

There is one particular issue on which I wish to comment now since it has received such widespread

attention and can easily be disposed. This relates to the allegations made by Mr Brian Molefe and Mr Matshela Koko in relation to the stake that I held in Optimum Mine prior to my entry into government and my later responsibilities in respect of the Eskom war room.

While I was in business I participated in a commercial consortium with Glencore in the acquisition of Optimum Holdings which acquisition was concluded in June 2012. I acquired an effective 9.64% shareholding in
10 Optimum Holdings and became a nonexecutive chairperson of Optimum Holdings. In that role, Chairperson, I had no operational involvement in Optimum Holdings or Optimum Mine. I was nonexecutive Chairperson.

Following my election as ANC Deputy President in December of 2012 I initiated a review of my business interest to avoid potential conflict. As part of this process on the 6 June 2013 I resigned as a director of Optimum Holdings and on the 22 May 2014 I disposed of my shareholding Optimum Holdings ahead of my appointment
20 as Deputy President of the Republic. I had no further involvement or interest in Optimum after that appointment.

In December 2014 President Zuma assigned to me responsibility to oversee efforts to turnaround several SOEs that were in dire straits. I was asked to give guidance and direction to existing governing structures

focusing on the unique challenges of each structure.

As is apparent now, this work required collective commitment by all governing structures and was a long terms endeavour. Only recently have we started to truly make progress on the challenges that a number of state owned enterprises had been facing such as SAA, Eskom and other SOEs.

As part of this responsibility I chaired an inter-ministerial committee on resolving the country's severe
10 energy challenges. This IMC exercised political responsibility for the Eskom technical war room which was set up to support the implementation of the five point action plan, which we can talk about, adopted by the cabinet to address the electricity constraints.

The war room was under the day-to-day direction of deputy ministers of relevant departments and comprise representatives Eskom and relevant departments. I was not a member of the technical war room.

In response to the allegations made on this matter,
20 it is necessary that I point out the following issues.

First, my acquisition of shares in Optimum Holdings was a straightforward commercial transaction done in accordance with the regulations of the Johannesburg Securities Exchange.

Second, as nonexecutive Chairperson of Optimum

holdings, I was not involved in operational matters, subsidiary companies including contractual matters between, for instance, Eskom and Optimum Mine. And, Chairperson, as I acted in a number of instances on boards of various companies as Chairperson, I made it a point that as nonexecutive on various boards I sat, not to get involved in the operational matters and not to get involved in contractual matters to a point where those roles I never knew the procurement processes in those companies were
10 and I actually regarded that as no limit, no limit that I should never even participate in that and I kept to that type of protocol throughout.

The third one, by the time President Zuma assigned certain Eskom-related matters to me in December 2014 I had disposed of my shareholding in Optimum Holdings and had no other business interests in mining and energy.

Fourth, as is evident from the documents provided to the Commission with my statement, the Eskom technical war room was not involved in Eskom management or
20 operational issues. I had no interest nor any opportunity to influence Eskom's decision-making process in matters pertaining to Optimum.

Finally, I turn to Mr Koko's allegations which was also widely publicised that I improperly interfered to procure his dismissal from Eskom in January 2018.

As I detail in my statement to the Commission Eskom was in a severe crisis at the time. Its domestic and international lenders were threatening to call on their loans, that is repayment, in part because of concerns about Eskom's leadership and its reaction to allegations of corruption.

Eskom's predicament threatened its very existence and a going-concern, it also threatened the country's sovereign rating and the country's ability to access much
10 needed lines of credit.

An urgent meeting was held at the President's official residence on the 19 January 2018 attended by President Zuma, Ministers Brown, Gigaba and myself.

The meeting resolved that urgent action was necessary to avert a national disaster and to restore Eskom's credibility and to instil confidence in Eskom. This would require changes to Eskom's board and its leadership. The board would further be directed to remove all Eskom executives facing allegations of corruption and
20 other acts of impropriety, including Mr Koko.

Mr Koko contends that his removal was an instance of unlawful interference in Eskom's affairs, executive overreach, but he also adds state capture. The suggestion that government cannot lawfully intervene in Eskom's affairs even to avert a crisis is completely incorrect.

Government is Eskom's sole shareholder and Eskom Memorandum of Incorporation states that a shareholder may direct the company to take action specified by the shareholder if the company is in financial difficulty or is being mismanaged.

The remedial measures thus fell substantively within the shareholder's powers as contemplated in Eskom's Memorandum of Incorporation. The mere fact that Mr Koko was removed does not mean that his removal was intended
10 to achieve corrupt ends of somehow to end up with the capture of Eskom.

Chairperson, many people sacrificed their lives in the fight to end apartheid and to bring us the new constitutional dispensation. When we dishonour the constitution and we dishonour its principles and values, we dishonour those people who lost their lives as well.

Since state capture is an assault on the democratic process, it is necessary that the process of extricating the state from a position of capture is inclusive but it must also
20 be democratic and it must involve the broad range of interests in society.

This is addressed in part by the public nature of this Commission's work but the hard work will begin after this Commission has finalised its hearings and submitted its report. There will be, Chairperson, a need for a

partnership between citizens and all branches of the state to ensure faith is restored in our institutions and in our democracy.

Putting an end to state capture will enable the state to focus its efforts and resources more effectively on the provision of public services which is critical to the transformation and development of our society.

It is worth highlighting that many of our critical institutions continued to work as they needed to and as provided for in the constitution throughout this period as well.

Now despite the damage that has been done by state capture to public institutions during this time and the resulting impact on the provision of services, the reality is that the work of government yes, did continue and progress has been achieved in a number of areas. This was due, in part, to the efforts of committed, capable and ethical public servants and public representatives.

Now the road from the period of state capture will be long. Every measure we have instituted has taken time and it has led to a lot of frustration as delays have led people to lose hope and faith but it has required time and effort and I believe, Chairperson, that will not and we cannot relent, we have got to succeed in the task that your Commission is also involved in, that we should restore the

credibility of the institutions of our country and indeed the further damage that was done to our democracy. Thank you, Chairperson.

CHAIRPERSON: Thank you, Mr President. I had said earlier that we would take the normal tea break at quarter past eleven, I see it is twenty five past. Maybe we should take it, but I am just concerned about the time we may be losing as well. Mr Pretorius suggests ten minutes. Okay, maybe we should take a break and the President can get
10 time for his tea as well. Okay. Well, sometimes when we say ten minutes it ends up not being helpful because maybe it is just too little a time so – okay, it is about twenty two minutes past, let us come back at twenty five. So we will adjourn to enable to have the tea break. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue. Our 12 minutes took much longer.

20 **ADV SELEKA SC:** Much longer, ja.

CHAIRPERSON: We ... has the issue of stopping time been discussed? Do you know Mr Seleka?

ADV SELEKA SC: Not yet sir.

CHAIRPERSON: Okay. So maybe during lunch ...[intervenes]

ADV SELEKA SC: Maybe during lunch time.

CHAIRPERSON: During lunch it could be discussed so that when we return after lunch I can be told, because we have lost quite some time. It would be good if the President is able to go beyond four o'clock, but I think also the evidence leaders maybe can arrange themselves in such a way that when one finishes and another one must take over, we can do that without a break because the breaks seem to take longer than we would like.

10 So if maybe the evidence leaders can work on that if possible so that as one leaves the podium another one can come in without us needing to take a break if possible. Okay, alright.

ADV SELEKA SC: Thank you sir.

CHAIRPERSON: Mr President, Mr Seleka is going to question you on Eskom related matters. Thank you.

ADV SELEKA SC: Indeed. Indeed Chair. Thank you. Pleased to meet you Mr President. Chair, just housekeeping quickly. The affidavit of Mr President relate
20 ... the second affidavit relating to the matters we are about to traverse maybe should be admitted as an exhibit.

That affidavit is in Bundle 3 Mr President and I would ask you to go to page 6 of that Bundle 3. We are using the black pagination at the top left hand corner. So on page 6 is the ... you find the first ... it is a cover page

with the index.

Between the tram lines is written statement by the President of the Republic of South Africa, Matamela Cyril Ramaphosa. You see that Mr President?

PRESIDENT RAMAPHOSA: I have got the statement, yes.

CHAIRPERSON: It actually starts at page 8. It is just the index that comes before that.

ADV SELEKA SC: Yes, and then it goes all the way to page 143. On page 143 it is a signature above your name.

10 Do you confirm that to be your signature Mr President?

PRESIDENT RAMAPHOSA: Yes, it is.

ADV SELEKA SC: And then the affidavit is commissioned. I see there is no handwriting of the date but the stamp date is 24 May 2021. Do you confirm that to be the date when you signed your statement?

PRESIDENT RAMAPHOSA: Yes.

ADV SELEKA SC: And do you confirm then the contents of your affidavit as true and correct?

PRESIDENT RAMAPHOSA: Yes.

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

CHAIRPERSON: I think that was too soft, I guess it is yes.

PRESIDENT RAMAPHOSA: Yes, yes, yes.

CHAIRPERSON: Thank you.

ADV SELEKA SC: Chairperson, may I then beg leave to have, it is actually an affidavit. I know it is titled a

statement. The affidavit of Mr President starting from page 8 of the bundle to page 143 together with the annexures thereto, admitted as Exhibit BBB3.1.

CHAIRPERSON: The affidavit of President Matamela Cyril Ramaphosa that starts at page 8 of Bundle 3 is admitted as an exhibit and will be marked as Exhibit BBB3.4.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: You said 3.4, not 3.1?

ADV SELEKA SC: 3.1.

10 **CHAIRPERSON:** 3.1.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay, correction. 3.1.

ADV SELEKA SC: Yes, thank you.

CHAIRPERSON: You may continue.

ADV SELEKA SC: Thank you Chair. Chair, just by way of introduction and for the benefit of Mr President. Mr President, the intention was to lead your evidence in respect of four items in relation to Eskom. One is the war room and the establishment of the war room, the purpose
20 for the war room and in relation to that is the allegations you have addressed in regard to Mr Brian Molefe.

The second issue is it relates to the secondment of Mr Molefe and Mr Arnold Singh to Eskom and the role that would have been played by the ANC deployment committee. The third issue which you have also touched

on, are the allegations of Mr Koko.

Then lastly also connected to Mr Koko and Mr Molefe is the allegation they make about loadshedding. Essentially that it was when you got appointed, that loadshedding came back in the country. So let us start with the war room and I will keep my eye on the time.

Pace ourselves. I know that you deal with the war room in your affidavit Mr President, but maybe you could explain to the Chairperson, as I have also seen that you
10 endeavour to distinguish between the war room ... the technical war room on the one hand and the IMC on the other and it pains to clear the confusion you say existed between the two and the role that you played in relation to the two.

If you could just in summary deal with that.

PRESIDENT RAMAPHOSA: Okay. Well, the IMC was set up really, and IMC is an inter-ministerial body which I as Deputy President was then delegated to lead. It largely dealt with more broader strategic issues, but also had to
20 deal with the challenges that Eskom was going through at a very broad strategic level.

The war room itself, we called it a technical war room which was largely overseen by deputy ministers and my then chief of staff, Mr Busani Ngoweni was the key coordinator and it was housed at the union buildings. It

was composed of your more technically inclined people who did the work, and it also had people from Eskom itself.

It got involved in the more operational issues, which I as an oversight person did not get involved in, and all I ever really got were reports on an ongoing basis and for the most part, they also dealt with what we had adapted as the five point plan.

Now the five point plan that dealt with issues of ensuring and I will recall them now in the statement, that
10 ensured issues of how best we could increase the capacity of Eskom and be able to get more generation. The generation that would also include the conversion of some of the pass stations to gas.

As we were already seeing the challenge that Eskom was having in relation to the breakage of a number of power stations due to lack of maintenance, but it also had to deal with the maintenance program. How that maintenance program would need to be overseen.

That is the type of work that the five ... that the
20 technical war room did, though the distinction between the two was the IMC more strategic matters, the broad nature and the technical war room, the real technical issues that needed to be dealt with.

That is the extent to which those two entities were .

ADV SELEKA SC: I listened during your opening speech

Mr President, that you described yourself as the Chairperson of the IMC. But that you were not the Chairperson of the technical war room. So what was your role in relation, if at all, in relation to the technical war room?

Now I am asking, I beg your pardon. I am asking that question because you would have heard Mr Koko and Mr Molefe had alleged that you were the Chairperson of the war room. Maybe you could explain that position.

10 **PRESIDENT RAMAPHOSA:** Well, I think there is a confusion and that is why in my opening statement I sought to verify. There would be for those who were possibly not within the bowels of government, at the union buildings level or cabinet level.

That confusion could be there. I did play an oversight role also on the war room as I periodically received the reports and the fact that my chief of staff at the time, Bosani Ngoweni was intricately involved in the technical war room, meant that from an oversight point of
20 view, the deputy president yes thought to oversee the work.

But my real key role was that of Chairing the IMC. That was the key role.

ADV SELEKA SC: Yes. Well, while we are there let me dispose of this allegation which was that should I assist

you with the page ...[intervenes]

PRESIDENT RAMAPHOSA: No, no that is fine. Yes, ja.

ADV SELEKA SC: Should I assist you with the page number?

PRESIDENT RAMAPHOSA: You can.

ADV SELEKA SC: That is on page ... it starts on page 57.

PRESIDENT RAMAPHOSA: Yes.

ADV SELEKA SC: Of the affidavit.

PRESIDENT RAMAPHOSA: Indeed.

10 **ADV SELEKA SC**: Yes.

CHAIRPERSON: Are you referring to page 57 of the affidavit or page 57 of the bundle?

ADV SELEKA SC: Page 57 of the bundle.

CHAIRPERSON: It is the black numbers on the top left ...[intervenes]

ADV SELEKA SC: Correct Chairperson.

CHAIRPERSON: Corner.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay.

20 **ADV SELEKA SC**: Thank you Chair. Now Mr President, then I wanted to dispose of this issue while we are there. Which is the allegation that when you played the role that you played in relation to the technical war room, as given your either at the time previous connection with Glencore, with OCH, that you did not allow for a cooling off period so

that there can be any potentiality of conflict in your ... on your part be dissipated.

I will do this in relation to the allegations. So I put them to you and you can address them to the Chairperson.

PRESIDENT RAMAPHOSA: Well Chairperson, I have heard of this cooling off period process and it is an interesting notion. I was ... I did not appoint myself. I was appointed by the President. A President to whom I had disclosed all my business dealings of the past.

10 A President who, on assuming office, I informed as it is expected in terms of the code of ethics, my interests and I laid them all out and my interests which at the time involved my past interests in Shanduka, which through its Shanduka resources had a shareholding in Optimum Holdings and I had disclosed that I was disposing of all those interests.

Even asked for extended time to be able to do so. Which was granted, and I had also resigned from the board as I said in my initial opening statement. As far as I was
20 concerned, I had distanced myself and the president was fully aware of all these, and the repository of all this is the Director General who received all these disclosures, who would have as the Director General is expected, make sure that all the protocols and all the regulations are properly observed.

So all that was declared, was known and as I was appointed, I had no further dealings with the coal business, if I may say so but then again my dealings in those two structures never revolved around issues of procurement, coal contracts and all that.

Even if by some imagination they could have I would have recused myself immediately because a conflict of interest in my world, is something that either needs to be declared or needs to be avoided. In this regard it had
10 been declared and I had completely walked away and moved away from such.

So the cooling off period is an interesting notion. It is not generally ... it is not being inculcated into our processes. But for me the safeguard was having declared and having distanced myself and having been appointed by someone who knew or should have known there were enough safeguards in that regard.

So I would say the allegation in my view falls flat because of the principles that I uphold as well as the
20 various actions that I had taken of resigning, of disposing and of ensuring that I do not get involved in procurement issues.

ADV SELEKA SC: Along with that Mr President is the allegation that Glenco / OCH which is Optimum Coal Holdings, failed to do a due diligence at the time of

acquisition of OCM and that failure was deliberately made because Glenco / OCH knew that they could rely on your political, on their connection they had with you as a political heavy weight, to muzzle Eskom into increasing the coal price once they have acquired OCM.

I am also going to give you a chance to respond to that allegation. It is made both by Mr Koko and by Mr Brian Molefe. This, according to them, you are on the one hand is their reliance on your connection with them and on
10 the other hand is you being placed in the position where you would be able to influence decision making within Eskom.

What do you say to that allegation?

PRESIDENT RAMAPHOSA: Very interesting. When I was Chair of Shanduka we decided to set up an entity called Shanduka Resources and through that we partnered Glenco – Glenco and ourselves sought to form a consortium that would require some resources assets and one of those was the coal entity.

20 It was listed and acquired some of the shares initially through the listed counter and thereafter felt that we should make an approach to acquire the entire shareholding and this is acquiring shares of a holding company which holding company would have a number of subsidiaries.

CHAIRPERSON: I think he is back Mr President.

PRESIDENT RAMAPHOSA: Oh, yes.

CHAIRPERSON: Yes, okay.

PRESIDENT RAMAPHOSA: So when you acquire shares of a listed entity, which may have a number of subsidiaries, what you normally do is to rely on published information which is available to everyone and you then buy your ... the shares and that is precisely how it happened.

There was therefore no real need to go and do a
10 due diligence on each of the subsidiaries because you were acquiring an entity that is listed and you are acquiring the shares. You were not necessarily buying the direct ... the assets directly.

In the case of Optimum Holdings and Optimum Mine, that is the differentiation. Optimum Mine is a subsidiary and Optimum Holdings is the listed entity, and then an offer had to be made to the board, to the shareholders and it was for the acquisition of the shares and whatever you acquire par – per rather the holding
20 company, you would also consequentially be acquiring the subsidiaries which could in some cases be many, but you rely on the published information that is available to everyone.

So there was therefore no need for a due diligence, because you were acquiring shares. As regards thinking

that partnering with Glenco was they were relying on my political connections, I was in business. I was not in government.

Due to the extent that if they have ever thought so, which they did not as far as I am concerned. It was just purely a business transaction, to the extent that they could have relied on me or indeed anyone else for political connections, in my case they would have been mistaken because much as one would have wanted to get into the
10 coal business, it had to be a business that is run in accordance with rules and without bringing undue influence on anyone to act against the interest of in my case I would say a publicly owned entity, which whose interests I would always want to advance.

So I refute and I deny the notion that I could have been used as a politically connected person and I reject that out rightly.

ADV SELEKA SC: Yes. Let me also put a statement which, an allegation rather made by Mr Brian Molefe as
20 well to you Mr President, so that you could also address it in the same context. so he says for instance when he arrived at Eskom, talking of the war room, he says a *de facto* board of the company had been established outside of the company in the form of a war room in the presidency.

Management had to report to the war room. Then Deputy President Cyril Ramaphosa Chaired it. This effectively made him the *de facto* Chairperson of Eskom and put him in a powerful position to pursue Glenco's agenda at Eskom.

Were you *de facto* the Chairperson of Eskom?

PRESIDENT RAMAPHOSA: No. I mean even with anybody's imagination I could never have been Eskom's Chairperson. I was Deputy President and in that role we
10 were dealing with the challenges that Eskom was facing, and I could never be that blase as to want to advance the interests of one company that everyone could have known that I was associated with in the past, much as I had already disposed of my interests.

So no, I deny I was Chairman of Eskom, ever ... even the notion of being Chairman of Eskom is quite bizarre. Because how does the Deputy President become the Chairman of an entity like Eskom? That would violate every corporate governance rule.

20 At best what the technical war room was doing, was to address the challenges that Eskom was facing. Which were clearly delineated, a task which I had been asked to undertake by none other than the President of the Republic.

Thank you.

ADV SELEKA SC: I should emphasise Mr President that he underscores his allegation by saying *de facto* and not *de jure*.

PRESIDENT RAMAPHOSA: Yes.

ADV SELEKA SC: So he does not say legally you were, but he says factually you were. So essentially you were the Chairman of the board but I think you have addressed the ...[intervenes]

PRESIDENT RAMAPHOSA: I have addressed it, yes.

10 **ADV SELEKA SC:** Now those are the conflicts alleged in regard to yourself, relative to the war room. There are – there is an apparent conflict now in relation or contradiction in relation to the former President, and let us see how you comment on that one, because the IMC and the war room as I read from your affidavit, would either one or two of them, or both of them, were established amongst other things, to address the issue of electricity crisis in the country.

PRESIDENT RAMAPHOSA: Address, sorry?

20 **ADV SELEKA SC:** Electricity crisis in the country.

PRESIDENT RAMAPHOSA: Yes.

ADV SELEKA SC: Is that correct?

PRESIDENT RAMAPHOSA: Yes.

ADV SELEKA SC: Now cabinet has set up these structures for that purpose but evidence has been led

before the Commission to the effect that during March 2015 because this cabinet establishment is December 2014, but during March 2015 the then President, Mr Jacob Zuma, is involved in a meeting in Durban, at his official residence amongst others with Ms Dudu Myeni, Mr Zola Tsotsi who was the Chairperson of the Eskom Board at that time, and this is one of the meetings in which a plan is conceived or maybe hatched, to establish an inquiry within Eskom and suspend the executives.

10 This inquiry is also amongst others meant to address or look into the electricity crisis in Eskom. Were you aware of what I have said now, the meetings the former President would have had in Durban when Ms Dudu Myeni was present, Mr Zola Tsotsi was present and others, to discuss this very issue of the inquiry?

CHAIRPERSON: Well, maybe we should add Mr Seleka that in that meeting another issue that was discussed was the or discussed or planned was the suspension of a number of executives at Eskom and you would obviously
20 know that at some stage they were suspended and ultimately left Eskom.

So when you comment on the question just bear in mind that this is a meeting where the President to whom you were deputy, met with certain people in his official residence in Durban. The date was the 8th of March 2015

and this was discussed.

A number of witnesses who were present have given evidence in regard to this. Of those witnesses only Ms Myeni denies that the President took part in the meeting but I think all the other witnesses say that he took part.

PRESIDENT RAMAPHOSA: No, I was not aware of this meeting. Like everyone else, I got to know about the suspension of those executives. Some of whom we interfaced with at the IMC and they were suspended and
10 they were gone and I was not aware of the meeting and the discussions and the decision.

CHAIRPERSON: Would it be fair to say you would have expected to have been informed if the then President was part of discussions that would see to the suspension of executives at Eskom in light of your role in regard to Eskom?

PRESIDENT RAMAPHOSA: Yes, I was surprised that I was not brought into the loop as it were or informed. It just happened and yes.

20 **CHAIRPERSON:** Ja. Mr Seleka?

ADV SELEKA SC: So I understand Mr President you to be saying to the Chairperson you had no prior knowledge of the suspensions?

PRESIDENT RAMAPHOSA: None whatsoever.

ADV SELEKA SC: Ja. I ...[intervenes]

CHAIRPERSON: After they had happened, I am sorry Mr Seleka.

ADV SELEKA SC: Yes.

CHAIRPERSON: After they had happened, the suspensions Mr President and maybe the removal of these executives, did the then President ever discuss with you what role if any he may have played in what he had known about them or did that never happen?

PRESIDENT RAMAPHOSA: It never really was a direct
10 type of ...[intervenes]

CHAIRPERSON: Discussion.

PRESIDENT RAMAPHOSA: Discussion.

CHAIRPERSON: Okay.

PRESIDENT RAMAPHOSA: So I would not be able to say
so.

CHAIRPERSON: Yes, okay. Alright. Mr Seleka?

ADV SELEKA SC: Thank you Chair. Mr President, I recall
reading your answers to the national assembly back in
2015. I think 18 March 2015, where your tone was rather
20 positive about this inquiry we are talking and the
suspension of the executives.

You do mention it in your answer to the national assembly. This is on the 18th of March, seven days after the suspensions had been effected. Had you at that time decided in your mind that this was a good thing for Eskom?

PRESIDENT RAMAPHOSA: The answering questions in the national assembly, the suspensions would have happened and that was a *fait accompli*. It had happened and we had to move on and move ahead. So I am not so sure whether one expressed it in a positive light or not, because the impression one got, was that they were doing their work, and they were, some of them were quite proficient in what they were doing.

But one was dealing with a *fait accompli* and so one
10 in answering questions, had to say yes, this has happened and we move on and we try to re- address the challenges that Eskom is having. So I would not specifically be able to say you know, am I excited, am I happy about all this.

No, it has happened and we move on.

CHAIRPERSON: Well, it might be helpful Mr Seleka if you have got the relevant extract at hand ...[intervenes]

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: To read that to the President so that we, you refresh his memory.

20 **ADV SELEKA SC:** Yes Chair, thank you. Mr President, that is in Bundle 5. I have given it to the President.

CHAIRPERSON: Okay.

PRESIDENT RAMAPHOSA: Ja. No, no, no I think ...[intervenes]

ADV SELEKA SC: Page 123. Page 123. I see the page

numbers are the same. Whether red or black.

PRESIDENT RAMAPHOSA: Indeed, I can see that.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

PRESIDENT RAMAPHOSA: It is a very small print.

ADV SELEKA SC: Very small print.

CHAIRPERSON: Did you say Mr Seleka, this was on the 18th of March 2015?

ADV SELEKA SC: Correct Chair.

10 **PRESIDENT RAMAPHOSA**: Yes.

CHAIRPERSON: Which, the suspensions happened on the 11th of March.

ADV SELEKA SC: That is right.

CHAIRPERSON: So this would have been seven days later?

ADV SELEKA SC: Correct Chair.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: This is fresh after the suspension. Paragraph 1, 2, 3, 4 Mr President, where you respond to a
20 question I think of Mr Singh.

PRESIDENT RAMAPHOSA: Yes.

ADV SELEKA SC: He is specifically talking about these issues and your response is:

“Yes, we can say ...”

And he is asking whether will there be light at the

end of the tunnel. You say:

“Yes, we can say there will be light at the end of the tunnel as well as we all know, Eskom faces challenges but these challenges are being addressed. They are being addressed, notwithstanding the fact that the four executives have been put on leave of absence for three months. It is leave of absence just for three months. An inquiry takes off and as it happens it will be done within three months and thereafter much clearer our executive future will be determined.”

10

That is, well it goes on:

“I believe that the problem with the leadership level will be addressed ...”

And so on, ja.

PRESIDENT RAMAPHOSA: Yes. Well, there is a prior paragraph which I thought you might have wanted to refer to, where Mr Singh says:

20

“Mr Chairman, we know Honourable Deputy President that you have been handed the poisoned chalice.”

And the evidence leader is handing me another poisoned chalice. No, no I mean yes, now that you refer me to this, I recollect that they were placed on leave so

that the inquiry could happen, and I want to reiterate what I said earlier, that I was not you know, made preview of the decision to have them either suspended or placed on leave.

But it is also as I responded to it here, because I was dealing with the factual situation *fait accompli* as it were.

ADV SELEKA SC: Yes.

PRESIDENT RAMAPHOSA: Ja.

10 **ADV SELEKA SC:** Was Mr President aware ... were you aware that Mr Mathona, the chief executive had only been there for about five months?

PRESIDENT RAMAPHOSA: Yes.

ADV SELEKA SC: You were aware of that?

PRESIDENT RAMAPHOSA: I was aware of it.

ADV SELEKA SC: May I ask you Mr President, in regard to the election you chose, you mentioned the options you had in your opening speech which is also dealt with in your affidavit and the last option or the option you ultimately
20 chose, was to stay.

Stay within and I think try to change things from within.

PRESIDENT RAMAPHOSA: Yes.

ADV SELEKA SC: And to the extent, I also get the sense that the intention was offer some resistance. Tell me if I

am correct in that assessment. Offer some resistance to some activities that are either relating to state capture or corruption.

Will that be correct?

PRESIDENT RAMAPHOSA: Yes. With the view to changing things, yes.

ADV SELEKA SC: Now when these things were happening, I want to ask you pursuant to that election you made, did you consider that you could do anything to find
10 out what is happening? Why are these executives suspended? Why does Eskom need to have an inquiry and into what.

The war room is here, the IMC on energy is also here. I oversee the turnaround of all these SOE's the strategy, exactly what is going on? Did you pursuant to that election see it fit to approach matters in that way?

PRESIDENT RAMAPHOSA: Within the context of everything else that was happening which context would also lead me to the decision that I then took to go to
20 President Zuma and say I think we should close the war room because as these suspensions happened, I suddenly realised that there were just too many initiatives that were all happening at the same time.

We had the war room on one side, the IMC on one side. We had what President Zuma was doing on one side

...[intervenes]

CHAIRPERSON: The board.

PRESIDENT RAMAPHOSA: We had the board on one side to deal with the issue that you raised as a concern, for me was to say let us close this war room. Let us have one entry point into Eskom. Let us even go a little further. Having closed the war room, let the board and the executive also be in charge.

I am not so sure now of the sequence, but one of
10 the things I then did when I saw President Zuma, was to say let us appoint Brian Molefi as the CEO of Eskom, close the war room and he has proven himself to be quite an effective CEO and let us give him the responsibility.

So then there will be one entry point, and all of us would then stop what we were trying to do with regard to Eskom because it leads to confusion. So that was my take and the chronology could be ...[intervenes]

ADV SELEKA SC: Yes.

PRESIDENT RAMAPHOSA: Synchronised with what I have
20 just said, but that is precisely the view that I took, because I was getting frustrated as well. Because this action had now been taken and there was to be an investigation and so on and I felt we are messing things up.

We are just having too many entry points, let us have one and that would be the CEO and the board and

they would be able to address all the challenges.

CHAIRPERSON: Did you have any suspicions at that stage in the light of these suspensions and an inquiry being suggested for Eskom, without you having any prior knowledge. Did you have any suspicions that there must be something untoward here?

How can being Deputy President and having been given this assignment to try and oversee the turnaround strategy for Eskom, not be consulted beforehand to say
10 four executives would be suspended all at the same time.

PRESIDENT RAMAPHOSA: Ja.

CHAIRPERSON: They have been acquiring to the affairs of Eskom. I do not know anything. Did this give rise to any suspicion on your part to say maybe there is something untoward going on here or not really?

PRESIDENT RAMAPHOSA: It was more frustration. More exasperation and frustration, that I had and my immediate staff also had. So that was the issue and by suspicion if you think that do we think that there was something
20 untoward that was of a dark nature, not at the time.

It was just ...[intervenes]

CHAIRPERSON: Ja.

PRESIDENT RAMAPHOSA: The frustration.

CHAIRPERSON: Okay. Mr Seleka?

ADV SELEKA SC: And Mr President, in addition to that, I

mean the response to the national assembly emphasises that this is leave, well you chose the words leave of absence for three months. It is leave of absence, just for three months as the inquiry takes away.

I am sure you became aware that three of them never came back to Eskom. You did become aware of that fact?

PRESIDENT RAMAPHOSA: Yes, I did become aware that three of them never came back.

10 **ADV SELEKA SC:** Ja. I told you during the break that Eskom matters are difficult. They are very complex and intriguing. So if it is difficult to answer some of the questions, it is because they are difficult.

PRESIDENT RAMAPHOSA: Indeed, it is.

ADV SELEKA SC: Because the next question is when, as and when you became aware that they did not come back, I go back to the Chairperson's question. Did it bother you? Did it trouble you? If you are not troubled on their suspension, were you troubled or not when you learnt that
20 these three have been negotiated out of Eskom?

PRESIDENT RAMAPHOSA: Yes, I was troubled and I was not even part of that process of negotiating them out. I recall the one person who impressed me greatly, who was the financial ... the CFO. I later heard that she had moved to another company.

CHAIRPERSON: That was Ms Molefi I think?

PRESIDENT RAMAPHOSA: That is Ms Molefi, ja.

CHAIRPERSON: Ja.

PRESIDENT RAMAPHOSA: I then had had a desire you know to talk to her but we never got the chance to sit and chat, and up till today. So I was never part of that whole process of getting them out of the system.

CHAIRPERSON: Well you might not Mr President, be hearing all the evidence that comes from this commission
10 obviously. Nobody would hear everything except myself. Because even the evidence leaders change, so I am the only one who does not change.

PRESIDENT RAMAPHOSA: Of course, it is your job. I have mine.

CHAIRPERSON: It is my job. You might not have heard this evidence that was given to this commission. One, that at the Durban meeting that Mr Seleka told you about, where President Zuma met with certain people and they were Ms Dudu Myeni, Mr Zola Tsotsi, Mr Lenel who was a
20 consultant at SAA, a consultant for Ms Dudu Myeni and I think one or two other people, the only ... the number of executives that were discussed who would be suspended, were three.

They did not include the financial director, the CFO. That was on the 8th of March, and the evidence that

I heard is that on the 10th of March certain Eskom employees, in particular Ms Daniels and Mr Masango had a meeting at Melrose Arch with Mr Koko and Mr Salim Essa and that at that meeting, that is now one day before the day when the board decided to suspend them, the executives.

It was at that meeting where they discovered or they were told that four executives would be suspended, and one of them was the financial director who had been
10 added. Prior to that she had not featured, and the then Minister of Public Enterprises, Mr Lynne Brown, was asked to address the board on the 11th of March.

That is the morning when the decision was taken to suspend and she was the first person who introduced into the board, the fourth person, namely the financial director as one of the people who should be suspended.

Prior to that as far as we know from what we have been told, she was not one of those to be suspended and she was suspended and the question has arisen and I put
20 it to Ms Lynne Brown, I put it to other people. Is where she got this name from and the evidence I have is simply that Mr Salim Essa and Mr Koko had four names and not three names that had been discussed at the Durban meeting.

So I am just mentioning that. Mr Seleka?

ADV SELEKA SC: The capture was quite deep, Mr President.

PRESIDENT RAMAPHOSA: All that was unknown to me.

ADV SELEKA SC: I am going to go into what you say was your suggestion Mr President, to the former President.

PRESIDENT RAMAPHOSA: Yes, indeed.

ADV SELEKA SC: For the appointment of Mr Molefi.

PRESIDENT RAMAPHOSA: Yes.

ADV SELEKA SC: But as I do so, let me preface that with
10 this question. What is your comment to the observation that the suspension and ultimate removal of the three executives, was to pave the way or open a space for the secondment for bringing into Eskom of people who were sympathetic to the Gupta cause.

PRESIDENT RAMAPHOSA: Well, I was not alive to that, I must say. Because once they had been placed on leave, I was exasperated and felt that we needed to close all the loopholes and not have too many fingers into Eskom, and have this one entry point.

20 That for me would have been the appointment of the CEO. So I must say that I was not alive and aware of the appointment or the bringing in of Gupta linked people. I was just merely looking at it as a clear situation where you want to bring about efficiency into Eskom.

That is all.

ADV SELEKA SC: So you then approached the then president. That is on page 66 of the bundle where you find your affidavit. You talk about you approaching the former President, Mr Zuma and suggested that Molefi should be appointed as CEO of Eskom.

That is page 66, paragraph 131.2. In that paragraph, you talk about Mr Matona being placed on precautionary suspension and therefore you went and discussed this with the President or suggested it to the
10 President.

So this would have been in 2015, after the suspensions. I am going to ask you this question Mr President, and I do not know whether this is a coincidence or not. In 20 ... again evidence before the Commission, the gentleman from a private company in 2014 Mr Henk Bester, who was ... whose company was in negotiations with Transnet for a contract, is called to a meeting to meet with Mr Arnold Singh, because in this case he is complaining about Transnet paying invoices late.

20 One of the gentleman who wants to be a subcontractor to their company, says well you can ... why do you not approach Mr Arnold Singh directly. That meeting is ultimately arranged and it takes place at Melrose Arch.

There he meets with Mr Salim Essa who seems to

be coordinating the meeting. This one meeting leads to another meeting and I am cutting a long story short. Leads to another meeting where he is called by Mr Salim Essa insisting that Mr Salim Essa's company should be subcontracted to Mr Henk Bester's company when they get the deal at Transnet.

In that conversation Mr Salim Essa is said to have said to him we will show you how powerful we are. We have decided that Mr Brian Molefi is the next boss of Eskom. The CEO of Eskom. This is in 2014 and he is assured watch this space, look at the news, it will be reported soon and then that gets to be reported in 2015, on the 17th of April 2016 by Minister Lynne Brown.

So your suggestion must have been a coincidence to the then President or were you seeing something no one was seeing Mr President?

PRESIDENT RAMAPHOSA: This is very complex, yes. No, I think it was a coincidence. My approach to President Zuma was clear proposal on how best we could take or resolve the challenges that Eskom was facing and for me it was a choice of Brian Molefe whom I have come to know over years as being a very effective, purely effective CEO who I had also worked with in another state owned enterprise and we had worked extremely well together.

That was Sasria and when I made the suggestion I

had no clue, no even awareness of all these issues that Mr Seleka is talking about. It was just purely on the basis of what I knew about his capability and also addressing another problem which I had which was my own exasperation about not even that I am making headway because of all these entry points into Eskom and I felt we needed somebody who is an effective CEO who would be able to just virtually grab Eskom by the scruff of its neck and take it forward in the most effective way. That is what
10 it was all about.

CHAIRPERSON: Can I find out Mr President whether your discussion with Mr Zuma on that occasion when you mentioned Mr Brian Molefe's name, whether you came up with this name without you having said anything about Mr Brian Molefe at all.

Are you able to remember whether from your point of view it was just a name that you came up with, he had not mentioned anything about the name himself?

PRESIDENT RAMAPHOSA: Yes, he did not mention a
20 name. I basically approached him that I think we should close this war room. We have got too many entry points into Eskom. Let us have one person who will run with this process of repositioning Eskom and I also wanted to be disengaged from the whole process and I then felt that Brian Molefe was the name that would be able to do the

work.

So he did not come up with the name, I came up with the name, and put it to him.

CHAIRPERSON: That is interesting, because Ms Lynne Brown also testified that she got the name of Brian Molefe from Mr Zuma.

PRESIDENT RAMAPHOSA: Ja.

CHAIRPERSON: And it may well be therefore that Mr Zuma mentioned that name to her because you had
10 suggested the name to him.

PRESIDENT RAMAPHOSA: It is possible.

CHAIRPERSON: It is possible. Of course, that question arose because part of what the Commission was looking at is certain people who were appointed to certain positions, where did this come from? You know, the idea that so and so should be in that you know entity and should occupy a particular position. Was it coming from people who legitimately could make those suggestions or who had the power to say let us look at that.

20 Now with regard to Brian Molefe, apart from what Mr Seleka has mentioned to you namely that in 2014 already the evidence that the Commission has heard, is that Mr Salim Essa had told Mr Henk Bester that we have already decided that Brian Molefe is going to be the next boss of Eskom.

Of course, at that time in March 2015 Mr Brian Molefe was the group CEO of Transnet.

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: Now before he got appointed to that position which happened in 2011, in 2010 December, I think December 6 or 7 or 10 December 2010, the New Age, that newspaper that used to belong to the Guptas, had carried an article which said that in effect Mr Brian Molefe was going to be the next group CEO of Transnet.

10 This was at a time when Mr Molefe was not even an applicant for that position, and later on he was nominated by a board member, Mr Shama of Transnet and although in terms of the points scored in the interviews, he was number 2, he was the one that was picked and became group CEO.

 So two times sources connected with the Guptas said in advance where he was going to go. First he was going to be the group CEO of Transnet and he did become group CEO of Transnet. Second, they said he was going to
20 be the next boss of Eskom and he did become the next boss of Eskom.

 So within this context, one asked the question where was this coming from. So Ms Lynne Brown says she got the name from Mr Zuma. You have said that you mentioned the name to Mr Zuma.

PRESIDENT RAMAPHOSA: Yes. On my part it was largely based on ...[intervenes]

CHAIRPERSON: His track record.

PRESIDENT RAMAPHOSA: Ja, his record of what I knew about him when he worked in treasury and later he went to the PIC and I had worked with him in Sasria when he was still in treasury and that was ...[intervenes]

CHAIRPERSON: Ja.

PRESIDENT RAMAPHOSA: Ja.

10 **CHAIRPERSON:** Mr Seleka?

ADV SELEKA SC: Thank you Chair. Mr President, is it correct that Minister Lynne Brown now most probably unbeknown to her that you had recommended the name to the former President, that she would have consulted with amongst others yourself for the secondment of Mr Brian Molefe to Eskom?

PRESIDENT RAMAPHOSA: I would imagine it did. I do not have a direct recollection of all that. I think within the broad parameters of how we worked, I am sure it would
20 have happened that way. Right now I do not have that calculation.

ADV SELEKA SC: Yes. Would then the consideration, suggestion, proposition or consideration for Mr Molefe to be seconded, would it have followed the process of the ANC deployment committee, which is that whoever gets

recommended must be a suitable candidate?

He must apply and he must meet the requirements. Must be a fit, I think you have used the word, it must be a fit for the purpose.

PRESIDENT RAMAPHOSA: Yes.

ADV SELEKA SC: Did that process get to be followed in this case?

PRESIDENT RAMAPHOSA: Ordinarily yes, it would have had to be followed and now we do not have the minutes of
10 the Guptas committee at the time, as to be able to have that type of recollection but ordinarily that is what would have had to happen because this is a very big state owned enterprise that has a huge impact on the economy of the country so that, to answer your question yes that would have had ...[intervenes]

CHAIRPERSON: Maybe I should ask this question which is more general. Would it be fair Mr President to work on the basis that when it came to board members and Chairpersons of board members of important SOE's such
20 as Transnet, Eskom, Denel, SAA as well as the CEO's maybe CFO's as well I am not sure, but certainly CEO's.

Would it be fair to say their ... the question of who would fill those positions and who would be appointed would have gone through the deployment committee of the ANC?

PRESIDENT RAMAPHOSA: Yes and no.

CHAIRPERSON: Ja.

PRESIDENT RAMAPHOSA: Some did and some did not.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: Ja.

CHAIRPERSON: But the expectation would be that it should go through them?

PRESIDENT RAMAPHOSA: Ja, the expectations will be, yes.

10 **CHAIRPERSON:** Yes, okay. Alright.

ADV SELEKA SC: Thank you Chair. Let me see so I can try ... we can try to bring this to a closure Mr President.

PRESIDENT RAMAPHOSA: Thank God.

CHAIRPERSON: Still a long way Mr President. There are still about two further evidence leaders.

PRESIDENT RAMAPHOSA: I know.

20 **ADV SELEKA SC:** Ja. So that ... the track record of Mr Molefe, he has proposed you say based on his track records, replaced by yourself but he does not stay long at Eskom. The announcement is made on the 17th of April 2015 by Minister Lynne Brown and she says that she has made the decision to second him with immediate effect.

Which is the reason why I was asking whether did that follow the ANC deployment. He says with immediate effect and given that this would have ... this would have

been consistent, his secondment would have been consistent with at least your suggestion to the then President.

Were you concerned if, when in November or December 2016 you learnt of his resignation from Eskom?

PRESIDENT RAMAPHOSA: Well, I think that consent could be something that may not immediately have entered my ...[intervenes]

CHAIRPERSON: Maybe what was your reaction to the
10 news?

PRESIDENT RAMAPHOSA: Well, when I heard that he had resigned, I knew that he was moving elsewhere and that we were going to have another CEO who would be appointed. So concern would not have been the word, it is not the word that I would use and I would say yes, I noted that this had happened.

ADV SELEKA SC: And were you aware that that happened in the wake of the public protector's report?

PRESIDENT RAMAPHOSA: Yes.

20 **PRESIDENT RAMAPHOSA:** And the allegations that had been made connecting Mr Molefe to the Guptas ...[intervenes]

PRESIDENT RAMAPHOSA: Yes.

ADV SELEKA SC: In that report.

PRESIDENT RAMAPHOSA: Indeed.

ADV SELEKA SC: What was your view in regard to that connection? Did that surprise you or shall I use the word again concern and you can correct it?

PRESIDENT RAMAPHOSA: I should say that that surprised me because I had never really connected Mr Molefe in that way with the Gupta family. I had no inkling or knowledge or even a suspicion that there was that linkage in connection.

I noted that and of course, in the fullness of time
10 that became a real concern that here was somebody that one held in high regard who was then entangled with the family that had done to what it had done to capture the state as it were.

ADV SELEKA SC: Ja. But there were also ...[intervenes]

CHAIRPERSON: We are at one o'clock Mr Seleka.

ADV SELEKA SC: Okay, I will ...[intervenes]

CHAIRPERSON: So I am mentioning that because ...[intervenes]

ADV SELEKA SC: I will take just two minutes of your time
20 Chair.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Yes. There were also widely at this stage, this is 2016, by this time the Guptas has landed at the air force.

PRESIDENT RAMAPHOSA: Yes.

ADV SELEKA SC: At the military air force, quite widespread reports about their connection to the then President and I ... you were aware of those reports, media reports Mr President.

PRESIDENT RAMAPHOSA: Of course, ja.

ADV SELEKA SC: Let me ask you Mr President, whether did you know the Guptas?

PRESIDENT RAMAPHOSA: I did deposit or depose to an affidavit.

10 **CHAIRPERSON:** Yes.

PRESIDENT RAMAPHOSA: Right at the beginning when I was asked by the Commission to detail, as I guess you asked other people, about their knowledge of the Guptas, their interactions with them and in that I said yes, I got to meet them and I have not read my affidavit again, but my recollection is I met them I think for the first time, or let me just say I met them soon after we were elected, after the 53rd conference and it was at a breakfast and they were there.

20 So I met them and I did say in my affidavit that I met them again when they came to the ANC headquarters Luthuli house and that is when we sat down to chat and it was at that stage when we also discussed the landing of the plane at Waterkloof air force base and when I expressed the view about the real difficulties that they had

placed President Zuma in, and the government by landing the plane, a commercial and private plane at the military air base.

So that and I guess one more time at one of the breakfasts and I remember one time journalists or it was just either a member of the public who was in the breakfast. He asked me about what do I say about the Gupta brothers being friends to President Zuma, and I said well, they are his friends and that is as far as I know.

10 That is what I said.

ADV SELEKA SC: Chair, may I propose I stop now.

CHAIRPERSON: Ja.

ADV SELEKA SC: I will just consider my notes. I might have two or so questions which I can dispose of when we come back and I will be brief.

CHAIRPERSON: Ja. Okay, no that is alright. Let us take the lunch adjournment. We will resume at two. I just remind all concerned we need to have a discussion about whether we stop at five or four, so to please have that
20 discussion during the lunch break.

We adjourn.

ADV SELEKA SC: Thank you Chair.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Thank you. Oh. Yes let us – let us

proceed.

ADV SELEKA SC: Thank you Chairperson.

CHAIRPERSON: Has the issue of stopping time been finalised?

ADV SELEKA SC: Yes Chair we have received the word that the President is only able to stay until half past four.

CHAIRPERSON: Okay. Okay no that is fine then we will go up to half past four.

ADV SELEKA SC: Thank you Chair.

10 **CHAIRPERSON:** Okay all right. Thank you.

ADV SELEKA SC: Thank you Chair. Mr President I thought of a question I should have asked you when we were dealing with Mr – your suggestion for Mr Brian Molefe to be appointed while Mr Matona was one of those suspended and the question is this whether you were aware that Mr Matona was in fact I use the word fighting with Eskom to come back with the board to be reinstated to his position. Whether you were aware of that fact.

20 **PRESIDENT RAMAPHOSA:** I heard of it. I was not fully made frontally aware but I heard that he had wanted to be reinstated.

ADV SELEKA SC: Yes. And along with that his having encountered in part of – you said they were reporting to the IMC or having encountered him as – as an executive at Eskom did you get exposure to him to the extent that you

could formulate a view on his capacity or competence as a CEO of Eskom?

PRESIDENT RAMAPHOSA: Mr Matona that is?

ADV SELEKA SC: Yes, yes.

PRESIDENT RAMAPHOSA: No I – yes I should say yes I did encounter him and I did get a sense of his competence but in the end my own thoughts about him was that whilst he was good and a fairly efficient official Eskom was such a huge organisation that in my view it required someone with
10 more experience who had run a fairly large organisation which had so many parts to it and divisions. So very, very honest individual, hardworking and the fact that he had not run a large organisation of a more or less engineering nature in my view meant that there were challenges.

ADV SELEKA SC: On the day that he was one of those suspended there is a – a report he made to the board on the 11th of March 2015 and that is captured on that page in Bundle 5 Chairperson page 135 – page 135 of Bundle 5 and he has reported to have said this EE – the CE which is the
20 Chief Executive had developed a turnaround plan which was being updated and put off – and put onto a firm foundation. The initial presentation had been used at a board induction and presented to the Deputy President.

And I believe this was referring to yourself Mr President. And he goes on – the minute goes on to say:

“The CE was in the process of engaging labour and trade union – trade unions, staff morale was serious challenge – was a serious challenge that was being explored. He stated that the turnaround strategy considered all initiatives and tabled them at the War Room for consideration. At the last War Room meeting with the Deputy President Eskom had advised that they had responded to all requests for information from the War Room and have requested that the management be advised of any gaps.”

And the question is Mr President do you have any recollection of him – Mr Matona presenting the strategy – turnaround strategy that he had prepared for Eskom to you?

PRESIDENT RAMAPHOSA: Yes I – I do recall that. I would not immediately now know the full contents thereof without having renewed my own recollection of it. Yes Eskom always had a number of ideas of how it can be turned around and one of his would have been one of those as well. So yes one does recall that. But I also recall the reports or rather the provision of information as it is set out here in the document that the technical War Room had requested because the technical War Room needed to deal with information that had to be provided by Eskom itself and

therefore here as it is set out they did provide information and in the end it needed to be properly assessed and evaluated and I do recall that the advisory team that I had appointed always had a sense that there was always – there were always gaps in the information. They always felt that they did not get as much information as they wanted. So this having been assessed would have led to people like those putting forward their own evaluation and saying this is still missing and that and so on. But when requested they
10 did make the attempt to present information.

ADV SELEKA SC: The question Mr President which I was going to ask you is this. Without going into the details of that turnaround strategy whether – can you recall if that turnaround strategy created in you the impression that this is a man who was now getting to grips with the issue at Eskom so that when he gets suspended along with others you would have wondered why suspend this man who just not so long ago showed me what he was doing positively to turnaround Eskom.

20 **PRESIDENT RAMAPHOSA:** The attempt that will be yes. The plan however needed to be properly evaluated. As I said a number of such plans had been put forward so it needed to be properly evaluated as to can see whether it is in the end implementable. So one needed to weigh that up with a proper almost evidence based evaluation to see if it

had the efficacy that it seemed to suggest.

ADV SELEKA SC: In her affidavit Ms Lynne Brown talks about the meeting she had with the former President Mr Jacob Zuma where Mr Zuma raises with her concerns about information given to the War Room by Eskom's executives.

And I want to know from you and you can tell the Chairperson whether as the person appointed by the former President to play that strategic role to oversee the turnaround strategy had he raised those concerns with you
10 as well that information given to the War Room was either inaccurate or incorrect.

PRESIDENT RAMAPHOSA: No such concern was ever raised with me by former President Jacob Zuma about information that was being provided to the technical War Room from Eskom. No.

ADV SELEKA SC: Did Minister Lynne Brown raise the concerns with you?

PRESIDENT RAMAPHOSA: No to my recollection no.

ADV SELEKA SC: Okay. Well this might be an unfair
20 question to you. Who could have possibly if – if we – if we accept the information or the version by Ms Lynne Brown that the issues were – the concerns were raised with her who could have possibly informed the former President about matters that I think should have come to your attention before they go to him?

PRESIDENT RAMAPHOSA: I frankly would not know which goes back to the issue that I raised that to use – to refer to it more colloquially that as I did before I guess the entry points into Eskom from government side they just far too many and that it is counter them again it was the Minister of – the Minister herself. It was me as Deputy President. It was the President. It was the board. It was the IMC. It was the technical War Room and – so those were the entry points so I would not know who the information would have
10 come from and this is what I found most concerning and hence I made the proposal that I did.

Of course you have to add the CEO as well and all that to all that mixture.

ADV SELEKA SC: Yes because that precedes the ultimate suspension of the executives and then comes the suspensions which have – the reasons for which have nothing even to do with the inadequacy or otherwise of information given by them to the War Room. And then as I indicated the observation is that the path was paved for
20 those executives who were sympathetic to the Gupta's course to be appointed. But with that you had also the board. The board of Eskom which the evidence before the commission shows that to a large – to a small or greater extent those board members of 11 December 2014 had connections with the Gupta's or Mr Essa. And the question

again Mr President is whether the ANC Deployment Committee played a role in the appointment of those board members.

PRESIDENT RAMAPHOSA: As I indicated earlier some appointments came to the Deployment Committee, some did not. So I have no recollection about the appointment of those then board members to the Deployment Committee. So some did come, some did not come.

CHAIRPERSON: Okay but would it not be highly unlikely
10 that the appointments of an entire board of such an important entity as Eskom would escape the attention of the Deployment Committee. Is it not highly unlikely?

PRESIDENT RAMAPHOSA: We are dealing here with a period where a lot of things were happening without the line of sight of a number of people. So it – it is that type of situation we are dealing with.

CHAIRPERSON: Okay. Mr Seleka.

ADV SELEKA SC: Lastly Mr President dealing with Mr Koko's allegation that your statement that he should be
20 removed by the board – your statement in January 2018 was an interference into Eskom's affairs. But I am going to ask a different question. In responding to that you went into great length to explain why you intervened as a shareholder on the basis on which you intervened. You referred to the MOI – the provisions of the MOI that entitled you to

intervene. And you set out the remedial steps that were taken as a result of responding quite aggressively or forcefully towards executives against whom allegations of corruption were made. And that you were addressing the government's and leaderships challenges at Eskom.

PRESIDENT RAMAPHOSA: Ja.

ADV SELEKA SC: That is in January 2018. In – again at a National Assembly on the 10th of June 2015 Bundle – Eskom – not Eskom Bundle – Bundle 5 page 153 so it is the same
10 bundle in front of you.

CHAIRPERSON: What page did you say?

ADV SELEKA SC: 153.

CHAIRPERSON: Okay.

ADV SELEKA SC: You will see the date of the meeting of the House National Assembly is 10 June 2015. And Mr President you start speaking at the bottom of page 152. You see that Mr President?

PRESIDENT RAMAPHOSA: Huh-uh.

ADV SELEKA SC: You say:

20 “Honourable Speaker has Honourable Members will – will know education is critical if we are to build a fair equitable and prosperous South Africa.”

But I want to come to page 153.

“As we reported in the Presidency but it

(indistinct) the date notable progress has been made in turning around Eskom. I did say that the appointment of the acting Chief Executive Officer has been a really good shot in the arm of Eskom. SA Airways, SAA and the SA Post Officer are also being turned around. With the support of the War Room located in the Presidency progress has been made in the implementation of government's 5 point plan on electricity particularly as well as the elements of the government support package."

10

And this is my focal point the next statement.

"Governance and leadership challenges at Eskom are being addressed as we speak."

Now that is June – 10 June 2015 Mr President the executives had been suspended but at this time they were either gotten rid of and I would say also been paid harsh money to leave. We were as it were the picture at this stage is actually going south at Eskom. And I was wondering when you saying governance and leadership challenges at Eskom are being addressed as we speak whether in fact you were speaking to certain steps that were being taken to address those challenges and what you perceived or understood those challenges to be in June

20

2015.

PRESIDENT RAMAPHOSA: Well I guess the challenges would have been yes at a – at a management level and also I guess maybe stabilising the board. I do not now recall what we had done in relation to the board. So I do not immediately recall the contextual situation there but it was 2015. So I think progress seemingly was being made but as you said yourself Eskom is very complex. There were a whole number of other balls that were falling through the
10 cracks either the operational level, commercial level and the other one.

So that is – that is what one would have been referring to.

ADV SELEKA SC: Yes now I suppose you will tell the Chairperson why did things go south as they did when the IMC was there to oversee the turnaround.

PRESIDENT RAMAPHOSA: Well it is a fairly straightforward issue. The operational issues that have had to do with our SOE's have been very complex and they have
20 had to do with whether you had the right people in place or not and at the IMC level we would only really get involved in the strategic issues more than with the operational issues. And I know that people would at times expect that once you have an IMC it means that all problems are resolved but you only really deal with the strategic issues, areas of focus but

you still need those operational people. Your executives and all that to actually do the work and with Eskom it has always proven to be quite a difficult in a complex type of task.

And I would say you know up until today it is almost like a day by day type of situation. You take five steps forward and two steps back the next day and you try to move forward, this lapses and this breaks down and so it is a complex one and it is complex because it is such a major
10 operation that has so many components – so many power stations that are aging, that are – even the new ones I mean we just recently had an explosion at Madupi which as you listen to it from a technical point of view you begin to realise the complexity that you know certain things were not done right in terms of opening this – opening and that opening – hydrogen coming in and another gas coming out and an explosion happening. So those are the complexities. So it is not an easy one as you said yourself it is a complex. But it can be done and I am confident that it
20 can be turned around as we are trying to do so right now.

ADV SELEKA SC: Chair that concludes my questions.

CHAIRPERSON: Okay thank you Mr Seleka. Mr President let us go back to the question – to your answer to Mr Koko's allegation.

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: Which was as I recall that you as Deputy President interfered in the area that should be dealt with by the board of Eskom and said he should be fired.

Now there are two possibilities. One is that because as I understood your evidence you were saying what you said then was justified.

There are two possibilities either you would be saying there is nothing wrong generally with the Deputy President of the country representing the shareholder to say
10 to a board of an SOE fire that employee, do not keep that employee or you would be saying generally speaking that is not what a Deputy President should be doing even representing the shareholder. But in this case it was done because there were special circumstances which justified it. Which of the two is it?

PRESIDENT RAMAPHOSA: It would be the latter. It would certainly be the latter because it was exceptional and we were facing a situation and I remember very clearly where – I was I think departing going to Europe to the – to the World
20 Economic Forum. We held a meeting a number of role players you know business and unions and all that and the view that was expressed was lack of confidence in Eskom and it even got worse when the funders of Eskom also expressed their views and some more directly to some of us. One or two of the Ministers including myself that – and

it was put as Eskom is the biggest risk that the country faces but at a sovereign level in terms of its debt and all that. So it became such a strong and pointed question with both lenders in the country and lenders outside the country. And it was not a singular or a one person's decision it was a decision that was taken by you know a group of us. The President, myself and I think the Ministers I think as I said in my evidence – in my input we met and we discussed this matter and said, we are facing this risk and it has got to do
10 with serious doubts in relation to the board as well as to management. And the stories that were going around about the management level people implicated in wrongdoing were not positive for Eskom and so therefore action had to be taken. So it was exceptional one accepts that but as the shareholder we needed to take action and action that led to the decisions that we finally took.

Ordinarily you know even a Minister or a Deputy President should not really get involved in decisions like that. So it was exceptional because it was the country
20 interest that we were looking at more directly because Eskom had been said to be the biggest risk that we were facing – the country was facing from a sovereign debt point of view.

CHAIRPERSON: Thank you. Thank you Mr Seleka.

ADV SELEKA SC: Thank you Chair. Thank you. My

colleague Vas Soni will continue.

CHAIRPERSON: Okay. Mr Soni. Mr Soni will put questions to you Mr President in regard to PRASA.

ADV SONI SC: Good afternoon to you again Mr President.

PRESIDENT RAMAPHOSA: Good afternoon Advocate.

CHAIRPERSON: Yes Mr Soni.

ADV SONI SC: As you please Chairperson. Mr President I just sketch the background against which my interaction with you this afternoon is going to go.

10 A fair amount of evidence at the commission has been led in respect of the – of state capture or the capture of PRASA and you will understand why I am saying that. I am putting it in those alternative terms.

 Now as regards the capture of PRASA the main witness here is a leader of the ANC you previously occupying a formal position in the ANC namely Mr Popo Molefe and he came and give evidence hear about his tenure as the Chairperson of the Board of Control at PRASA from 2014 to 2017. And what emerges from his
20 evidence is this. Is that he was one of the few people who had political influence who tried to use his influence to turn PRASA around from being captured. And he said in his evidence what he tried to do. He tried to explain why all his efforts failed.

 Now that is, in fact, the main issue I want to raise

with you. The other significant issue that I want to raise with you is the failure to appoint their board for a period of more than three years until the High Court in Cape Town, virtually last year, forced the Minister to appointed the board or directed the Minister to appointed the board.

And then the failure to appoint the CEO for more than five years and this is in respect of an SOE that – it was clear in the public eye – was floundering and in serious trouble, in need of leadership at both board and
10 senior level. But the value of Mr Molefe's evidence, Mr President, is this.

That when one looks at what his board did, whether they were successful or not, what is quite clear is that his board, when he tried to do something, was in fact made, as he called it, a dysfunctional, its term of office was allowed to run to an end, and for three and a half years no board was appointed.

Now the questions that he asked the Chairperson to consider is. Please join the dots and see if there is
20 method in this madness. And that is part of what I want you discuss with you, Mr President. Now, Mr President, in order to make these matters familiar to you. A set of documents relating to PRASA was given in the bundle. I do not know if you have had an opportunity just to familiarise yourself with that bundle?

PRESIDENT RAMAPHOSA: At last.

ADV VAS SONI SC: Okay. Well, at least you are aware of the nature of the issues. Okay. Now, I do not necessarily want to refer to the documents. I have tried to encapsulate in what I am going to put to you what is contained in the documents but should you need a reference to it, I will give it to you.

Now, just in general in regard to – and when I say Mr Molefe, I am going to distinguish because I know we
10 have been talking about a different Molefe a few minutes ago. [laughs]

PRESIDENT RAMAPHOSA: [laughs]

ADV VAS SONI SC: I am going to say Mr Popo Molefe and I think he deserves that distinction to be drawn from the other Molefe's. Now Mr Molefe makes allegations during the course – or made allegations during the course of his evidence to three entities or groups of people which could be categorised as follows. Those who did nothing against state capture at PRASA when they should have.
20 Secondly. Those who appeared to side with the capturers and then those who refused and continued to refuse to act notwithstanding they are being under constitutional and statutory duty to do so.

Now, I do not know if it is any comfort to you but to the extent that he refers to you, you would belong to the

first category namely he approached you about certain things and you were as part of these Top Six did nothing about it.

I am going to then, having prefaced this, introduce the aspect of Mr Molefe's evidence dealing with you in your capacity as a member of the Top Six with whom he had a meeting. He had a meeting, he says, sometime in July or August 2015. He cannot remember the date. And can I ask you if you recall such a meeting, a meeting facilitated
10 by the ANC's then Treasurer, Mr Zweli Mkize?

PRESIDENT RAMAPHOSA: Yes, I do recall. I do recall.

ADV VAS SONI SC: So I am – this is the approach I am going to use, Mr President, and I do it out of no disrespect.

PRESIDENT RAMAPHOSA: Sure.

ADV VAS SONI SC: I just to shorten it and get to the nub of things because what emerged from questions that the Chairperson, and I want to take us there as soon as possible, raised during the period Mr Molefe gave evidence. Is that certain concerns were raised by the
20 inaction of the Top Six. So I just want to get through just to paint the facts. Have agreement on that and then the explanations. I hope to take about the afternoon.

Now he says the meeting took place against the following background. Firstly there were a series of public attacks on Mr Molefe and his board by Mr Montana, Lucky

Montana, the then CEO of PRASA who was on his way out.

There was at that time too, there were concerns relating to the findings, very adverse findings that the then Public Protector, Ms Thulisile Madonsela had made against, especially, Mr Montana and PRASA as a whole and the maladministration there.

And against the other important issues which I suspect the reason Dr Mkhize wanted this meeting is a confession from a beneficiary of a R 3.5 billion contract, locomotive contract. We are told by Mr Molefe that after he had been encouraged to tender for this in an area that he does not practise in, he was asked to donate or give money to people in a sum of about R 79 million for that money to be diverted to the ANC. That is the confession that Mr Molefe received.

And it is in that total context that this meeting took place. Now I just need to ask you. Are you aware of these three matters that I have traversed with you as being part of the background to that meeting?

20 **PRESIDENT RAMAPHOSA:** My recollection may be challenged. However, I clearly recollect – I have a clear recollection of Popo Molefe asking to meet the Top Six which indeed took place. I have a recollection of him raising the challenges that they were having or he was having which he articulated as acts of corruption at

PRASA. I do recall that.

I also do recall him mentioning the attacks against, you know, the board and him by Mr Montana. I have no immediate recollection of this R 79 million donation that was mentioned. I have no recollection of that. But the two, certainly, I have a recollection of. Yes.

ADV VAS SONI SC: Now I suppose, in a sense, the reason he approached the Top Six was to deal with – well, taking some guidance or assistance of how to deal with the
10 issues at PRASA. Now this is what he said. He said that when he approached you... Oh, sorry. And we should get this. I say he met the Top Six but he made the point that the Chairperson of the ANC, Ms Baleka Mbete was not present at the meeting. So it was effectively five members of the ...[intervenes]

PRESIDENT RAMAPHOSA: Of the Top Six.

ADV VAS SONI SC: I did not want to create a news fact. I think the ANC has enough of them. Anyway. He says that this is what he said to the members that he met, the
20 senior members. He said: You are the ruling party. Meaning the ANC. SOE's are governed by laws and you as the ruling party as the custodians of the constitution and accordingly custodians of the law.

He says: The ANC leadership approved this appointment as the chair of the board. It, in effect,

deployed him to be the chair of the board. But the board, he said, was being subjected to these attacks and he regretted the fact, and he pointed this out to the senior leaders, that they had stood by silently whilst the attack was going on an institution, in a sense, to which he had been deployed.

And he says he was informing you that he had been quiet all this time but he was now going to act by using the applicable laws, like the PFMA, because the
10 board has fiduciary responsibilities to deal with corruption at PRASA.

Now this is just a general proposition, Mr President. Does that accord with your recollection of what Mr Molefe said to you at that meeting?

PRESIDENT RAMAPHOSA: Yes, Chairperson, it does accord with what he articulated to us and in articulating that position that he felt he should take, he received nothing else but support because we formed the view that he needed to use the various processes and structures that
20 are given raise to by legislation to deal with these matters.

And I guess you are going to go to the second issue which I would also like to respond to and like to expand a little bit more.

ADV VAS SONI SC: Yes. But in general, I mean, what he has said in his evidence is correct. You want to add other

issues?

PRESIDENT RAMAPHOSA: Yes.

ADV VAS SONI SC: Before you do that though. Can I say that what he also said because you respond on that? And he said that he was deeply concerned because the Public Protector's interim report was now available to him and they made some damning findings against Mr Montana, some of them not complementary at all.

For example, that Mr Montana would not cooperate
10 with high documents from the Public Protector a constitutional institution and he was required to resist to finalise a report which had already taken him four years because of this sort of resistance to cooperation from Mr Montana.

And many employees were being dismissed or suspended without due processes as one of the findings of the Public Protector and he wanted to put a stop to that. But he also says that the Public Protector's report reflected that the amounts involved in some of the
20 maladministration were not quite small. One of them involving an entity called Siyangena on the Public Protector's report was marked to R 1.9 million.

And just to take the process forward. The high court found earlier this year that that contract was invalid and by that time it had blown to R 2.8 billion. So that is

the other one. And then the third one is the Swifambo contract and this is the one where I was saying that R 79 million had been paid to the ANC.

And he says that this was not rumours he had heard. He heard this from the person who had been the beneficiary of the contract who was afraid that there were investigations and he did not want his entire business to fall as a result of that.

Now against that background, he said something
10 that I suppose must be said in public. He says that he told the leadership: You are doing nothing because you wanted to see if Montana's campaign would lead to the defeat or the collapse of the board. And this is what he says he told the Top Six.

Now I say all of this because it is quite clear that one leader - and I can say this because he was the Premier of the North West. That is the court that the organisation gave him. This is one leader now saying but this is what, effectively, you are doing. You want the board to collapse.
20 That is why you are not interfering.

Can you recall it happened at the meeting, transpired in that fashion?

PRESIDENT RAMAPHOSA: You have painted quite a picture which I am not fully, you know, in agreement with because when Mr Popo Molefe came it was like: This is

what is happening to me as the chair of the board, being attacked and the board as well. This is the decision that I have come to. I am now going to use the PFMA to ward off these attacks unwarranted, he said.

And on that, we agreed. But he also did raise the issue of things that were happening at PRASA and wanted us to act, to act – to deal with some of those issues. And I do not know whether he recalls this but one of the things that we did say is that, just as you now are saying you will
10 use the PFMA Act. Those things that are wrong and that are being done at the PRASA level should also be subjected to the right structures and authorities and laws and processes so that they can want the investigation to be dealt with and there can be proper accountability.

And this is like a standing position and which was also confirmed by one of our conferences that to the extent that there are – there is that type of maleficence which is reported to the structures of the ANC. There must be active follow-through through the various structures of the
20 state because the ANC, and indeed it is various officials, Secretary Generals of otherwise, they do not have the power, the capability themselves to be able to do anything about these matters.

They would be much rely on our state agencies to be able to do this and therefore all these matters must be

reported to those agencies so that something can be done about them. And sometimes some of these things come across are said and sometimes they are contested and if they are, the best institutions to deal with them are those institutions that have been set up to follow these matters through without prejudice, with a great deal of fairness, and a great deal of investigative powers.

And that is what was communicated to him. I do not know if he recalls that. So what we expected, 10 therefore, was that - the very positive thing that Mr Molefe said is that: I am going to utilise the PFMA process. Which is great because that basically means that you are pressing a button and setting certain processes in motion at government level and for investigative processes and similarly on these others.

I must dispute this notion that the Top Six would have done nothing about all this so that the board can be collapsed. I must dispute that because to me that is the realm of dark eyes. It is too dark and too deliberate. And 20 how could ANC deliberately say that we will not do anything because we want the board to collapse? To me it is inconceivable.

It is – there is some measure of evil behind it and I do not believe that that would have been something that would have been intentionally done by the ANC. And I

guess maybe he reaches a conclusion on his own in that regard and I have never really heard that articulation because I would never imagine that anyone of the Top Six would have that.

Unless maybe it is a perception, it is a conclusion that one reaches that you are not helping me because you want this entity to collapse or whatever. To me that has dark eyes.

CHAIRPERSON: Of course, Mr President, you are aware
10 as we all are that when it comes to the issues of state capture there is a proposition that good public servants, good people who were dedicated to their jobs, wanted to do their jobs honestly and properly were sometimes pushed out to make way for others who have been put in their positions who would cooperate with those who were pursuing the agenda of state capture. You...

And I suspected you accept that that may be so, generally speaking. What you may – what you are saying is. You do not think that that would have been case with
20 the Top Six.

PRESIDENT RAMAPHOSA: What you are saying and suggesting may well be the case and I am not disputing that it did not happen.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: But certainly on this one.

CHAIRPERSON: Yes, yes.

PRESIDENT RAMAPHOSA: Having been part of the then Top Six ...[intervenes]

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: ...is highly improbable, highly inconceivable that we could have hang Pop Molefe out to dry so that the board can collapse.

CHAIRPERSON: H'm, ja.

PRESIDENT RAMAPHOSA: To me that could never
10 happen.

CHAIRPERSON: H'm.

PRESIDENT RAMAPHOSA: It would have meant that we had a bit of a herd mentality all of us.

CHAIRPERSON: H'm.

PRESIDENT RAMAPHOSA: That this is now what we decide should be done. Let us collapse this board and let us hang Popo Molefe out to dry. Let him sink himself.

CHAIRPERSON: H'm.

PRESIDENT RAMAPHOSA: This could never have been.
20 Never.

CHAIRPERSON: H'm. Mr Soni.

ADV VAS SONI SC: As you please, Chairperson. Mr President, I just want to ask one question in relation to – we know who was not there. Can I accept that the former President Zuma was at that meeting?

PRESIDENT RAMAPHOSA: Yes.

ADV VAS SONI SC: And you will understand the relevance of this in a little while. I just wanted to get that out of the way. Now this is what Mr Molefe said the reaction of the Top Six was, which is one of the reasons his evidence on this issue took a little more time when he ...[indistinct]

He said the reaction of the five leaders was as follows. We were not expecting this. We are going to have
10 to have another meeting. You have not given us enough time to think about the issues you are raising. That is what he says was the reaction. Is his recollection correct?

PRESIDENT RAMAPHOSA: It could well be but on the issue of the PFMA a very, very clear response. But as I recollect, it was also about him as the chairperson of the board having sufficient power even, sufficient capability to do something about this.

Because if you are a chairperson of an entity, you have been given the way with all to be able to act various
20 structures of your board. It is either the Audit Committee, the Risk Committee, your HR Committee and if not, then your criminal justice system entities.

So you do have the capability. And what did surprise me a bit was. Why would he seek out permission?

CHAIRPERSON: Well, as I recall. His evidence,

Mr President, he was not seeking not your permission.

PRESIDENT RAMAPHOSA: Okay.

CHAIRPERSON: I think he said and Mr Soni will tell me if I am – if my recollection is not correct. What he said, he – was that he wanted to get your support as the Top Six because of the challenges he found at PRASA, basically, about corruption.

PRESIDENT RAMAPHOSA: H'm.

CHAIRPERSON: And my recollection is that unfortunately
10 he did not get that support because – certainly my recollection is that, on his evidence, it was like the matter will be looked at sometime in the future and he said nobody including you Mr President came back to him to say: You know that problem that you raised? We want to look at it or how are you doing. He said nobody ever came back to him. So but he said he came to secure support because he believed that he had been deployed there by the party.

PRESIDENT RAMAPHOSA: I find that a bit disingenuous for a person who has been clothed with all the powers of a
20 position to then say I felt powerless and the support that he sought on the issue of a PFMA was a given and he said this is what I am now going to do because I am being subjected to these attacks, I am going to use the PFMA and we said go ahead and I find it disingenuous that someone who is an chair of an entity would then say I am powerless

and I need your full and total support and when he would and should have known that it would be there anyway and so the question is, he should have gone ahead, he is the chair of the board.

When you are chair of the board and you find this malfeasance, your audit committee must act, your risk committee must act and if it affects your CEO or CFO, your HR committee must act. If not then you use other state agencies.

- 10 **CHAIRPERSON:** Well, Mr President, let me say this. The PRASA issue is a depressing issue. I have heard a lot of evidence, it is a depressing issue. One of the things I do not understand is how it was possible that for something like five years there would be no CEO, permanent CEO appointed and I ask myself the question well, the minister responsible was aware of the situation, he ought to have been reporting to either the President of the cabinet and I think I did specifically ask him the question and I think she said, that is Minister Dipuo Peters, she used to make reports – I cannot remember
- 20 whether I said cabinet or president or both but I seem to think she may have said cabinet as well, apart from the President, how this situation in such an important entity, state owned entity, could be allowed to just continue? How was this entity supposed to be successful when it had no leader, permanent leader?

At some stage the board, actually Mr. Popo Molefe's board, as I recall, had acted diligently in recruiting a CEO and presented, recommended a preferred candidate to the minister, Ms. Dipuo Peters and the candidate was not appointed.

When we asked her questions about that here quite frankly her explanations left much to be desired. She gave explanations that are difficult to understand.

They leave with the question but how was it possible?
10 Was she not reporting to the President to say this is the situation with PRASA, it has got no CEO for so long, was this matter not reaching the cabinet? Was the cabinet not asking the question but how can we allow this to happen?

The evidence that I have heard includes a situation where from I think around 2012/2013 financial year up to 2019, 2018/2019 financial year, if I am not mistaken, or 2017/2018 financial year, where irregular expenditure was going up astronomically and I said to her but somebody is supposed to have put a stop to this. Every year it was just going up. All of
20 this time nothing happens.

So I am simply saying, Mr. President, it is difficult to see how in a government something like this could happen for so long and no obvious – no remedial action seems to have been taken, you allow a situation where there is no permanent CEO for five years and the entity is riddled with all kinds of

allegations of corruption.

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: So I am making that point, Mr. President, to say that it may well be that Mr. Molefe thought you know what, I need to get the party to assist here because within state machinery not much seems to be happening. And my recollection is that he did not think he was getting much support at that point from the minister concerned. So I just mention that, Mr. President and maybe I should add and then
10 you can deal with all of this.

And ANC or ruling party that is interested in appointing in who gets appointed as members of boards and in who gets appointed as CEOs of entities, state owned entities, one would expect would be an ANC that would be interested in finding out how those people are discharging their functions in those entities. Therefore, if the ANC did not seem to be so keen to get involved here, it is difficult to understand because one would think the ANC would be entitled to say we are the ones who go to the electorate and say vote for us, we
20 will give you a good government, blah, blah, blah, blah, so if we deploy you to those entities and you mess up, you give us a bad name, so we will not allow it.

But from what I heard in terms of Mr. Popo Molefe's evidence, it seemed that the ANC was not so keen to be party to sorting out this problem.

PRESIDENT RAMAPHOSA: Chairperson ...[intervenes]

CHAIRPERSON: I have said a lot, Mr. President.

PRESIDENT RAMAPHOSA: You have indeed, ja. But, Chairperson, let me say the following. I did say – I did address the issue that you have put very frontally on the table when I gave my evidence as President of the ANC, the then Deputy President and President of the ANC.

I did concede and I want to concede it today again, that there was system failure and I concede that today as
10 well. A system failure and we should have been much more alert, we should have been much more active in terms of enforcing accountability and we were not and the issues that you are raising now are matters that not even going forward but even right now we are doing differently.

And one could say that this process that you are involved in of going into the depth of what state capture has been all about has galvanised us to make sure that we start acting properly, in the correct way. Yes, we do need to look at the past. I think for us it is good to look at the
20 past with a view of correcting the future but also dealing with the present and we are now dealing with that.

On the issue of for instance state owned enterprises, it is precisely in setting up the state owned enterprises council we are trying to address and correct this challenge that we have had in the past where state

owned enterprises were acting and operating in silos and in ministries, in silos, and no one had line of sight and cabinet itself never had line of sight of what was happening in each of the state owned enterprises and we are correcting that, we are putting that right and I have been insisting that everyone who is in the executive must have line of sight of what each one of us are doing.

We need to know because in the end in terms of our constitution we take a collective responsibility and in
10 the ANC itself, we are already taking new, call it remedial measures, we are taking corrective measures and the corrective measures are such that those who are deployed in various positions as party cadres, either you are deployed either as a mayor, as a premier, as a minister, you have got to be accountable and we have started the process of evaluation and assessing those that we have deployed in terms of whether they are acting according to what they were deployed for precisely for the reason that the ANC has to go out to the public to canvass for support
20 so that it can achieve its own objectives and the objectives of our people as a whole.

So, systems failure, corrective measures are being taken and we can testify or I can testify to the fact that what has gone wrong in the past is being corrected now and will be corrected for the future and the Commission,

as it does its work and will conclude its work, will be emboldening that process on our part. But all the mishaps and the things that we did not do properly are now done properly and we say thanks to your Commission that it is going to help us in doing that.

CHAIRPERSON: Thank you, Mr. President. Mr. Soni?

ADV SONI SC: As you please, Chairperson. Mr. President, I had prepared a set of questions, trying to go in some order but I am going to deviate from that order on
10 account of some of the matters you have raised.

I thought long and hard about the interaction I should have with you given the nature of the evidence that has emerged from PRASA. I accept that there was an interaction at that meeting and maybe one should concentrate not so much on the accusations that are being made thereafter, because I think that is going to be counterproductive, I know Chairperson would need to find whose version to accept, but I want to put that aside for a moment.

20 I want to say – and you might remember I asked you if President Zuma, former President Zuma was at that meeting and this meeting took place between mid-July and mid-August, the meeting with the top six. Now on the 20 August – so that is two or three weeks after this meeting – Mr. Zuma called a meeting of Minister Peters, Mr. Molefe,

Minister in the Presidency, Minister Jeff Radebe and he invited Mr. Montana to this meeting. This is a week later, two weeks later, and said – Mr. Molefe certainly got this impression and it was not an impression discounted by Minister Peters that President Zuma said you must take this boy back. Meaning Montana.

Now this is two weeks later. So when Mr. Molefe says to the Commission I got no support, he may be sort of lathering(?) things, I am not saying mixing up, but
10 certainly if the head of the top six after a meeting where he is told use your power, is told take this boy back and I mean I am not using the word boy, it was what was used at that meeting. Then is there not a problem with the way the positions deployees are expected to fulfil the responsibilities – and these are weighty responsibilities that the ANC places on them.

CHAIRPERSON: And maybe before you answer, Mr. President, one can say, Mr. Soni, maybe in fairness to both Mr. Zuma and Mr. Montana, that Mr. Montana's
20 evidence was that no such thing was said. Am I right, Mr. Soni?

ADV SONI SC: He disputed that he asked ...[intervenes]

CHAIRPERSON: He disputed that, ja. But certainly Mr. Popo Molefe said that is what was said and I think – I cannot remember what Ms. Peters' version was.

ADV SONI SC: Ms. Peters said, Chairperson, that ...[intervenes]

CHAIRPERSON: I think she conceded that ...[intervenes]

ADV SONI SC: That is Mr. Molefe's impression but she was not disputing it.

CHAIRPERSON: My recollection is that after I had asked her some questions she seemed to accept that either that it may have been said and Mr. Molefe may have been right. So all I am simply saying, Mr. President, is I
10 fairness to those people, I do not want you to have the picture that there is only one version, there is a version that denies that as well. But I think Mr. Soni's question is, if that version is true, does that not show a problem?

PRESIDENT RAMAPHOSA: Well, as I said earlier, many of these matters are often quite contested and disputed. So having now been at that meeting, I am unable to even comment, you know, the veracity or lack thereof of what had transpired.

But what I can say is that this is exceptional, it is
20 not the norm. It is certainly not the way that people who are deployed in various positions are, you know, instructed to act, it certainly is not, and if that is true, I find it a bit surprising but I would not expect that we would in any way, shape or form be, you know, that directive to people that we have deployed.

Our default position would always be we have deployed you and we want you to use your – precisely the talent that we recognized in you to deal with these matters and to deal with them as best as you can to execute the task you have at hand and that is certainly what I have used as an approach for people who have been deployed.

ADV SONI SC: Is it now only that you are becoming aware of this meeting between the President and Mr. Molefe and Minister Peters?

10 **PRESIDENT RAMAPHOSA:** Yes.

ADV SONI SC: Now obviously you cannot answer for it and Mr. Zuma has no counsel, we do not know what his version is but one of the things that Mr. Molefe said was, he finds it strange that a President who had so many responsibilities would want to interfere – and that is the word he used – in the affairs of the board especially in matters that are within its purview. In other words, to appoint, because that is what the board charter required and I take it as a general proposition you would agree with
20 that.

PRESIDENT RAMAPHOSA: Yes, as a general proposition that should be the case and similarly, it is when you have appointed a person to chair a board you expect them to be robust in dealing with the challenges that they have to deal with and not throw up their hands in the air and say I

do not have support when all the instruments are in their hands from, you know, board charter to Memorandum of Incorporation, to the Companies Act, to – you know, all the policies in the company and everything else, that is where I find it a bit strange and I have used the word disingenuous that, you know, Mr. Molefe would seem to be suggesting that he was helpless and therefore needed the support of, you know, higher body when, as you put to the proposition to me, that he wondered why a President
10 would bother about the little things that are happening in a board, so that is my ...[intervenes]

CHAIRPERSON: Well, maybe we should also put this before you, Mr. President, and because maybe that might be part of the reason why Mr. Molefe he needed the support of the ANC leadership.

Mr. Montana gave evidence here and at some stage, if I recall correctly and once again Mr. Soni will correct me if my recollection is wrong, said something to the effect that there were certain ANC people who wanted
20 to get some business from PRASA, as I understood it, not in a proper way, you know? And he said he resisted them. He said he resisted the Guptas and he resisted ANC people who wanted to get some business from PRASA improperly.

So I am just mentioning that to say there was that

part of the evidence as well and I do not know whether that might have been part of the reason why Mr. Molefe might have felt look, maybe we need – I need the ANC leadership to give me support. So I mention – I do not think he may have said that himself, but I thought I should just enlighten you that there was that element as well.

PRESIDENT RAMAPHOSA: Ja. Well, it is interesting that Mr. Montana would have said that because in the end that is how a CEO should act and say this is outside of the
10 correct processes and I cannot act unlawfully or outside of the parameters of the PFMA or whatever. So it is tool that he has.

CHAIRPERSON: Mr. Soni?

ADV SONI SC: As you please, Chairperson. I am just going to deal with one other part relating to Mr. Popo Molefe's communication with you because I do want to come back to the issue you have raised about, that you have got to stand up if you are the Chairperson, you have taken those responsibilities, you have to have the courage
20 to exercise the powers that you have given by legislation. I want to come back to that in a moment but I just want to ask you this, though. Mr. Molefe says that after his term of office ended and it was not pleasant, we will go through that in a few minutes, but he says he wrote to you and identified critical [indistinct] to you in your capacity as

Deputy President and identified critical issues and asked you to get PRASA back on track because it had become dysfunctional. Is that correct that he did write to you at the end of his term. Now he is not asking for assistance but saying here please, get this organization back on track.

PRESIDENT RAMAPHOSA: I seem to recall – I do not immediately recall that letter but I do recall, yes, his opinion in that regard, yes.

10 **CHAIRPERSON:** Mr. President, if you could just repeat that answer, your voice was too soft.

PRESIDENT RAMAPHOSA: Yes, no, no, I apologise for that, Chairperson. I say I do recall – I do not immediately recall the actual letter but I do recall that type of approach from him to get, you know, PRASA straightened out, yes.

ADV SONI SC: I raise that issue specifically because what it shows is that notwithstanding that Mr. Molefe in a sense was – and I will tell you why I say this in a moment, he and his board were cleaned out, that – and treated
20 badly, he says, that even after all of that, the wants this organization to succeed, it – whatever else, it must say something about Mr. Molefe as a person and his commitment to the country and to organizations in respect of which he has been given certain responsibilities. You accept that?

PRESIDENT RAMAPHOSA: Well, without any doubt I accept Mr. Popo Molefe's credentials in this regard, he is an outstanding and straightforward person and that I why I am a bit taken aback by his feeling helpless because he is quite strong, he is quite forthright and where he has taken action he has been very, very successful in his forthrightness without even asking for help. He goes ahead and puts certain things in motion regardless of the consequences. So his approach then on this that he
10 needed support is a bit surprising to me.

CHAIRPERSON: Well, maybe ...[intervenes]

PRESIDENT RAMAPHOSA: But – and I am sorry that I am spending quite a lot of time discussing, you know, the credentials of my comrade, he is a very good friend and comrade.

CHAIRPERSON: No, well I must say this and Mr. Soni may have a different impression. I did not understand him to be saying he was helpless.

PRESIDENT RAMAPHOSA: Okay.

20 **CHAIRPERSON:** I understood him to be saying I could do certain things but I would be more effective if I had support or I had a certain environment, I am not sure, but I did not get the impression he was saying he was helpless.

PRESIDENT RAMAPHOSA: Alright.

CHAIRPERSON: And we know he testified that one, his

board laid – went to the Hawks and laid criminal complaints against those who were alleged to have done wrong at PRASA.

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: His board even went to the High Court to force the Hawks to do their job when they were not – they seemed not to be doing anything about those complaints. So he certainly – you know, they certainly seemed to try and do certain things. So I thought I would just at least
10 mention my own impression that I did not think he was saying he was helpless.

ADV SONI SC: No, he certainly did and I just want to put this, Mr. President, that to the best of my knowledge, he is – and that is why the investigation into PRASA is so intriguing but also so frustrating, that he is the only Chairperson who himself brought applications to set aside mega contracts, he set aside the Swifambo contract of R3,5 billion and then he initiated the process to set aside the Siyangena contracts for R2,8 billion and you will read
20 in the evidence that he gave, he stopped two contracts together totaling R4 billion just as about the time he took office because there had not been proper processes and that was shown. So you are quite right, Mr. President, and I think Mr. Molefe deserves that credit at least. He had the courage to save the taxpayers as much money as he could.

PRESIDENT RAMAPHOSA: Well, in confirming what the evidence leader has said, what I know of Mr. Molefe, Popo Molefe, the actions, he deserves nothing but praise because he really acted so correctly and properly. In the interest of the state and our nation and so forgive me, I was reacting more to what I thought ...[intervenes]

CHAIRPERSON: Ja.

PRESIDENT RAMAPHOSA: Was being put forward as him being filling or him feeling a little bit helpless, and he by
10 no means a helpless type of person. I was told that you know, the evidence leaders are the bomb squad. He is more than a bomb squad.

ADV VAS SONI SC: We do operate under the law. Mr President, I and I say this purely for your own insight into state capture. The documents you have been given reflect some of what Mr Molefe said. There is one passage that I think all of us can benefit from and this, I am going to read it to you.

It appears at page 539, 593 to 594 but you need not
20 go there. I will just read it to you. He says:

“For state capture to succeed systems in organisations must be broken, must be weakened and good people removed from positions and substituted by people who are compliant and would carry out the agenda of

those whose objective is the looting of the public purse. That is the reason this board which tried to stop that looting had to be verified and removed.”

This is what he says. I am going to get to the verification. He is not suggesting the leadership itself, but I will get to that, but you will find that at page 593 to 594 and I find that quite a profound insight into how it came about that state capture certainly at PRASA succeeded.

10 But he also makes on page 545 Mr President, the following point. He says:

“He was in a position to speak out, but many people are not, because many are young. They buy a home, they pay a huge bond, they buy cars and send their children to private school. In order to maintain this lifestyle they are required to please those in positions of influence and decision making, either in SOE’s or the part.”

20 And these are the warnings he is giving about how it came about that state capture succeeds or succeeded certainly at PRASA. I just raise that to say that he has used his experience to give us the wisdom of how to avoid these pitfalls in the future.

Now I am not going to go into this, but Chairperson

you will recall when Mr Molefe gave evidence at pages 594 to 595 you raised a number of questions about the why the [indistinct] did not do more. I admit that the President has given his thought to that, whether it is a full answer is a different issue.

But what I want to do next Mr President, because I have limited time and I need to finish in a little while, so my learned friend Mr Myburgh can continue. I want to turn to the second category of entities that Mr Molefe referred
10 to, namely those who appeared side with the captives.

Now in this regard, Mr President and again this is the picture that he painted with obviously with effect the insight he has given us. He deals with how his board was treated by the ANC members of the Port Folio Committee on transport.

Now I am going ... there is a bundle which I will refer you to, but I am going to just summarise what happened there, but before I do that, I want to point out to you that the verification by the portfolio committee
20 members in parliament came about at the end of August 2016 as the meeting starts on the 31st of August and goes on until March 2017.

But what happened on the 25th of August 2016 appears to be the catalyst for this change in the attitude of the portfolio committee to Mr Molefe. You might recall, I

said to you that at the 2015 meeting, it would be part 6 or with the leadership Mr Molefe raised the question of this [indistinct].

Now in his replying affidavit in the High Court in that matter, Mr Molefe set out in full how he came to know about the 79 million rand. Produced the documents. In effect Mr President, this is what he said. He said that somebody at PRASA had been approached by Mr Oswald Mashaba who was the Chairman of Swifambo which was
10 the winning bidder, and Mr Mashaba said he wanted to meet Mr Molefe.

It is all set out in Mr Molefe's affidavit. He says that Mr Mashaba said to him that I was approached by a Mr McKenzie Mabunda, the close associate of Mr Montana to bid for this contract for locomotives. I bid, I won the contract.

It was a contract for lease but it became a contract to buy. It came with 3.5 million rand overnight as it were, and after I won the contract I was approached by Ms Maria
20 Gomez who is an Angolan woman who purports to be a fundraiser.

I was told to pay monies into different accounts. Some associated with Ms Gomez and others associated with other people, which I was told by her paid this money to. A total of 79 million rand was paid. I was told that

money would be going to the ANC.

I cannot tell you whether it went to the ANC, but this is how it happened. Now part of that was what a High Court found problematic about the Swifambo contract and it set it aside. When Mr Molefe's affidavit was filed in court in the Swifambo matter, not surprisingly the press made ... it made headlines.

Now that affidavit was filed or is dated the 25th of August 2016. The portfolio committee meets on the 31st of
10 August and all the meetings are in your pack Mr President, I am not going to go through it but you can accept that I am going to summarise what happened thereafter.

At the meeting of the 31st, I am not going to name the persons, but I specifically ask you to look at that because there are some concerns that I will raise with you in a moment. In that ... in that pack you will find that on the 31st, one of the items raised is that PRASA needs about 25 executives, but it has in the reason of 60 executives.

20 **PRESIDENT RAMAPHOSA**: Six zero?

ADV VAS SONI SC: Six zero. If my figures are correct but it is about that. No, in fact let me give you the figures correctly. You will find that at page 642 Mr President of that bundle. It needs 20 executives, it had 65 executives. This is now put forward to the portfolio committee on that

day by the acting CEO.

Now I would have thought and I know I am not an executive, but I would have thought that somebody concerned with governance as the portfolio committee should have been, that that is scandalous. A scandalous waste of public funds.

You are paying 45 people who ought not to be in those positions and Mr President, some of them earn a lot more than you do. I can say that for a fact because I have
10 seen the figures. Now I am merely saying that I would have thought as a member of the portfolio committee, that is what I would concentrate on.

An ANC member refers to this 80 million rand, angry with Mr Molefe for raising it. Mr Molefe says can we discuss this in committee because it is sub judice. That is not my problem. These things need to be aired, but instead of concentrating on the fact that there was corruption, a new line of attack is taken that Mr Molefe had appointed a firm of attorneys in terms of a directive given
20 by the public protector Mr President, and at that stage it had cost 93 million.

That became the focus of the team. Now thereafter, a further aim ... sorry. One of the people who participated says this was the ANC's tactic of deflecting attention from corruption and effectively what was being

done when one looks at what happened in the portfolio committee meetings, from the 31st of August to the time Mr Molefe's board was dismissed, ignominiously at the portfolio committee by the minister on the 8th of March, they subjected to this verification.

Now it is that which Mr Molefe is really complaining, he is not complaining yet about that on the 15th of ... in August 2015. But I am merely saying that that is what he carries. That is, those are the scars that he
10 carries with him.

That he gave to bring corruption to the public fore. That is the price, and so the point I want to make Mr President, is and all of the people involved who were targeting Mr Molefe and his board, and I have got to say to you Mr President, it makes painful reading, but I would like you to read it and instead of targeting corruption, he exposes it.

It does not reflect well on the ANC Mr President and I say that. Now that is not the concern I have.
20 Remember, I am talking about two categories. The first was those for example part 6, then these are the persons and effectively Mr President, this is what happened.

A climate was created with the dismissal of Mr Molefe's board publicly. The minister sends a letter to the portfolio committee and the portfolio committee gleefully

announces the dismissal of the board three months before.

Now what can be more embarrassing for somebody like Mr Molefe? Well, as you have pointed out Mr Molefe is a fighter. He fought it and he won, but it was a victory because as he points out, thereafter his board was made dysfunctional, people were offered other positions. Some of them took them, some of them did not, but he did not have a board to finish his office with the glory that he deserves, because Mr President I have got to say to you.

10 I have looked at everything in PRASA. He is the only leader in PRASA, took on corruption head on and seemingly paid the price for that. It is not a good reflection on good governance in our country, and how good governance could be.

Now I want to then deal with ...[intervenues]

CHAIRPERSON: I think Mr President wants to comment.

ADV VAS SONI SC: Sorry.

CHAIRPERSON: You know, you have said quite a lot and he has been quite. I think it is fair to let him say
20 something if he wishes to.

PRESIDENT RAMAPHOSA: No, just you know maybe a sentence or two. Just in reflecting on what Mr Soni has said. What I would say is that we have come from a dark place and I myself as the President of the ANC has said here in this forum that there were lapses and there were

errors that were committed.

But we have drawn a line and I will keep on repeating that we have drawn a line because this is meant with a great deal of commitment that the wrongs of the past are being corrected and we will continue to do so. Sometimes we will make mistakes, but we will always try to do the best thing that we can to move forward with the correct ways of working that we should and that we are expected to have.

10 **CHAIRPERSON:** You do not need to react to what I am going to say Mr President, but if you choose to it is fine, because I think what you have said may cover it. You will appreciate of course from what Mr Soni has ... the picture that he has drawn in relation to Mr Molefe and his board what they were trying to do.

You will appreciate that the picture that emerges, is that of a board and its Chairperson who approaches their minister for the job to be done that they need to do, ask for example for a permanency or to be appointed. The
20 minister does not do that.

He approaches the top six. On his version there is no support given. I know you have given your version Mr President.

PRESIDENT RAMAPHOSA: Ja.

CHAIRPERSON: But on his version he goes to the

portfolio committee in parliament responsible for PRASA.

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: And he tries to get support, instead that is also not given. So I am saying you may have ... you have already dealt with it, I am not asking you to comment, but if you want it is fine, but that is the picture that seems to be made.

PRESIDENT RAMAPHOSA: I have dealt with it.

CHAIRPERSON: Ja, thank you. Mr Soni?

10 **ADV VAS SONI SC:** As you please Chairperson. Just again to complete the picture and again in fairness to Mr Molefe that he did write you the Chairperson of the portfolio committee asking for an audience, did not get any response.

He wrote to the speaker of parliament, did not get a response either. He reported these matters having won on court. He reported these matters to the Hawks. Having got no response from them, he asked that they investigate and they started all sorts of stalling tactics.

20 He took them to court and in court they raised technical issues and the judge was quite scolding that the police should in the face of the sea of corruption, adopt such an approach. So again when one looks at PRASA one owes a great deal to Mr Molefe.

I know he has his [indistinct] but one needs to say

that those who looted will hopefully be brought to justice.

PRESIDENT RAMAPHOSA: Yes.

ADV VAS SONI SC: Because he has exposed that war. I now want to deal Mr President, with the issue of the non-appointment of the board and the CEO. Now in your pack you will see that there is a passage from the ... an affidavit by the late Mr Mkweto where he says that he brought these matters to the attention of the minister and the minister says that they were also brought to the attention of
10 [indistinct] about the instability that the failure to appoint a board and a CEO during this entire period was creating, and as Mr Mkweto says, he says it has contributed to the collapse of the control environment of ... at PRASA, and the Chairperson has raised with you the amount of irregular expenditure.

It went from 0.1 billion rand in 2013, 14 to 24.2 billion rand in 2017. It is all there in the pack. Now is there a reason Mr President that you are aware of, why there was a failure to appoint?

20 **CHAIRPERSON:** Maybe just repeat that question Mr Soni, your voice goes down.

ADV VAS SONI SC: I apologise.

CHAIRPERSON: Ja, is there a reason, then ...[intervenes]

ADV VAS SONI SC: Why there was a failure to appoint over all these years.

CHAIRPERSON: Ja, okay.

PRESIDENT RAMAPHOSA: I guess the reason would be the minister not executing a task because the minister is the one who is supposed to actively seek to ensure that the board of the entities that they are responsible for, have proper governance, have boards appointed within the various time frames, CEO's and all that.

I am surprised to hear that the minister says that it was raised in cabinet but it is the minister who comes to
10 cabinet to discuss these matters. To propose these matters and who as we heard earlier, would even go to the deployment committee and have names proposed.

Even have those discussed even say with the President. The minister must take active, an active role in all this themselves, and if there is a lapse at the ministerial level, then yes you will find this type of problem, because even if they go to cabinet and they are sent back, they must persist coming back and coming back and not sit back and just let things go to pieces.

20 It should not be. It certainly should not be.

CHAIRPERSON: Well, a minister is under the supervision of the President at least. I do not know whether ...[intervenes]

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: The minister is also under the

supervision of the cabinet but certainly the President. So if the minister failed to do her job, then the president ought to pick that up.

PRESIDENT RAMAPHOSA: Indeed.

CHAIRPERSON: Because the President is supposed to be interested in regular reports on the portfolio of every minister to see what the problems are, what is being done to deal with those problems and whether those measures that are being employed to deal with the problems are
10 effective in remedying the problems and if the President ... so it is either a situation where the President did not make sure he provided proper supervision and therefore made sure he was aware of all the challenges and made necessary interventions or the President maybe was not interested, but it cannot be a matter of the minister alone.

You know. At least the President, maybe the cabinet might be a different story, but the President is supposed to be interested in how every minister is performing their duties.

20 **PRESIDENT RAMAPHOSA:** Absolutely correct Chairperson. In case I seem to be deflecting and not being very [indistinct] in accepting the responsibility of their President, I do not want that impression to come across.

Certainly you are absolutely right. it is for this reason that I have said that through the structure that we

have now put in place, you will be able to reduce that type of failure, that type of weakness because on your dashboard through the SOE council we will have right across the board we will have proper line of sight of what is happening in each state owned enterprise from the balance sheet management to the income statement management, to the boards how they function and to also the operational issues as the reports come through.

10 So through this new process that we have now introduced which will be perfected in a little while, we will be able to have that line of sight. So we could say that you know, yes the errors have occurred as I have admitted here, but the process we are going to have now is going to be much, much better than what we have got now.

CHAIRPERSON: Now Mr President, the situation of PRASA as I said earlier on, is a special one. Now as I understand it, what you have said is generally speaking cabinet would not be aware of what was happening in the SOE's and you must just tell me if I am misrepresenting
20 ...[intervenes]

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: Your position. Now with regard to PRASA, even before I came into this Commission, I was aware for quite some time that in the media there were lots of allegations of corruption that were very often in the

media.

Will members of cabinet not pick this up and say at a cabinet meeting these, there are these allegations that have been going on and on about this SOE. We should be interested to find out what is going on, what should be done.

Does the President know about them, the minister involved. Can we be fully briefed on these matters. Would that not be legitimate to do on the part of just cabinet
10 ministers, even if as a minister you were not responsible for that SOE.

Of course I am including the Deputy President as well at the time.

PRESIDENT RAMAPHOSA: It would be, you are absolutely correct. It would be, except that we did not have the well, let me put it this way. We had much more of a silo style of work, and which we have changed and are changing an integrated style of work that we should all have line of sight of what is happening and to this and we have
20 now introduced that for on a periodic basis various departments or Ministries if you like will – will come to cabinet so that in a collegiate way they come and present everything they are doing which has never happened. And if one gets to hear about the work of the department you hear about it when either the annual – the annual plan is

presented in Parliament or when there is something you know horrible that has happened in that department through the media as you have said.

So you are absolutely right what would have happened in the past should have been raised by others in cabinet or otherwise that what is happening can we discuss it. But now it is something that would happen as a matter of course because we have a much more integrated way of working. As I said in my initial evidence. Ja.

10 **CHAIRPERSON:** Thank you. Mr Soni.

ADV SONI SC: Yes. Mr President I am pleased to tell you I am nearly finished so I have got the – about five minutes more.

PRESIDENT RAMAPHOSA: I have got all the time.

ADV SONI SC: Mr President just in relation to PRASA and as the Chairperson has just pointed out PRASA is an especially troubling institute – or SOE in South Africa because many of our people rely on PRASA for transport and it is the poorest of the poor who suffer if – if PRASA is
20 not working at full steam. And as a country we owe it especially to the vulnerable to get it back on track both literally and figuratively.

But can I conclude what I want to say about – or my interaction with you about PRASA by pointing out the following.

PRASA presents an interesting illustration of how it is that the capture of an SOE can be successful and I am just going to illustrate four points in that regard.

Firstly for a long time it was wrapped by scandal – public scandal to the point where the Public Protector took four years to write a report despite all the allegations made in public.

At the centre of it was a deployee Mr Montana. One of the disturbing things about Mr Montana and I know he –
10 he has asked for my recusal so I do not mind saying what needs to be said though.

He has said – he at the meeting of – with President Zuma that Mr Molefe refers to questioned how it is that the Molefe board was appointed without his being consulted. That is how powerful he became.

Now I say this and – and you are – you are right to smile Mr President and I know you do it because you are surprised but the point is the board is his boss and he says, con – to the President – consult me before you appoint my
20 boss. Now I mean that is quite frightening in terms of governance structure. Those are the Frankenstein's that we can create.

But more importantly Mr President I have pointed out to you the Portfolio Committee, the Hawks, the – the NDPP too is a problem. None of them have done anything. And

so the reason it – the capture of PRASA flourished was simply because mainly by acts of omission it was allowed to. The perpetrators were allowed to get away with it.

And what we have got to do Mr President is to create institutions as you said and I know it is a process that are going to hold people accountable.

Now in addition what we need are that when things are taken to court like in PRASA to R2.6 – R2.8 billion and R3.5 billion contracts have been set aside. The courts have
10 expressly said those contracts were corrupt.

Now corruption Mr President you know is a crime. The question I ask is and we have been asking from the time the PRASA matter came before the commission why are those people not arrested? I cannot – I do not ask you the question I ask it rhetorically and through you Mr President I ask those who are in charge of those institutions to do what (inaudible). Because Mr Chairman – Mr President unless serious attempts are made to bring them to justice our justice system will be under a dark, dark cloud
20 and that is to put it at its (inaudible).

Those are my questions now.

CHAIRPERSON: Thank you. Well Mr President let me make – maybe it is an observation maybe you will – or maybe I should put it as a question because you have yourself conceded that Mr Popo Molefe is chairperson of the

board of PRASA he and his board did take quite a lot – quite some steps to try and address problems.

Now we know from what you said earlier or maybe even last time I think earlier today that the appointment of board members would come to cabinet as I understand it and then CEO's and so on.

Now one question that arises in my mind is you have a chairperson of a board such as Mr Popo Molefe and his board who seemed to have been doing quite a lot being
10 allowed to go. They served one term and go and actually I think Mr Soni referred to this but he might not have emphasised it. For a certain period – for a number of months before the end of their term they could not form a quorum and the Minister who was supposed to make an appointment to make sure that their board would have a quorum did not make one. So by the time they ended their term they really could not be effective.

But I know that in your affidavit where you deal with SAA for example we know that Ms Dudu Myeni was
20 chairperson of the SAA board – served beyond one term and I think in your affidavit you even say that the last time she got an extension you called President Zuma who was out of the country if I recall correctly about the extension and you had a discussion.

Now with regard to Ms Dudu Myeni the evidence that

I have heard includes that at some stage during her first term members of her own board had all kinds of complaints against her. They brought these to the attention of the then Minister and instead of action being taken against Ms Dudu Myeni those – those members of the board were allowed to go and she continued.

And of course there has been a lot of evidence about challenges that happened at SAA under her leadership. So you ask yourself the question, how – how does this happen
10 that a chairperson who seems to be doing quite well is just allowed to go but here is another chairperson against whom there are lots of complaints about her leadership of the board and the entity is in serious trouble but she gets her term extended.

PRESIDENT RAMAPHOSA: Chairperson I do not know whether you want me to answer that.

CHAIRPERSON: Well I assume Mr President that maybe the extensions of terms of chairpersons and boards also came to the cabinet just like the appointments would come
20 to the cabinet. But – so one looks at this and say, what has happened – what were the criteria for a chairperson's term to be extended? You know. Did it have anything to do with performance or what was happening? You – you ...

PRESIDENT RAMAPHOSA: It belongs to a chapter which one could say entitle the Anomalies of our Times that is

what one can say. Ja.

CHAIRPERSON: Okay Mr President. Thank you Mr President.

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: The other question I wanted to ask Mr President going back to your answer with regard to the cabinet not being aware of what was happening at SOE's.

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: Saying that the cabinet was working in
10 silos. My question is whether people did not want to raise
the issue for example with the President because I guess
what happens in cabinet and how cabinet functions is really
largely up to the President to say, no this way of working is
not right. We – we have no clue what is happening in
SOE's. It should change.

Or was the position that maybe people felt that the
President – the then President wanted it that way and
therefore they did not want to upset the arrangement.

PRESIDENT RAMAPHOSA: Well Chairperson I – I do not
20 think it is because the President wanted it that way. I think
it is a system – pardon me – that just evolved where people
kept to their lane and just ran there and if matters were
brought cabinet which shed light on what they were doing
so be it but there was never an opportunity to have a broad
and as I have often say a deep dive into fully understanding

so that in doing so there can be cross-pollination of ideas and experiences and people can make their remarks – their suggestions to enrich the whole process and the concerned Minister should never feel threatened that others are now delving into their work. They should actually feel empowered that I have now exposed what I am – what we are doing in a particular department SOE to – to greater minds and you know people who – who can make a contribution.

10 It was a culture that had evolved. We changing it now. We saying periodically we want to have deep dives so that all of us as we all bear responsibility not only the President we all bear responsibility in what happens.

 And I am hoping and fully in belief or believe that this is going to change the way we – we govern. It is also going to help us deal with the problems that may be inherent in a various place and be able to get us to also raise a red flag when corruption or some maleficence is – is identified so that all in cabinet will then also feel that we
20 are working as a team and we working together and nobody you know keeps to their lane to a point where we do not traverse right across the board.

 So that is the change and the commission has helped to bring quite a lot of this out into the open and that is a great advantage but at the same time we are already

beginning to bring about those changes that the commission is not – is identifying in the way of wrong things that were being done.

CHAIRPERSON: Okay. Thank you. Thank you Mr Soni.

ADV SONI SC: Way to my learned friend Mr Myburgh.

CHAIRPERSON: Yes.

ADV SONI SC: Thank you Mr President thank you.

CHAIRPERSON: I see that we are at...

PRESIDENT RAMAPHOSA: Thank you.

10 **CHAIRPERSON**: Seventeen, eighteen minutes past Mr Myburgh I guess you will use whatever time you have and then maybe continue tomorrow. Thank you. They just sanitise there first.

ADV MYBURGH SC: Thank you.

CHAIRPERSON: Yes Mr Myburgh.

ADV MYBURGH SC: Good afternoon DCJ and good afternoon President.

CHAIRPERSON: Good afternoon Mr Myburgh.

PRESIDENT RAMAPHOSA: Good afternoon Mr Myburgh.

20 **CHAIRPERSON**: Mr Myburgh will ask you questions Mr President relating to Transnet.

PRESIDENT RAMAPHOSA: Indeed.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: Indeed.

ADV MYBURGH SC: You would probably be happy to know

Mr President that I have got less questions for you than my colleagues and there is nothing that implicates you directly.

I want to deal with two broad things. I want to ask you some questions in relation to four individuals. Mr Gama, Mr Brian Molefe, Mr Sharma and Mr Gigaba and then secondly I want to bring to your attention three things that went seriously wrong at Transnet.

That relates to the use of so called Supply Development partners, the conclusion of business
10 development service agreements – kickback agreements and the very extensive use of consultants.

Perhaps I could start with Mr Gama. This is something that was touched on at the April sitting when you – when you gave evidence.

Mr Gama was dismissed as the Chief Executive Officer of Transnet Freight Rail in June of 2010. He was then reinstated in February 2011. He went on to act as the Group Chief Executive of Transnet from April 2015 to March 2016 and he was then appointed permanently as the Group
20 Chief Executive in April of 2016.

Now the commission has investigated extensively whether and to use the term very broadly there was any political interference in relation to Mr Gama's reinstatement as the Chief Executive Officer of Transnet Freight Rail in 2010.

And you would have seen from the documents that we have put up in the bundle – there is an affidavit from Ms Hogan who at a point in time was the Minister of Public Enterprises and to summarise very broadly she says that in May of 2009 she had a meeting with the former President. She presented to him a very credible black candidate to become the new Group Chief Executive and he indicated that his only candidate was Mr Gama. She said well he is not the board's choice and also there was a problem that he
10 was facing disciplinary proceedings. He on her version adopted the approach that well in those circumstances no appointments are going to be made until Mr Gama's disciplinary proceedings have been concluded.

We can then fast-forward to the next year, October of 2010. By this time, Mr Gama was dismissed. Ms Hogan then took the initiative to try and put a new board at Transnet in place. That board would then go about selecting a new group – a CE in circumstances where the chosen candidate had withdrawn.

20 And it was in that context that she was called to a meeting with President Zuma in October 2010 and she was relieved of her post and she was offered redeployment as the Ambassador in Finland.

Now, what I want to ask you is. I know that you were not on the scene at the time but accepting that Ms

Hogan's version carries the day. Did you ever come to learn of President Zuma's support for Mr Gama?

PRESIDENT RAMAPHOSA: No.

ADV MYBURGH SC: And what about at the time when he was appointed as the Group Chief Executive in April of 2016? Would that appointment also have been made following the Deployment Committee process that you spoke about this morning? Can you recall that process? Can you recall how his appointment came about?

10 **PRESIDENT RAMAPHOSA:** Okay. Yes, I do recall at the Deployment Committee, Mr Siyabonga Gama's name coming up and the proposal being that he should be appointed Group Chief Executive officer of Transnet. And I do ...[intervenes]

CHAIRPERSON: Maybe if you could come closer to the mic, Mr President.

PRESIDENT RAMAPHOSA: I apologise.

CHAIRPERSON: You are speaking sometimes softer.

PRESIDENT RAMAPHOSA: Ja. No, no I apologise.

20 **CHAIRPERSON:** Ja.

PRESIDENT RAMAPHOSA: I was saying that I do recall that Mr Siyabonga Gama's name did come up in the workings of the Deployment Committee and his name being proposed for Group CEO of Transnet and there was support for his appointment. This I do recall. I do not have the

minutes to prove to you that is the case.

ADV MYBURGH SC: And can you remember whether Mr Gama went through a competitive process or was he the only candidate for the job?

PRESIDENT RAMAPHOSA: Aha. I beg to correct myself. I think he was largely the only candidate for the job. I could be wrong but I say it under that type of correction.

CHAIRPERSON: H'm, h'm.

ADV MYBURGH SC: Alright. Then let us deal with
10 Mr Molefe. Mr Seleka asked you and when I was preparing my questions, I also had one eye on the television. So some of my questions had already been answered by you. So please beg my pardon if I repeat that. But I just want to look at it from a purely Transnet perspective.

Mr Seleka asked you this morning or he put to you Mr Bester's evidence. And that is that Mr Bester was told by Mr Essa sometime after April 2014 that Mr Molefe would be appointed as the new CEO of Eskom and we know that then came to pass. At least he was seconded back to
20 Eskom in April of 2015.

As I understand your evidence, and please correct me if I am wrong, you have testified that you were the person who actually proposed that secondment to the former President Zuma. Is that correct? Do I understand your evidence correctly?

PRESIDENT RAMAPHOSA: That is correct.

ADV MYBURGH SC: Perhaps just from a Transnet perspective. Could I ask you this? What had Mr Molefe done at Transnet that motivated you to put his name forward to move to Eskom? Was there anything in particular that impressed you?

PRESIDENT RAMAPHOSA: Now you are stretching my mind. Chairperson, when it comes to Mr Brian Molefe, I must confess. I have been acting more of my experience
10 and knowledge of him from the past. I did say firstly. When he was in Treasury and when we worked together when I was made Chairperson of SASRIA and he was on the board and we achieved great things for SASRIA and the country.

And then when he went to PIC, he, in my view, seemed to do very well. I do not have direct and active knowledge but he seemed to be managing the public servant's purse very, very well.

And then at Transnet, I will possible not be able to
20 put a clear finger on some of the things that he did and achieved. So forgive me in that regard. I was much more knowledgeable about his capability from past years.

ADV MYBURGH SC: So what I wanted to raise with you, Mr President, is of course, what Mr Molefe had spearheaded in that time that he was the CEO of Transnet

in 2011 up until the secondment in 2015 is, amongst other things, the acquisition of the 1064 locomotives that had cost Transnet R 50 billion.

But I just was wondering whether consideration was given to perhaps rather leaving him there but to see how that acquisition and the delivery of the locomotives. There had been this huge expenditure that had just been incurred. Yet he was moved somewhere else.

PRESIDENT RAMAPHOSA: I would not have known the
10 intricate details of that to say maybe for reading it in the press. So I did not have, you know, the real information about it. And so that, in my view, was not factored into even my proposal that he should go to Eskom. Ja.

ADV MYBURGH SC: But what we do know is that Mr Singh followed shortly on the heels of Mr Molefe. Do you have any knowledge as to how Mr Singh's secondment and ultimate transfer to Eskom came about?

PRESIDENT RAMAPHOSA: I do not know Mr Singh and I
20 have no knowledge of even his tenure at Transnet or even at Eskom.

ADV MYBURGH SC: And then, as I understand your evidence, Mr President. You say that you only came to learn of Mr Molefe's links with the Guptas on reading the Public Protector report roundabout the time of his resignation. Did I hear you correctly on television?

PRESIDENT RAMAPHOSA: Indeed, indeed.

ADV MYBURGH SC: Alright. I just wanted to raise with you. So that would have been some years later. I simply want to raise two things with you as we conclude for the day. The first thing is that when Mr Molefe gave evidence here, he made no bones about the fact that he knew all of the Gupta brothers.

It seems to me that he, in fact describes Mr AJ Gupta as a friend of his. And he said that throughout his
10 time at Transnet, and that was my focus of my question, in 2011 to 2015 he would regularly frequent the Gupta compound.

So it is not secret, certainly from Mr Molefe's evidence, that he was connected to the Guptas in the years leading up to his secondment to Eskom. But did you not know anything about that?

PRESIDENT RAMAPHOSA: No, I knew nothing about that. Nothing whatsoever.

ADV MYBURGH SC: And then perhaps the last thing for
20 the day. I just want to read to you a passage of the evidence of Mr Jonas. He gave evidence on the third day of this Commission, on the 24th of August 2018. And he testified, you will remember DCJ, about a meeting that he attended at the Gupta compound.

Present was one of the Gupta brothers and

Duduzane Zuma and other people. And on his version of this meeting this was said to him. I will read to you from page 22 of the transcripts. He, this is Mr Gupta, said:

“He said emphatically that I must become the Minister of Finance because that is what we want and by that I would have to work with them. He also said that if I work with them I would become very rich and he could immediately offer me R 600 million.

10 He pointed at Mr Duduzane and said they have made a billionaire and that he has bought a house in Dubai.

He said... [and this is the important part] ...that they were with a number of people including

Lynne Brown and Brian Molefe and as a result they were protected. In other words, those people who worked for them are protected. He said that Mr Molefe is very safe and that his career path is very clear and that nobody
20 would touch and I would be safe too.”

That is what Mr Jonas said was said to him by Mr Gupta at this meeting and the meeting occurred on the 23rd of October 2015, a five months or so after the secondment. Now this passage bears out the evidence of Mr Bester that Mr Molefe was very much aligned to the

Guptas. Do you have any comment on this?

PRESIDENT RAMAPHOSA: No. All this is what I got to hear when the evidence was been given here. And no knowledge that I had about all this. It is quite – ja, I am not allowed to use the word shocking anymore.

CHAIRPERSON: [laughs]

PRESIDENT RAMAPHOSA: [laughs] They must teach me another word I can use rather than shocking.

ADV MYBURGH SC: [laughs]

10 **PRESIDENT RAMAPHOSA:** It is quite – I do not know. Very frightening? It is very concerning. Very deeply concerning to be more serious about this. Because, Chairperson, this is precisely what we do not expect from the democracy that we have.

It should not happen that people of important positions are just used in a way by people who wanted to extract either rands or financial benefits out of our democratic systems and institutions. It should not be. So it is something that is deeply, deeply concerning and it is
20 just as well that the Commission is unravelling all these things so that they should never happen ever again in our country. Thank you.

ADV MYBURGH SC: Sorry, do you want to say something, Chairperson?

CHAIRPERSON: No, I was letting you finish

...[intervenes]

ADV MYBURGH SC: Yes.

CHAIRPERSON: ...if you want to finish for the day or...?

ADV MYBURGH SC: If I could just make one point before we finish?

CHAIRPERSON: H'm.

ADV MYBURGH SC: Of course, the one difficulty with putting questions to you after everyone has given evidence. I must point out that in summarising Ms Hogan's
10 evidence, the former President Zuma disputes parts of her version. And then there are other participants in this meeting that Mr Jonas attended, that also disputes his version. So I just want to in fairness to the relevant role-players indicate that. Of course, the Chairperson, will have to decide then in time whose version he believes. Thank you, DCJ.

CHAIRPERSON: Okay.

ADV MYBURGH SC: If this is a convenient time to adjourn?

20 **CHAIRPERSON:** Yes. Well, maybe Mr President just to wrap up in this way with regard to Mr Brian Molefe. When you have heard Mr Jonas' evidence, when I have heard because I heard it that he said on the 23rd of October 2015, it was a Friday, he was told by one of the Gupta brothers who seems to have been Mr Tony Gupta on the

evidence that I have heard, that there were people that they as the Guptas were working with and mentioning Ms Lynne Brown and Mr Brian Molefe and saying their careers are protected. I think that is the word used.

PRESIDENT RAMAPHOSA: H'm.

CHAIRPERSON: When you then subsequently hear, as I did, the evidence relating to the New Age in 2010 in December saying Mr Brian Molefe will be the next Group CEO of Transnet and he does become that even when he
10 did not get the highest points in the interview, number one.

Number two. When you hear that Mr Henk Bester says Mr Essa told him in 2014 that the new boss of Eskom would be Brian Molefe. You say: Oh, okay. And then it happens.

And then when Brian Molefe has left Eskom under the circumstances under which he left, you then see him going to Parliament becoming an MP and within two months after that after he became an MP and of course during that time there was speculation in the media that he was going
20 to take Mr Gordhan's position as Minister of Finance.

Then when Mr Gordhan or one on the evidence that has been furnished to the Commission by some of the ANC leaders on affidavit, at my request, they say Mr Zuma, when he consulted – maybe consulted is not the right word – maybe he informed the Top Five because he would be the

sixth, the Top Five about his intention to dismiss Mr Gordhan.

He said to the Top Five he wanted to replace him as Minister of Finance with Mr Brian Molefe. When you hear that then your mind goes back to Mr Jonas' evidence that he was told by this Gupta brother that Mr Brian Molefe's career is protected.

And then when you see Mr Brian Molefe after he is not appointed as Minister of Finance, leaving Parliament, 10 and then going to Eskom, it all makes you think. I just wanted to say that. So you have this situation where Mr Jonas says this is what I was told by one of the Gupta brothers.

And then you see something that happens in regard to one of the individuals which does make you ask the question. Does this not give credence to the allegation that a Gupta brother said his career was protected?

Of course, that question I will have to answer having regard to all of the evidence.

20 **PRESIDENT RAMAPHOSA**: I think that is your job.
[laughs]

CHAIRPERSON: [laughs]

PRESIDENT RAMAPHOSA: You will have to make that assessment and conclusion, Chairperson.

CHAIRPERSON: Ja. No, no that is fine. We are going to

stop here. We have gone beyond half past four, Mr President. We will stop here for the day. And as I understand it. There is agreement that we will start at nine tomorrow. I assume that there should be a discussion about how, up to what point, what time we go tomorrow. But we can deal with that tomorrow. Thank you very much, Mr President.

PRESIDENT RAMAPHOSA: Thank you.

CHAIRPERSON: We are then going to adjourn.

10 **PRESIDENT RAMAPHOSA:** Thank you, Chairperson.

CHAIRPERSON: Thank you. We adjourn.

INQUIRY ADJOURNS UNTIL 12 AUGUST 2021