

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

12 AUGUST 2021

DAY 428



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; C SCHWARTZ



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PROCEEDINGS RESUME ON 12 AUGUST 2021

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

PRESIDENT RAMAPHOSA: Morning Chair.

ADV MYBURGH SC: Morning Chairperson.

CHAIRPERSON: Are we ready Mr Myburgh.

ADV MYBURGH SC: Yes thank you Chairperson.

CHAIRPERSON: The oath you took yesterday Mr President will continue to apply today.

10 **PRESIDENT RAMAPHOSA:** Thank you. Thank you.

CHAIRPERSON: Thank you. Okay.

ADV MYBURGH SC: Good morning Mr President.

PRESIDENT RAMAPHOSA: Good morning Mr Myburgh.

ADV MYBURGH SC: I am going to try my best to complete my questioning of you in relation to Transnet within thirty minutes. We dealt yesterday with Mr Molefe's secondment to Eskom.

20 What has also proven somewhat controversial was Mr Molefe's appointment as the GC of Transnet in February of 2011. The Chairperson raised some of these issues with you I just want to – to highlight a few of them.

Firstly Mr Molefe's appointment was predicted by the New Age Newspaper – Gupta owned newspaper on the 7th of December 2010 that is months before the appointment and in fact even before Mr Molefe had been nominated for

the position. That is the first important point.

The second one is that in January of 2011 Mr Molefe was then nominated by a Transnet director, Mr Sharma and there is evidence before the commission that Mr Sharma was Gupta linked.

We then had a situation unfold where Mr Molefe did not score the highest. He was the – scored second highest. Contrary to what the board was supposed to do it put forward three names but it did not identify its preferred
10 candidate. It was obliged to do that in terms of the relevant guidelines.

Mr Molefe was then appointed on the recommendation of Minister Gigaba approved by cabinet.

Importantly shortly after that on the 25th of February and you used the word yesterday in your evidence red flagging and how people just stayed in their lane.

An article was published in the Mail & Guardian titled Cosatu Raises Red Flag on Gupta's where they raised concerns about Mr Molefe's appointment and they raised
20 concerns about the Gupta's. And ironically that article ends with this statement – the Mail & Guardian having sought the comment of the Gupta's – it ends by saying and this is on the 25th of February 2011 and I quote:
“The Gupta family told the MMG that it had taken a decision to stay out of government tenders entirely.”

So that is the scenario surrounding Mr Molefe's appointment.

Now you were not on the scene at the time that I can accept but here we get another instance of a credible organisation raising a red flag about the Gupta's Mr President as early as 2011 and nothing was done about it.

You want to comment on any of that?

PRESIDENT RAMAPHOSA: Well I think yes the red flag would have been raised and I think the level of alertness
10 should have been there and they had ensconced themselves quite neatly by into the various structures and they – they had protection, they had approval and they had access. So yes the red flag having been raised it was not heeded. We should say that.

CHAIRPERSON: Of course Mr President and Mr Myburgh I am alive to your time limitations but we have got to deal with these matters as properly as we can.

Of course Mr President maybe later this afternoon at some stage we have got to – to deal with the question, how
20 do you make sure that if something similar were to happen again there would not only be alertness but there would be action to stop it.

Red flags were raised. Maybe there was no alertness but all of this would come to nothing – all that this commission is doing will come to nothing if the same thing

could happen again and we go through the same results with the same consequences. So – so I am just saying that at some stage today we will need to address that. Mr Myburgh.

ADV MYBURGH SC: Yes thank you. Now I said I also want to bring to your attention a few things in relation to Mr Sharma. Now Mr Sharma I have already mentioned Gupta linked nominates Mr Molefe in January of 2011 at that time he is a board member at Transnet.

10 A few months later Mr Gigaba attempted to make Mr Sharma the new chairperson of the Transnet board to replace Mr Mkwanazi. There is a cabinet memorandum that goes to cabinet. There is then a Business Day article on the 9th of June after cabinet had decided not to do that which reports this and it is in the bundle but it is a bit of a eye test so I will read to you the key part. It says:

20 “The proposal to replace Mr Mkwanazi at Transnet with Iqbal Rafiek Sharma was shot down and a new candidate will have to be found. Mr Sharma a former senior official in the Department of Trade and Industry was appointed to the Transnet board last December shortly after Mr Gigaba took up his new job. But cabinet colleagues are thought to have been uncomfortable with

appointing someone relatively inexperienced and unknown in the capital markets.”

And this is now the important sentence.

“There were also fears that he might be too close identified with the wealthy Gupta family, friends of President Jacob Zuma.”

Now Mr Gigaba denies that this was the reason why the proposal to appoint Mr Sharma as chairperson did not carry the day but nevertheless that was reported.

10 Another article in a credible newspaper here it is reported:

“Fears about Mr Sharma being too closely linked to the Gupta family.”

Did you ever come to learn of that?

PRESIDENT RAMAPHOSA: No, no I never got to learn about that.

ADV MYBURGH SC: So what we see now when you go forward that is May 2011. Mr President attempts to make Mr Sharma the chairperson of Transnet failed. He then
20 became appointed as the chairperson of the BADC the Board Acquisitions and Disposals Council Committee in August of 2012. He was the chairperson of this committee at the time of the acquisition of the 1064 locomotives and not only was he Gupta linked but there is evidence before this commission that he had a matrix of business

relationships with Mr Essa.

PRESIDENT RAMAPHOSA: He had a what?

ADV MYBURGH SC: A matrix of business relationships.

PRESIDENT RAMAPHOSA: Oh okay.

ADV MYBURGH SC: With Mr Essa.

PRESIDENT RAMAPHOSA: Yes.

ADV MYBURGH SC: It is quite astonishing.

PRESIDENT RAMAPHOSA: Yes.

ADV MYBURGH SC: And this was something that was
10 raised in the press on the 9th of June 2011. Not only was
nothing done about this but the man then went on to occupy
what became a central position in relation to the acquisition
of the 1064 locomotives.

Do you have any comment on that?

PRESIDENT RAMAPHOSA: Well indeed I think that is how
capture not only of the state but state institutions
manifested itself as we have come to know that a number of
key people from inside and outside the state were
strategically placed to play the role of fully capturing the
20 state and achieving the ends that they had in mind of
pursuing their own interest and advancing their own
interests. So that is how we have come to know manifested
itself because it was a web and if you could as they say
connect the dots you will find that the dots do connect in
the way that Mr Myburgh is describing it.

ADV MYBURGH SC: Let me turn to – to ex Minister Gigaba. Now Mr Gigaba was either a Deputy Minister or Minister for a very long period of time – some fourteen years I think from 2004 to 2018 and during that time we know that he served initially as the Deputy Minister of Home Affairs then of importance to Transnet the Minister of Public Enterprises. He then served again as the Minister of Home Affairs, then as the Minister of Finance and then in your cabinet for a year or so in 2018 again as the Minister of
10 Home Affairs.

Now I just want to ask you this. Having initially served as a Deputy Minister of Home Affairs how is it that someone gets – goes from a Deputy Minister of Home Affairs to a Minister of Public Enterprises. Does that seem unusual to you at all?

PRESIDENT RAMAPHOSA: No I would not say it unusual Chairperson. It really depends on the President and the assessment that he makes of people who serve with him or those that he would like to serve with him assesses either
20 their capability or assesses the work ethic they have or whatever and appoints them. So I would not necessarily say that in order to be appointed say Minister of Public Enterprises you have to have specialised knowledge. You have got to have the ability and the department to be able to learn and most of the people that are appointed even on

cabinet they – they learn very quickly. They get onto it and they display their own capabilities.

ADV MYBURGH SC: So – sorry –

CHAIRPERSON: This might not fit nicely into what you are talking about Mr Myburgh but I do recall that many years ago there was a Minister of Health who before becoming Minister of Health had been Deputy Minister of Justice.

PRESIDENT RAMAPHOSA: It does happen – it does happen.

10 **CHAIRPERSON:** Ja. Okay Mr Myburgh.

ADV MYBURGH SC: Thank you. So what we do know is that Mr Gigaba was the Minister of Public Enterprises at the time at all material times relevant to the acquisition of the 1064 locomotives where there was a great deal of looting by the Gupta's and we will come to that in a moment.

You would know that there is evidence denied by Mr Gigaba before the commission that he was very much in the pocket of the Gupta's to the extent there being evidence denied by him that he would be told by Ajay Gupta that if he
20 did not do as he was told he would be sent back to the Department of Home Affairs and that ultimately is what happened.

Do you have any comment on that?

PRESIDENT RAMAPHOSA: I have no knowledge of that. I just saw the movement of people from one department to

the other. So I would not really be able to comment on that because in the end it is the President's prerogative to appoint and move Ministers, to release them all that.

ADV MYBURGH SC: So I think there is some common cause facts that I want to – to ask you about in relation to Mr Gigaba.

I mean at this very time when he was the DPE Minister - when there was the acquisition of the 1064 locomotives – when there was looting by the Gupta's. It is
10 Mr Gigaba's own evidence that he was friendly with Ajay Gupta and that he would socialise at the Gupta compound.

You – you did not know anything about that presumably.

PRESIDENT RAMAPHOSA: No I did not know anything about that.

ADV MYBURGH SC: And something that I want to ask you about is his evidence that he tasked his special advisor a Mr Mahlangu to manage the Gupta's and other key entities and that this served to place something of a buffer between
20 him and his friend Mr Ajay Gupta.

Do you want to comment on that?

PRESIDENT RAMAPHOSA: Well it is a – extraordinary. I think somehow I must have realised that there needed to be a bit of a distance and it needed to be carefully managed. That is all I would say.

ADV MYBURGH SC: Now we have heard a lot of evidence about the role played by Mr Mahlangu but and a lot of this is contested of course but what the picture shows is that Mr Mahlangu would on many occasions almost be a broker and arrange meetings and go with people to the Gupta compound.

What is your sense and impression of the actual role of a special advisor to a Minister? What is the person supposed to do?

10 **PRESIDENT RAMAPHOSA:** Well a special advisor I mean performs a variety of roles from a policy advice point of view and also being able to execute certain projects or tasks that either a Minister or the President can give them and also be able to meet people on the request and direction of their principal. So a special advisor plays a variety of roles save for you know the actual implementation because that is often left to the line people who are appointed for those tasks.

20 So what do they do – they advise the principle, they perform a number of tasks that the principle asks them to perform.

ADV MYBURGH SC: I mentioned when I began my questions that I was going to raise with you three things that went wrong. There were many things that went wrong at Transnet but there were three things I want to highlight

with you.

The one relates to the use of supply development partners. Now of course this is a very important and admirable black economic empowerment initiative but what we saw at Transnet and Mr Seleka I think already mentioned to you about a meeting at which – on Mr Bester’s version Mr Essa tried to muscle in and have one of his entities appointed as a supply development partner to Mr Bester’s company.

10 We have seen that. What we have also seen there is evidence being led where Regiments acted as a supply development partner to McKinsey. You are probably aware of the – the concerns that arose there and to their credit McKinsey has tendered to pay back I think the latest figure is R850 million to Transnet of their fees where they worked alongside Regiments.

 But Mr President I thought I should highlight this to you that – that certainly the Transnet experience shows an abuse by unscrupulous individuals and organisations of the
20 supplier development partner initiative. Presumably this is something that can be discussed and debated in the SOE council that you have told us about.

PRESIDENT RAMAPHOSA: Ja certainly and our given policies obviously to promote economic empowerment by – for black people who have been prevented from advancing

under apartheid regime and in doing so do it properly and do it in accordance with the rules and to make sure that we do indeed live up to what we say when we say we want to force empowerment and do so in the interests of the people who were previously disadvantaged and move away just from promoting just a few elites and all that.

So the SOE council will obviously be looking at how this black economic empowerment process is managed, is implemented because by definition you know state owned
10 enterprises will from time to time have to do business with a variety of businesses and entities and it is through this either through the procurement system or through various partnerships that they can forged that we would like to see black companies being advanced, being given opportunities but those opportunities must be done openly, transparently and fairly and it should never be a situation where there is favouritism and when it is done like that everybody will tend to appreciate what needs – what is being done.

So that is what we will want to foster and that is
20 what we will be beginning to do more and more. Because what did happen in our state own enterprises were – there were just a few entities that were always favoured when – whenever the state owned entity had to conduct business with outside parties is inherently wrong. It should be changed and we should move to a different trajectory and

that is the culture that we seeking to infuse in our state owned enterprises.

ADV MYBURGH SC: And then the second thing related to BDSA's which stands for Business Development Services Agreements. You would have read about this. What happened here is that the locomotive suppliers concluded these BDSA's effectively kickback agreements with Gupta linked organisations where 20 to 21% of the contract price was then kicked back to the Gupta Enterprise and became
10 part of their money-laundering scheme.

This is another very real problem presumably also something that can be dealt with at the SOE council. Perhaps moves could be implemented where if there were these agreements they had to be disclosed or one could not have these agreements but presumably this is also something that can be discussed at that council.

PRESIDENT RAMAPHOSA: Precisely, I mean all this will be underpinned by a very good measure of transparency where everyone is able to see how these deals are done
20 and why they are done and with whom they are done and what the pricing is. Because what – from what one has seen throughout is – has tendered to be overpricing of services and goods to achieve this kickback type of a process. So the state or the state owned enterprise pays much more than what the market price is because it has got

to be a kickback. But one does admit that sometimes there is a premium to be paid but the premium should be structured in the most transparent and ethical manner and there must be justification for why it is paid but ordinarily everything should always be at a discount when it comes to a state owned entity.

ADV MYBURGH SC: And you would be aware of the evidence of Mr Holden to the effect that so far it has been established that the Gupta Enterprise received in these
10 kickbacks some R3.5 billion and that it is suspected that they will in total receive over R7 billion in kickbacks. You have seen that.

PRESIDENT RAMAPHOSA: Yes I see that.

ADV MYBURGH SC: Then – the third thing I said I would raise relates to the use of consultants and I guess this is a sort of a perennial problem. But just to alert you to the Transnet experience amongst the documents that we have given you you would have seen that Transnet in a three
20 year period spent close to a R1 billion on Regiments as a consultant. We know that it spent a similar amount on McKinsey because McKinsey have tendered to pay back the R850 million.

Now I am quite sure that is quite often important and valuable work performed by consultants and it is not all bad but what the Transnet experience shows is that a lot of that

money was spent on consultants in circumstances where for example Transnet had a very well respected treasury and instead of the work being given – and let me again say this is – a lot of this evidence is disputed. But instead of the work being given to the treasury you had this situation where the treasurer would come along and say, I could have done this – I have got a team.

PRESIDENT RAMAPHOSA: Yes.

ADV MYBURGH SC: And instead of me being afforded the
10 opportunity I had to deal with Regiments. So there is a problem that – that I think perhaps is also something that could be dealt with in the SOE council. Put a hedge almost on the use of consultants and perhaps put in place policies and procedures as to when they can and cannot be used.

PRESIDENT RAMAPHOSA: Yes indeed I think it also goes
beyond just the SOE council. It also – there is something that needs to be handled the state or government level. I am generally opposed to outsourcing because I think outsourcing weakens the state. It deludes the state of
20 capability.

One of the challenges we facing now is that the state has been so weakened and in one of the efforts that we are making now is to strengthen the capacity of the state and if we have to strengthen the capacity of the state we must have skilled people, professionals and that is why we

have now embarked on this trajectory of professionalising the public service because we do have people in the public service who are well-trained, who are skilled, are well educated and during the period of state capture they have been side-lined and some of them actually left the employ of the state because the tasks they were doing were just generally outsourced and I am now saying that we need to insource. Like for instance the treasury tasks that you were talking about Transnet was known to be one of those

10 entities and so was Eskom and a number of other institutions were known to have well-trained and experienced in their treasury who could do deals, craft agreements and this outsourcing is – it is a clear demonstration of capture. But it also goes beyond that even at you know various levels of government you find that even the drafting of on-going management accounts and financial statements are done by consultants and that denudes the state of that capability that needs to reside in the state to be able to do ordinary and straightforward tasks

20 like that. This does not mean that you do not need consultants – you do need them for exceptional tasks but for your – your on-going run of the mill tasks those need to be insourced and I have been saying that even Chairperson even local government level. We have outsourced just too many tasks that used to be performed by a local

municipality. And when we do outsource whatever task it is we often find that we pay much more than we would have paid if the task was insourced. So I am raising this as another plank that we should use to strengthen the capacity of the state and this process is starting and it is beginning. It will gain momentum and as I said yesterday some of these things will take time but now we are aware of them and example that we – we now have and how it was done at Transnet and so forth is a good example for us to be alert, aware that we have got to have the skills in-house. And this will be very good for our young people as well because many young people want to work for the state and we need to bring them in so that they can sharpen their own wits and capabilities and showcase what they can do for their own government and state institutions.

CHAIRPERSON: Well maybe something else that needs to be mentioned along those lines Mr President where as you say consultants are given work that actually should be done and can be done by state employees and then the state ends up paying double.

PRESIDENT RAMAPHOSA: Much more.

CHAIRPERSON: Or more. One the things that I struggle to understand that gets done by government departments is where for example they are going to have a meeting or a workshop or a conference maybe not a workshop you find

that they say okay we are going to need some food, some refreshments instead of somebody within the department going and buying they get somebody else to go and buy for them and bring this here and that person you know adds more – more money that must be paid by the state. A loaf of bread that would have cost - that costs R14,00 ends up – the state ends up paying R20,00 for it. You say, but what is the problem you know does the state not have people who can go and buy these things and bring them to he
10 conference or to the workshop.

PRESIDENT RAMAPHOSA: It gets worse than that and that is what we are addressing now. I mean there have been occasions where they – even if it is a dinner for you know visitors who have come to find that we go and hire glasses and hire a glass for R75,00.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: And when you could have had the glass in-house.

CHAIRPERSON: Yes.

20 **PRESIDENT RAMAPHOSA:** Being looked after, maintained and all that by – by people in in-house. By R75,00 for 50 glasses you have almost spent money for a salary that you could have paid to someone in-house and much cheaper. And you just do not even give people the pride of being able to work for their government. And this of course has also

been done because we had this notion that through this we are fostering black economic empowerment. But we have been doing it in a demeaning manner because even that does not promote economic empowerment because it promotes dependency and yet what we should be doing is to really empower black businesses and enable them to stand them on their own and to be able yes to provide a service to even government or even the private sector and enable access to be possible also to the private sector even if it
10 might be reluctant to accommodate. So this – this is now the way we want to move forward and we are moving forward. So from the bad lessons we have had there is a positive future that we are going to move in – forward.

CHAIRPERSON: Mr Myburgh.

ADV MYBURGH SC: Thank you. I have one more question only. The – the evidence of Mr Holden has revealed that contracts to the value of R57 billion were awarded by SOE's that have links to the Gupta money-laundering enterprise. And more than half of those contracts were awarded to
20 Transnet. So if that evidence is accepted by the Chairperson you have large is probably not the right word it is grand scale looting having occurred by the Gupta's at Transnet. And I just want to ask you this Mr President. There are no doubt people that were complicit and the Chairperson will have to decide who was complicit. But my

question is for those people that – that were not complicit how is it possible that this was not identified – this grand scale looting that it is clear it was a program, it went on for a number of years and the Gupta's literally did not miss an opportunity. How is it possible? This happened in the light of day. It was coordinated literally a few kilometres up the road. It happened when the key Minister – Mr Gigaba himself accepts that he was a friend of Ajay Gupta and would frequent Saxonwold. It happened in circumstances
10 where the GCE of Transnet himself accepts too that he was a friend of Ajay Gupta and would frequent Saxonwold. How is it possible that no-one in a position of power that was not complicit identified this and raised the red flag as you call it? How is it conceivably possible?

PRESIDENT RAMAPHOSA: Chairperson it is – it is possible and conceivable in a state capture type of environment where the capture of the state goes through a number of if you like structures and where those who will then everything into action have got protection. They have
20 got the connections. They have got the access and made sure that people who are going to implement this also their appointed people. So it is conceivable and that is why moving forward we have got to be rigorous in the appointment of people and be able to – to ensure that those people who are appointed either at board level or at

management level are people who can pass you know the bar of scrutiny and can be people of integrity and whose interlinkages with others can be either transparent or be properly examined. And I guess maybe when we do finally deal with the issue that you raised that how do we prevent this from happening ever again and maybe we can traverse that ground again.

ADV MYBURGH SC: Thank you Chairperson that completes our questioning.

10 **CHAIRPERSON:** Thank you Mr Myburgh. Thank you.

ADV MYBURGH SC: May I be excused?

CHAIRPERSON: Yes you are excused.

ADV MYBURGH SC: Thank you very much.

CHAIRPERSON: Ja. Well as Mr Pretorius steps up to the podium Mr President I – I do want to say this and if I am repeating something that I have said forgive me but maybe it is because it keeps on playing in my mind and I say what really was going on here.

20 My Myburgh has told you that Mr Brian Molefe in his evidence admitted or said that he was a friend of Mr Ajay Gupta. He has also told you that Mr Gigaba also told the commission that he was a friend of Mr Ajay Gupta. So that gives one the picture that because you did say that the appointments of CEO's of state entities and the boards would go through cabinet. That gives one the impression

that the President at the time appointed a friend of Mr Ajay Gupta as Minister of Public Enterprises – Mr Gigaba in 2010 – November 1 after removing Ms Barbara Hogan as Minister of Public Enterprises. Of course the cabinet might have had nothing to do with that appointment that might have been just a President’s decision but in February 2011 when Mr Brian Molefe was appointed as Group CEO of Transnet a friend of the Gupta’s was appointed to be in charge of Transnet. So you have a friend of the Gupta’s appointed in
10 charge of Transnet, a Minister of Public Enterprises who is a friend of the Gupta’s being in charge of Public Enterprises in the country. And then about two or three years later a friend of the Gupta’s Mr Brian Molefe is moved to be in charge of Eskom. That is the scenario that emerges.

PRESIDENT RAMAPHOSA: Quite that is for sure.

CHAIRPERSON: Okay. All right. Mr Pretorius.

ADV PRETORIUS SC: Thank you Chair. Good morning Mr President.

PRESIDENT RAMAPHOSA: Good morning Mr Pretorius.

20 **ADV PRETORIUS SC:** It will not be possible in the time allocated for us to deal with everything that has been raised in the questions put to you by way of preparation and in your response – in your 120 odd page affidavit in response. But it is going to be necessary to deal in detail with some of the elements and I would like to start off with a series of

events over ten plus years that is illustrative of the types of issue that the Chair will have to deal with in his findings, recommendations and in the work that follows the commission and it has to do with the activities related to state security.

It is necessary to go back to the period from 2007 to 2011. Of course your position was not yet established as Deputy President and at that time as I understand it you were a member of the NEC.

10 In approximately 2007 and under the auspices of Mr Manzini and Mr Arthur Fraser a project was establish which you will know about. We have given you documentation called the Principle Agent Network.

Now the establishment of such a network of agents appointed outside the agency is not something that is unusual and is in accordance with international precedent. But it was the implementation of the project under Mr Fraser that allegedly became problematic.

20 And what happened under Pan 1 which we have called it is that there was a series of investigations which uncovered widespread illegality, bypassing of the procedural requirements or the recruitment of staff, the unlawful disbursements of funds, unlawful procurement and a range of alleged illegal activities. All of those are summarised in the report which you have and you will know

of them particularly now that you have assumed the responsibility for state security under your watch.

There were in fact three sets of investigation. There was an internal investigation by SSA Auditors. That led to a formal SSA internal investigation and then there were two investigations by the Inspector General of Intelligence at the time Ms Face Radebe – Ms Faith Radebe.

There is a declassified summary of the SSA internal report. I am not going to go through it you have been
10 provided with a copy. It has emerged in evidence already.

But it is replete with references to criminal offences for example the unlawful procurement of assets, signing of fraudulent contracts, payment to persons without valid contracts having been signed.

And the internal SSA report concluded that there was a sufficient basis upon which to institute criminal investigations into a range of persons who have not been named in – well were named in the summary but their names were redacted.

20 But Mr Arthur Fraser was one of those against whom criminal investigations were recommended.

Now when did you come to know of the events surrounding let us call it Pan 1?

PRESIDENT RAMAPHOSA: Yes that became more evident following the – my appointment of the high level panel

which was headed by Dr Mufamade that is when it became more and more evident.

ADV PRETORIUS SC: So we know as a start that in the period between 2007 and 2011 there had emerged a range of allegations about the illegal and improper operations of the State Security Agency. What followed is equally concerning and I am going to go through it in a little more detail.

But there has been evidence before the commission
10 that by 2011 the internal investigations had progressed to a significant degree.

And as a result of this the investigation team approached the SIU – Special Investigation Unit and the NPA. It was agreed that at that stage there was sufficient information, the results of the investigation warrant – warranted handing the results of the investigation and the related information to the SIU and that was done.

The evidence of the witnesses before the
commission is that after the information, results of the
20 investigation had been handed over to the SIU Director Ngege received a call from the Minister Dr Cwele to meet him at the OR Tambo Airport.

Now we must understand that initially Ambassador Cwele was in favour of the investigation. He promoted and supported the investigation. But at this airport meeting

according to the evidence of Director Ngege Ambassador Cwele told Director Ngege that they needed to stop the investigation. They needed to halt any process which would result in the prosecution of Mr Fraser and others in relation to the Pan Program.

The evidence which is denied by Ambassador Cwele and I will come to that in a moment is that there was a direct instruction from the former President to the Minister at the time Ambassador Cwele to take all the investigation
10 results away from the Special Investigation Unit. This is now around 2011.

Firstly did you ever come to know of allegations in that regard? The Chair will decide on the probabilities in due course and if so when?

PRESIDENT RAMAPHOSA: Well I did through this high level panel process that is when it became evident.

ADV PRETORIUS SC: All right. The import of Ambassador Cwele's direction in 2011 to Director Ngege at the time was that the investigation at the hands of State Security or
20 at the hands of the SIU should come to a halt. All information and documentation should be retrieved. That was done.

Now we have an affidavit from the – well from a senior person in the SIU at the time which you have been provided with confirming and it is common cause everybody

knows even Ambassador Cwele that the investigation at the hands of Law Enforcement was halted and all the information was taken away.

So that illegality insofar as it existed between 2007 and 2011 or 2010 was in a sense swept under the carpet. Not in a sense it was actually.

A report was rather made to the Inspector General of Intelligence and as Dr Dintwe pointed out in his evidence to the Chair that was a way of avoiding accountability because
10 the invest – Inspector General of Intelligence had no enforcement powers whatsoever and that is something that maybe looked at in the future.

But whether or not this instruction was given to Director Ngenge at OR Tambo Airport by Ambassador Cwele is a secondary issue. The common cause fact is that the matter was taken away from Law Enforcement and handed over to the Inspector General of Intelligence where it for a period and we will deal with that too died an unnatural death.

20 How could that happen – how could that properly happen?

PRESIDENT RAMAPHOSA: Chairperson it happened as many other things that are wrong, unexplainable if I can use such a term, things that you find incomprehensible and also inconceivable did happen. And our task now as we move

forward and this is where the commission will help us play a key role to deal with all the things that went wrong and also those who participated, who were perpetrators in all this. Because in a way your commission or the commission – the commission is really going to be the final washing machine that will help us cleanse this – the state, the various agencies and identify those who have committed and perpetrated wrong things.

10 This is what we will be able to do because these things happened.

ADV PRETORIUS SC: The unfortunate issue around State Security is that that in a sense was just background. That is just history. So we move forward to 2018 when you receive the report of the high level review panel.

You say in your affidavit Mr President as has been made plain in this commission our Intelligence Services are in dire need of attention. That I think is a kind way of putting the problem and we will deal with that in a moment.

20 Intelligence Services include the SSA, SAPS that is Crime Intelligence and SANDF that is Defence Intelligence. Clearly it is unlikely that you would reached this conclusion simply after hearing evidence at the commission.

As I understand your evidence you would have come to this conclusion on receipt of the high level review panel report. But it is rather concerning that the SSA which

should be a great asset to the people of this country and we will come to that at a – in a moment because many of the questions that have been raised by the Chair and others may well be answered by the inactivity or the lapses or the simply illegal maladministration in SSA from 2007.

But you say to this – and the question is why – why is it necessary for the HLRP surely it to inform government of what is going on. Not one Minister but several Ministers are involved.

10 There is a cabinet. Surely it did not need the HLRP Dr Mufamadi who will be clearly at your heels now that he has been brought back into the picture in relation to State Security it is a matter of concern that the activities highlighted in the high level review panel report and testified to by amongst others Dr Mufamadi had to be brought to the attention of cabinet.

Is that not a matter of concern that it needed him to do so? The evidence must have been there. Ministers must have known. It seems to indicate that it is a not lapse, it is
20 not a mistake, it is complicit action by a vast number of senior members of the executive.

PRESIDENT RAMAPHOSA: Well Chairperson we – we have been through a period of state capture which really debilitated a number not all a number of state institutions. And some of those were like SSA but within SSA I must say

there are quite a number of really good people who are in there to serve the interests of our country and to advance its developmental path. But we must admit that it was one of those agencies that was compromised and operating under the milieu of state capture for all these things that the evidence leader is talking about – Mr Pretorius is talking about did happen and our task now as we move forward is to correct all those and to – to route out the maleficence, the corruption and maybe we will deal with that later when it comes to the high level panel report its implementation has been rather poor and it is now going to gain momentum with the State Security Agency having been brought into the Presidency because if you like the President is the first client of that agency. Reports on a daily basis come to the President but having National Security advisor like Dr Mufamadi is going to help to reposition, to realign the state agency and I think many of the people who are in that agency welcome this move because we are going to align what we think to do in the state with the work that they have to do.

So it is going to be on a much more positive level. So much as we have gone through a horrible past I think the future that beckons is a future that will be a lot more different from what we have been through aided and abetted by the people of our country and indeed by those who are

active as either civil servants, operatives in the structures of the state.

So what we have been through is a good lesson of what not to do.

ADV PRETORIUS SC: I hear those observations Mr President before we return to the more general questions.

PRESIDENT RAMAPHOSA: Sure.

ADV PRETORIUS SC: If we could just freeze the position for a moment to 2018 when you received the report –
10 December 2018 and then examine what happened after that.

I presume that it is not controversial to posit the proposition that the State Security Agency, the security establishment is a more general proposition, is a vital asset in our constitutional democracy.

PRESIDENT RAMAPHOSA: True.

ADV PRETORIUS SC: It is there to protect the people of South Africa not the state, not a party, not a faction of the party.

PRESIDENT RAMAPHOSA: Yes.

20 **ADV PRETORIUS SC:** Against the clear and present dangers that face a democracy.

PRESIDENT RAMAPHOSA: Indeed.

ADV PRETORIUS SC: And it has been stated over and over again that state capture has been one of those threats. A – an efficient, capable, focussed, lawful and constitutional

State Security Agency doing its allotted task during the state capture years may have made a big difference to what has happened up to date. There can be no doubt about that.

PRESIDENT RAMAPHOSA: Absolutely.

ADV PRETORIUS SC: And that has been said by more than one witness. But in 2018 the objective for the establishment of the high level review panel by yourself and this was recognised in 2018 or before 2018 in fact before
10 the establishment of the panel the objective that you established for the panel was to enable the reconstruction of a professional, national intelligence capability for South Africa that will respect and uphold the constitution and the relevant legislative prescripts. That is what had to be done.

PRESIDENT RAMAPHOSA: Yes Sir.

ADV PRETORIUS SC: That did not exist.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: At the time you appointed the panel with those objectives. And what the panel concluded was
20 that this national asset in fact this essential asset to the proper operation of our democracy had been in a sense captured itself and the words used are the – was a growing contagion of the civilian intelligence community by the factionalism in the ANC and that progressively worsened from 2009 that is the beginning of the Pan 1 period.

In other words what was happening is that within the ruling party factionalism as you have testified to last time around was growing and the State Security Agency, the national asset had been drawn into that conflict and was active in the fractionalisation. There was a doctrinal shift says the high level review panel. In other words rather than the State Security Agency operating to protect the nation, the people of South Africa from abuse such as the state capture project.

10 It was directing its activities to a much narrower State Security orientation. So says the high level review panel.

There were organisational issues that we have examined that went along with this said the high level review panel.

There was resource abuse to a large degree quite simply looting of money that should have been allocated to the proper operation of the security system and a disproportionate application of secrecy.

20 One – that is amongst many findings.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: That the high level review panel made and we have dealt with them. One of the findings made or one of the recommendations made to you in the report which you received in December 2018 was the

following.

The panel recommends that the President instruct the appropriate Law Enforcement bodies, oversight institutions and internal disciplinary bodies to investigate all manifest breaches of the law, regulations and other prescripts in the SSA as highlighted by this report with a view to instituting where appropriate criminal and/or disciplinary procedures.

This is in 2018. We know that in 2011 seven years
10 earlier the allegations against those involved in criminal conduct had not been taken or they had been buried for a period of seven years.

The panel also recommended the establishment of a multi-disciplinary investigation team to deal with the criminal investigations and that a private advocate is appointed to conduct internal disciplinary hearings.

Leave aside the appointment of private advocates possible conflict of interest on my part but the multi-disciplinary investigation team was established as an
20 internal team VEZA. Those investigators gave evidence before the commission.

And what is of great concern in addition to what happened before 2018 which elicited the findings of the HLRP commission and what happened under Pan 1 in the period between 2007 and 2011 is what happened after 2018

and I would like to deal with that.

There were two essential parts to the recommendations amongst others. The first was to deal with the criminal investigations and to work in collaboration with Law Enforcement and the second was to conduct for disciplinary purposes internal investigations.

So what happened as a result was that in an internal investigation called Project VEZA was established and it was established with a view not only to deal with internal
10 matters but also to establish the evidence necessary to allow later and where appropriate criminal proceedings.

And that investigation focussed on a later period than Pan 1 and it focussed on certain projects carried out by a unit called the Chief Directorate Special Operations and the entity called the Cover Support Unit and Operations run from the office of the Director General who at that time was Mr Fraser.

So Mr Fraser survives without consequence, he resigned in 2011, survives the first period and he is back
20 now in the second period.

Not something that could possibly have gone unnoticed to those in power at the time. But what is particularly concerning and it relates to the consequences of the work of the commission, the sentencing and imprisonment of the former President and the events of July

of this year and I will explain that in a moment.

But in December 2011 the Presidential Security Service was established within the Chief Directorate Special Operations. The CDSO on behalf of the State Security Agency established responsibility for the former President's various needs and interests including his physical security.

PRESIDENT RAMAPHOSA: Including?

ADV PRETORIUS SC: His physical security.

PRESIDENT RAMAPHOSA: Oh okay.

10 **ADV PRETORIUS SC:** In other words not the South African Police Service but now a special unit under the State Security Agency.

What happened was that a separate and discreet force was established within the SSA reporting to and accountable to Ambassador Dlomo who had worked with the former President in KwaZulu Natal in different capacities. Right.

20 So early on in the days of the last decade the President – the former President had at his disposal an SSA based protection service, financed and controlled and armed by the SSA and it was also according to the evidence possibly performing intelligence functions as it had been trained to do.

Now I am not going to go into too much of the history but in 2008 and 2009 under the auspices of the SSA

persons were trained. They did not go through the vetting procedures. They were trained and armed in amongst other things VIP protection under Ambassador Dlomo.

Later in 2014 and around 2014 there was a new series of events which resulted in once again the employment of persons to provide security for the former President and the Deputy President at the time but we can deal with that separately. It is not entirely relevant to what we are talking about now.

10 These non-SSA members were referred to as co-workers. They did not go through formal recruit – they did not go through formal vetting processes. They were trained and armed and allocated to the protection of the former President.

We have also heard evidence that during 2014 and 2015 the Chief Director of Special Operations within State Security began requesting firearms from the SSA and a number of firearms including automatic weapons were issued to these persons.

20 So these firearms were distributed to the co-workers and during this period they remain unaccounted for. There have been attempts to recover these firearms, they have not yet all been recovered and accounted for.

So there is – there was the let us call it in inverted commas “formal allocation of arms” and then we have heard

evidence from witnesses who say that they were asked by Ambassador Dlomo to go and fetch arms and deliver them to him from the armoury.

Now this is all evidence that emerges from the Veza investigation conducted by, amongst others, Mr Y and Ms K who gave evidence here. And also alluded to by the then acting Director General of SSA, Mr Jafta.

Apart from the whole structure of the private security force, the SSA security force allocated to the
10 President, its recruitment, its establishment, its training outside the country, its arming. The decommissioning of these persons, the return of SSA arms is still open.

It is a serious matter, as we now know and it is a matter that requires urgent intervention but instead, we hear the evidence of Ms K in an affidavit provided to you, that these internal investigations of Veza were hampered and were sabotaged and we can go into some detail but Ms K talks of the executive overreach and in fact under the auspices of Minister Dlodlo, the reinstatement into SSA of
20 many of those implicated in wrongdoing in the earlier period.

Now it does not need anybody with rocket science or anyone to have this evidence laid out before them in detail to understand that something is seriously wrong and if there is a clear and present danger to the security of the

country our security establishment, which is meant to protect the people, is seriously wrong.

When did you come to know of that situation? In other words, the manifest threats to these state security emergencies proper and lawful functioning? When were you aware of this? I mean, you have been nodding your head as I have been reciting these facts to you, I presume with little more than interest has been told it for the first time, you must have known of this earlier. What is the
10 position?

PRESIDENT RAMAPHOSA: I may not be able to pinpoint the time and date and all that but I am aware of it and I have been aware of it and one of the processes of getting to the bottom of this and dealing with it is precisely part of the reason that motivated me to bring the SSA into the presidency so that we can go much more intensively to the depth of it.

So, Mr Pretorius, it is something that is firmly on my radar screen including those – the account and the report
20 of those people who were employed who were given arms and some of them automatic, arms that never been accounted for and brought back and the activities of those people that you were talking about. So it is part of an intensive investigative process that is under way that will unravel precisely quite a number of the issues that you

have covered.

ADV PRETORIUS SC: Unfortunately, Mr President, that series of events is again background because what happens after that appears to be even more serious. This evidence that is unearthed by the Veza investigation – well, unearthed may be a completely wrong way of putting it because it was there for all to see but collated by the Veza investigation team.

This investigation was stopped. It was halted. Ms
10 K and Ms Y, who were responsible for the investigation and the collation of all the evidence, for example, evidence in relation to the presidential security force. They were taken off their jobs after they gave evidence before this Commission. They were side-lined, they were told no.

Advocate Muofhe was tasked with continuing the investigation but it stopped. All the evidence and documentation was put under lock and key and there was talk of getting a private firm of attorneys to continue the investigation.

20 Now what is alarming about that is of course if it is a firm of attorneys conducting the investigation under the then minister's direction and under Advocate Muofhe's direction, they would control which documents go to the firm of attorneys. I do not know why that firm of attorneys rejected the brief, they did, according to news reports, and

perhaps that might be one of the reasons that they could never conduct a proper investigation when those being investigated controlled the documentation that would go – do you know anything about that set of circumstances?

PRESIDENT RAMAPHOSA: Yes, I did get to know about that and there was – was quite a flurry of activity around that and also - and I guess an attempt by the Inspector General to also intervene and some arrangement had to be made about the safekeeping of those documents.

10 To my knowledge those documents are in safekeeping and they are going to form part of this process of intensive investigation going forward.

So it might seem like the process has been stopped or has been scuttled but it will not – all these things will come to light.

ADV PRETORIUS SC: Now, Ms K and Mr Y, not personally but through his affidavit, gave evidence before this Commission. Mr Jafta, with your support, I understand, and I do not think it is improper to say so
20 because we know that to be a fact, gave evidence before the Commission notwithstanding, as we learnt, the reluctance of the then minister to have that evidence heard at the time and in the manner it was heard.

But what happened after Mr Jafta gave evidence was his contract, acting contract was allowed to expire.

The particular timing and circumstances are a story in themselves because it was at the very time that the law enforcement agencies were seeking documentation for their own investigations from SSA.

But the point is, amongst those documents will be evidence of arms and evidence of personnel, whether they had been decommissioned properly and the question is, is that evidence relevant to what happened in July? It is a matter of great concern. We do not know the answer to
10 that but anybody with an inquiring mind would at least inquiring mind would at least raise red flags.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: In that regard. Now unfortunately not only was Mr Jafta taken off the beat, Ms K and Y with their investigations were taken off the beat. Far from saying finish your investigation, give us the complete report, Mr Jafta, you were involved, they are taken out of the equation. What is the explanation for that other than that they knew things that were potentially embarrassing to
20 the government of the day. Is that not so?

PRESIDENT RAMAPHOSA: The specifics of taking those two officials off the investigation is something that I would not know closely. With Mr Jafta, he was an acting Director General and his acting period had been renewed a number of times to appoint where there was some regulation that

seemed to suggest that you could not just keep on renewing and renewing an acting role, so you therefore needed to change that and bring in either a fully appointed person or bring in someone else.

So I would not necessarily say that Mr Jafta's removal had any agenda behind it. I would say it was in terms of regulatory processes.

ADV PRETORIUS SC: Not all the evidence that the Commission has established through its investigators has
10 been led in evidence but that this was all done in the normal course of business is not an observation or a conclusion that accords with our views and the view of our investigators. In fact Ms K puts it quite succinctly. He (sic) said that her fears that the investigation, the Veza investigation, would not be successful without the full support of all senior management and the executive have been proved correct. Project Veza has effectively been shut down. It was shut down.

Advocate Muofhe took all the documentation, all the
20 evidence and put it under lock and key under the direction of the former Minister of State Security.

So far from – and it has to start again. Goodness knows why it has to start again, there are investigators who have got the evidence, collated the evidence and have drawn certain preliminary conclusions. But be that as it

may, it cannot be said, with respect, Mr President, that the recommendations of the HLRP and its investigations which resulted the Veza investigation are at – and I quote your paper, “at an advanced stage of completion.” The investigations have been halted, the documents have been put under lock and key and it has to start again. That is hardly a fair description that they are at an advanced stage of completion. Would you agree?

PRESIDENT RAMAPHOSA: Yes, I would agree.

10 **ADV PRETORIUS SC:** Not only that but Project Justice, for example, let us deal with that briefly. I am not going to ask for any final opinion from you, you have a job to do in this regard, Mr President, but the high level review panel produced evidence and made certain observations and finding about Project Justice.

The Veza investigation made certain points. There has been evidence before the Commission about the existence of the Project Justice. And not all the evidence that we have in that regard has been presented. No doubt
20 the Commission will, in accordance with the regulations that you approve, make this evidence available to law enforcement agencies and to investigative agencies in due course. The evidence is there.

But for Minister Dlodlo to simply say publicly without the apparent backing of any investigation that this

is all fake news, rather alarming. In other words, not only Minister Dlodlo but in his address to parliament, the current minister appeared to say that – in fact I will give you a quote in due course from the address to parliament of the current minister.

PRESIDENT RAMAPHOSA: Which current minister are you referring to?

ADV PRETORIUS SC: Of State Security. Well, no, the minister in your ministry.

10 **PRESIDENT RAMAPHOSA:** Okay.

ADV PRETORIUS SC: Correct? Am I correct?

CHAIRPERSON: The Deputy Minister of the Minister.

ADV PRETORIUS SC: Ja, the Deputy Ministry in your ministry.

PRESIDENT RAMAPHOSA: The Deputy Minister. Oh, okay, I get that.

ADV PRETORIUS SC: Who was acting before parliament instead of Minister Dlodlo.

PRESIDENT RAMAPHOSA: Okay.

20 **ADV PRETORIUS SC:** Forgive me for that.

PRESIDENT RAMAPHOSA: Okay.

ADV PRETORIUS SC: But what he said was telling. The address before parliament was an interesting historical account of security. I do not know if you were present or alert to that.

PRESIDENT RAMAPHOSA: No, I was not present.

ADV PRETORIUS SC: But he seemed to support Minister Dlodlo's observation that the prevails or the problems of State Security were the cause of external forces operating to this manner when in fact and in truth State Security, the state of State Security was a direct result of those in charge of State Security. Would you concede?

PRESIDENT RAMAPHOSA: Yes, I will concede.

ADV PRETORIUS SC: We have spoken about the joint
10 standing committee on Intelligence and its supervisory role, the role that it plays. There was a full presentation to be made before the JSCI on Project Justice, was a matter of concern and alarming.

Ms K was there ready to give the evidence to the JSCI, they did not call on her. It seems that even at the level of the JSCI there was an attempt to bury or push aside evidence that is truly embarrassing and concerning to the South Africa state. Do you know of that incident?

PRESIDENT RAMAPHOSA: No, I am not alive to that.

20 **ADV PRETORIUS SC:** I am going to try and shorten this part because we have got a lot of work to do still. Further matters of concern – we have dealt with the first period.

The second period of SSA activities and the investigations into wrongdoing in that regard, they were also reported to the security agencies but – or to the law

enforcement agencies, rather, from the security agencies and as it now, 2021, there is still no progress in this regard.

I mean, can the nation have your assurance that if there is a need for criminal investigation and prosecution, as far back as 2007 that will be done?

PRESIDENT RAMAPHOSA: Flowing from the work of this Commission we look to a future where what the Commission has unravelled, has found in terms of its
10 findings will be dealt with. It has to be dealt with otherwise this has just been a wasted effort to have spent almost three years doing this work and spent almost a billion rand, it will have in money fruitlessly spent and your time, Acting Chief Justice, would have been spent fruitlessly. So we have to follow through what your Commission will present as findings as the report because the thoroughness which I probably will talk about later, the thoroughness with – through which you have gone through the various aspects is such that it must identify wrongdoing
20 and wrongdoers.

ADV PRETORIUS SC: Well, Mr President, that is not the end of the story unfortunately because we know from Ms K's affidavit that far from there being collaboration and cooperation between the law enforcement agencies and let me say guardedly the former State Security Agency under

its former control.

The investigation directorate under the NPA has issued a subpoena for documents. Mr Jafta, whilst he was still there and days before he was removed, authorised and instructed those documents to be released and this was some months ago.

What the establishment in SSA did, the minister and Mr Muofhe must have been instrumental in this. They said no to the law enforcement, you cannot have the
10 documents. That is the first issue.

The second issue is that the Inspector General of Intelligence has the statutory power which no one can countermand, not even the Minister of State Security, to access documents. He has been refused access to them. They are under lock and key under the instruction of Advocate Muofhe who is now “retired”.

What can be the possible explanation - I know you say documents should be secured – for a lack of cooperation with law enforcement agencies who need to
20 investigate and prosecute, urgently, to withhold documentation from them, to keep it under lock and key, to lock the gates of the Musanda security complex and prevent people coming in and out and to say to the NPA, armed with a subpoena, you cannot have these documents? Where – how does that translate into

cooperation with law enforcement agencies? And you must know of that.

PRESIDENT RAMAPHOSA: Yes, I do. Chairperson, I think a lot got lost in translation and in implementation because both entities being “law enforcement agencies” they each have a sense of proprietorship over what they hold and control and the lack of what I would call proper coordination and discussion amongst them got in the way of these documents being made available when they should
10 have been made available and I think that that is what really bedevilled the whole process.

What I am however say pleased with is that the documents are still there, they are under lock and key and the various processes that needs to unfold will unfold.

There was a time when I got concerned whether the documents had either been destroyed, shredded or done way with but the documents are there and the processes that now need to unfold to deal with those documents needs to be properly synchronized so that each law
20 enforcement agency can do its work because it cannot be that there should be stoppage of work that needs to be done. So it is a matter of getting things being implemented properly and with the proper coordination and I have no doubt in my mind that that will be achieved.

ADV PRETORIUS SC: It appears, however, that the

events related to the security establishment, the national asset to our democracy, that it should be, are symptomatic of what has happened in the state capture years. Unlawfulness, not prosecuted, not followed up, not dealt with and the establishment responsible for that very sad and concerning series of events remains and the concern is that it remains to date because I am not sure that it is a valid answer to say to a investigating directorate under the auspices of the NPA when they come to do their statutory
10 duty and their constitutional duty that no, you must agree with us. I know you want to investigate us but we must have an agreement before you can execute a lawful subpoena and take documents away.

I am not sure it is valid to say to the IGI, the Inspector General of Intelligence, despite your investigative powers to supervise and investigate us, State Security, you must agree with us on where you are going to lock the documents because I am not happy that they are going to be safe on your premises. That is not what the
20 law says. It is manifestly unlawful to interfere with the operations of the National Prosecuting Authority and the powers of the IGI in relation to state security.

So far from there being cooperation and far from this being at an advanced state of completion arising out of the HLRP report we have got to start again, is that no so?

PRESIDENT RAMAPHOSA: We do indeed have to basically start again but it will also be a continuation of work that has been done including those who have been taken off the job who know these matters intimately.

ADV PRETORIUS SC: Well, that is very encouraging to hear.

PRESIDENT RAMAPHOSA: Will be able to be brought back to be able to carry on with the work because the reasons and the justifications for that, for their either
10 removal is something that has got to be cogent and it appears now it is not. So that is something that we will be able to follow through.

ADV PRETORIUS SC: The importance of these events to the people who should be protected by the security establishment came to the fore in July. I am drawing no conclusions but merely putting possible propositions which do not seem, in the circumstances, unreasonable. But under lock and key before July where the list of the operatives would have been the list of the operatives in the
20 projects, presidential security project, would have been evidence in relation to release of arms, right?

It would be very sad indeed had those activities had a relationship with what happened in July and it is not unreasonable to at least suspect that that is a matter that should be investigated. Not an unreasonable proposition

to put to you, Mr President.

PRESIDENT RAMAPHOSA: It is a proposition and not unreasonable, may I add, and it is part of the investigation that is underway because all these things needs to be gone into and as Mr Pretorius correctly says, it is about the security for the people of our country and there was a lapse and we now need to investigate that and find out how it happened and how it manifested itself from a certain beginning right up till what happened in July.

10 **ADV PRETORIUS SC:** Now one hesitates to respond to public commentary, that is not our job, our job is deal with evidence.

PRESIDENT RAMAPHOSA: Indeed.

ADV PRETORIUS SC: But you will have no doubt learnt of the frustrations of many “out there” the use of the lapse. The events of the state security saga over a period from 2007 to now, not two years ago, not one year ago, to now, could hardly be termed a lapse, Mr President, they were a concerted exercise of state governance and executive
20 control. These were not mistakes, these were not slip ups, Minister Dlodlo did not arrive one morning and say oops, I forgot to do this or I made a mistake here, this was a deliberate pattern of misgovernance which has possibly had the most serious consequences for our state. Far from the – well, let me stop there. Do you have a comment on

that?

PRESIDENT RAMAPHOSA: I think if we are looking at it broadly from the time that you have alluded to, 2007, that was the time when not only the capability of the state was initiated, it also mutated into state capture, which we are dealing with now, and all these things are a consequence of either deliberate incapability of the state or state capture itself. So an accumulation of all this has resulted in the challenges that we face now.

10 But the fortunate part, Chairperson, and I will keep repeating this, is that we have got your Commission, we have got a whole number of other processes that have been embarked upon that have unravelled all these things and we will be remiss in our work if we will not deal with what is clearly apparent as misgovernance, as Mr Pretorius says, the capture of the state, the malfeasance and fraud and corruption.

 We are determined to deal with all those things. We just went into an abyss and we are clawing our way back to
20 the top and, in doing so, we are determined to succeed and we will succeed.

ADV PRETORIUS SC: I will revert to the general observations that certainly us, as a legal team, think legitimate to put before you in due course but Mr Mahlobo, for example, has given evidence, he has denied many, not

all of the allegations against him, but the evidence against him is strong and we will make our submissions in due course.

He was Minister of State Security from 2014 to 2017. There are serious allegations against him.

He was then moved to the post of Minister of Energy in May 2017, he was not included as a minister in your first cabinet, as you are well aware.

The high level review panel, which was released in
10 redacted from by your office in March 2019, as I understand it, was given to you in December 2018 and it made serious findings, albeit on the basis of reports made to it in relation to Minister Mahlobo, right?

So the question I would like to pose to you is not whether he is guilty or not guilty of any misconduct or illegal activity, although the evidence is at least there on a *prima facie* basis.

The question is, would he be a person with that series of allegations concerning him in the public domain
20 to be appointed to office? You appointed him as a Deputy Minister in May 2019 despite the findings by high level review panel.

Now that might have been a mistake or a lapse. That was a deliberate decision on your part. What is the explanation for that, if we may ask?

PRESIDENT RAMAPHOSA: Much of what the Commission is doing and will make findings on, will be in my view the final guide on how we will be able to deal with either persons or people and in this regard I have, as I said in my statement, in saying I will want to wait for the outcome of the Commission's report and I think that is about all I can say on that question right now.

ADV PRETORIUS SC: But as I tried to emphasise, Mr President, it is not really a matter of whether in retrospect
10 Mr Mahlobo is guilty or not guilty of matters that the Commission will assist in determining.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: And makes its on own findings on. The question is whether he is a suitable person for appointment in the first place and that does not need a firm judgment of a court or a commission to assist.

Does not explain why state security, being as important as it was, Mr Mahlobo's involvement and allegations against him why he was still a suitable person
20 for appointment to cabinet and we will come to this issue later but is the explanation not it is a matter of balance and power in politics?

PRESIDENT RAMAPHOSA: Mr Chairperson, I am waiting for the Commission's report in this regard to be able to make my judgment.

ADV PRETORIUS SC: Well sadly we will come back to that because it is a central part of your explanation for the events and your own relation to those events over the past ten years.

CHAIRPERSON: Well, let me add this, Mr President, I think it has almost certain that when this Commissioner has completed its work and handed its report over to you and the report has become public, as I take it it will be at some stage that there will be review proceedings and I would not
10 be surprised if even before it finishes its work papers are being drawn to take some of the findings that it will make on review. At that stage people might say but, Mr President, you cannot do anything, you must wait until the outcome of the review process, so will you wait for that as well?

PRESIDENT RAMAPHOSA: Well, about the review processes, that is from your lips, so I cannot comment on that. But obviously, in evaluating your report we will be better informed as to be able to take a variety of actions
20 because we view the work of this Commission very seriously, a deliberate decision which was backed up by many people in our country that this Commission should be instituted or established and so therefore, we are duty bound, but not only that, but morally bound to take the results of this – the findings of this Commission seriously

because the Commission's existence and work is the watershed moment for our country in as far as dealing with corruption and the state capture that we have gone through. So I feel we can be rest assured that we are going to take your findings very seriously.

CHAIRPERSON: Yes. No, that is fine, Mr President, I guess I am doing nothing more than just alerting you that you ought to be alive to a situation which could end up with no action being taken for a quite a number of years
10 because some people will be believing that well, nothing should be done until those processes of reviews, court processes and appeals have been exhausted and I think that some of the challenges that we have had in our country are challenges where people have – people who are supposed to make decisions have unnecessarily waited for court processes which decide different issues to issues that they have to decide, you know? A court process will take six years, will take ten years and in the meantime nothing is done when something should be done.

20 **PRESIDENT RAMAPHOSA:** Ja.

CHAIRPERSON: So – but I think I am doing nothing more than just say...

PRESIDENT RAMAPHOSA: Alerting me.

CHAIRPERSON: Ja. Okay, Mr Pretorius?

ADV PRETORIUS SC: Chair, I have had a request from

the right hand side that we adjourn at eleven o'clock for the short adjournment. Would that be in order? It is a request made on behalf of the President.

CHAIRPERSON: Of the President?

PRESIDENT RAMAPHOSA: On my behalf? [inaudible – speaking simultaneously]

CHAIRPERSON: Well, the President says he gave no such mandate.

ADV PRETORIUS SC: Nor request but I feel duty bound
10 to communicate the request.

CHAIRPERSON: No, no...

PRESIDENT RAMAPHOSA: I did not signify any such...

ADV PRETORIUS SC: Presumably we will take such inaction as is necessary.

CHAIRPERSON: Well, we were due to take the tea break at quarter past eleven, so unless there was really something pressing, one would like to go up to quarter past eleven and it may be that those on your right, Mr Pretorius, were thinking of something that might be – that the
20 President might be needing a break but he seems to be quite fine.

ADV PRETORIUS SC: No, well he has been going for two hours in fairness for him.

PRESIDENT RAMAPHOSA: Ja.

CHAIRPERSON: No, he says he is fine, he is fine, he is

full of energy. Okay, let us go up to quarter past.

ADV PRETORIUS SC: I will convey the message.

CHAIRPERSON: Let us go up to quarter past.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: Thank you. Right, when you appointed Mr Fraser as ...[intervenes]

CHAIRPERSON: So on a light note, Mr Pretorius, in effect Mr President says well, if you thought you were going to get a break to think about some questions, he is not giving
10 you that, you must ask the questions now.

ADV PRETORIUS SC: No, I understand that.

PRESIDENT RAMAPHOSA: That is the idea.

ADV PRETORIUS SC: I understand that, Chair. And there is still a long day to go.

I am informed that Mr Fraser was redeployed by yourself, Mr President, to Correctional Services during April 2018. At that time did you know of the allegations in relation to State Security against Mr Fraser?

PRESIDENT RAMAPHOSA: Yes, some of them and also in
20 his regard, if you are going to ask more or less the same question, I have been waiting for a more full and complete picture which this Commission is going to assist me with to be able to make a fuller determination.

ADV PRETORIUS SC: Yes. Well, it does not seem unfair, Mr President, to draw the conclusion that not only cabinet,

which is under your control, but appointments to high office within government continued to include those against whom serious and known allegations have been made, Mr Mahlobo and Mr Fraser, at the very least, is that correct?

PRESIDENT RAMAPHOSA: Yes, they are on that radar screen and in a way, whether my judgment on this is found to be flawed or not, I decided that I want to wait for this process to complete and fortunately, it is coming to an end and I shall soon have a report in my hand.

10 **ADV PRETORIUS SC:** As we know, Mr President, the cabinet has been reconfigured by yourself in the last weeks, the default position – and this is something that I am not sure that great deal of the political commentators are aware of, the default position with regard to state security is that the President should be in control. You are aware of that section of the constitution.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: For public information maybe it is just as well to just draw to the Chair's attention and to the
20 public's attention, the President, as head of the National Executive must appoint a woman or a man as head of each intelligence service established in terms of subsection 1 and must either assume political responsibility for control and direction of any of those services or designate a member of the cabinet to assume that responsibility.

So in your recent reconfiguration you have reverted to the default constitutional position as I understand it.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: And the evidence given during 2018 and 2019 supports the notion that it is such an important aspect of our constitutional democracy, a security establishment, as we have learnt in the last month, with such dire consequences of failure that this should be the position and that there should not be a Minister of
10 State Security. Would it be unfair to ask you why you decided to take the State Security Agency under your direct control?

PRESIDENT RAMAPHOSA: No, it would not be unfair. As you correctly point out to the prescripts of our constitution, I took the decision to bring the State Security Agency into the presidency precisely because, as Mr Pretorius has said, it is an asset of our nation.

It is important that it should be seen to be so and there should be confidence in this important asset of our
20 nation to serve the nation and never to be seen to be serving certain sections of our nation and a high level panel report did speak to this issue that in the past it tended to serve certain sectional interests, be it in the governing party or otherwise and it is an agency that has been dogged with a lot of controversy and trouble.

And as I said earlier, it has got a lot of good people in it and we just need to realign its work properly with the objectives of our developmental state. And it is possible that in time to come we may once again delineate a person, as said in our constitution, who can be in charge but for now I have deemed it proper to realign it properly and have it in the presidency.

And this happens in many countries around the world. State security is viewed as very sensitive and
10 important arm of the state to serve the nation, not so much also to serve the state but the nation as a whole and many countries, they do not have a Minister of State Security, they rather have the heads of those agencies reporting to the President or to the head of government or even of state in certain instances.

So that is what we have put into effect and we are hoping and are committed to ensuring that we realign the State Security Agency. Many people have misunderstood it, Chairperson, they have even gone to an extent of saying
20 the President is now creating a super presidency and others have gone on to say this is now the emergence of a dictatorship. Others are saying it is now we are becoming a totalitarian state. Far be it from it.

All we are seeking to do, this very important entity of government, is to realign it, to repurpose it and I should

say, as has been said here, that in having Dr Mufamadi who used to be a minister himself in the past but, more importantly, who headed the high level panel report, is a great benefit to us, as the nation, because his deep knowledge is going to assist me in ensuring that state security works well.

I have often said, and I will conclude in a minute, that there are certain entities in government that should really work at, if you like, at the top of their game, must
10 really be super, super excellent and state security is one of those, the intelligence services is one of those. And through doing this, we want to inject not only the confidence of our nation into its work so that it can help to protect but also that we professionalize and be completely disinfected of any partisanship, particularly party political partisanship and that is what we are seeking to do.

Others may even suggest that, or they have even said so, the President is now amassing all power in his hand and he is going to use state security against his
20 enemies.

I am not wired in that way, I am not geared in that way and as we professionalize state security we will be wanting to have officers and individuals who will just swear their allegiance to the constitution of our country and not be there to protect the President, that is completely out of

range as far as I am concerned. Thank you.

ADV PRETORIUS SC: We have three minutes to go. This request comes from myself.

PRESIDENT RAMAPHOSA: I am glad and I am vindicated.

CHAIRPERSON: Well, Mr President, I think the legal team wants some few minutes break before proceeding. Yes, we are three minutes before the tea break. Let us take the tea break and we will resume at half past eleven. We adjourn.

10 **ADV PRETORIUS SC:** Thank you, Chair.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV PRETORIUS SC: To complete the section of the questioning and your evidence, Mr President, a few general observations.

Firstly, Deputy Minister Kodwa made an address to parliament when he was standing in for the previous Minister of State Security on the 1 June 2021 and he said

20 the following to parliament:

“South Africans of all walks of life also have a patriotic duty to protect the sovereignty, territorial integrity and the country against hostile elements that seek to undermine our hard-earned democracy. Some of these

hostile elements including the plethora of information peddlers who have become nation wreckers, whose mission is subversion and sabotage to destabilise legitimate governments.”

He continues:

“Each time they manifested their hostile machinations the South African Intelligence Community is left reeling from mandated
10 disorientation, internal divisions, disruption of business and more of restructuring fatigue.”

This was said as part of this opening review in June 2021 and appears to be a response to much of the public criticism of the SSA prevalent at the time and perhaps arising in large measure from the evidence led before the Chair in this Commission.

I just want to suggest that – not suggest, state perhaps firmly, Mr President, that it is not some mysterious nation wreckers or information peddlers that have done the
20 damage that has been done, it is over a decade of mismanagement and unlawful activity by the people in charge in power. Do you agree with that?

PRESIDENT RAMAPHOSA: There has been quite a lot of that.

ADV PRETORIUS SC: The HLRP report which you, in

fairness to you, commissioned for good reason and you have stated the reason.

The Veza investigation, the Commission have all heard substantial evidence in this regard and all the evidence has not yet come to light and not even all the evidence that our investigators have produced has been led, it will be compiled and presented to Chair in due course.

But if I may just by way of summary go back to the
10 main conclusion put before you by Dr Mufamadi's panel.
He said in 2018:

“Our key finding is that there has been a serious politicization and factionalisation of the Intelligence community over the past decade or more based on factions in the ruling party resulting in an almost complete disregard for the constitution, policy, legislation and other prescripts and turning our civilian intelligence community into a
20 private resource to serve the political and personal interests of particular individuals. In addition, we identified a doctrinal shift towards a narrow state security orientation in the intelligence community from 2009 and contradiction to the doctrines outlined in the

constitution, the White Paper on Intelligence and other prescripts. We are concerned that the cumulative effect of the above led to the deliberate repurposing of the SSA.”

And the link between those findings and the concept of state capture cannot be lost and perhaps, more severely, the link between that and the failure or any failure that has to be found in the future in relation to the security establishment and the events of June cannot be
10 underestimated. Would you agree with that?

By way of conclusion. Can I put the following to you for your comment?

PRESIDENT RAMAPHOSA: [No audible reply]

ADV PRETORIUS SC: It is not unreasonable, therefore, to propose that any failures at the heels of the SSA in July 2021 and during this period of state capture were a logical and predictable outcome of the history of over 12 years’ of mismanagement, institutionalised corruption, factionalism and a redirection of the capacity and
20 resources of the security establishment away from its true objective, the interest of the people as a whole to serve narrow political, sectional and private interest. Would that be a fair comment?

PRESIDENT RAMAPHOSA: I have said that the SSA has a number of quite good people who want to serve the

nation and who want to serve the nation diligently. So I will not use a broad brush and say all of it is like that, with a black brush. I would say yes quite a lot of maleficence did happen and it was – the SSA was purposed to serve political and factional interest by certain of its operatives or officials and certainly not all.

As we have now brought the SSA into the Presidency, our task is going to be to achieve the objectives that have been or rather the conclusions that
10 have been set out in the high level panel report. And in a way to repurpose, reposition the SSA to be an SSA or intelligent service that will serve the interest of the people of South Africa completely and not serve certain interests in society. That is what we are now determined to do.

ADV PRETORIUS SC: And to make the point that the Chair made during the morning session that the issue of alertness and prompt action in the future, much of that responsibility will lie or does lie with the security establishment.

20 **PRESIDENT RAMAPHOSA:** That is correct.

ADV PRETORIUS SC: I would like to move on to a new topic, please, Mr President and Chair. First to go back to an item raised by you, Chair, in relation to the Judicial Service Committee agenda.

CHAIRPERSON: H'm.

ADV PRETORIUS SC: And Commission and the activities of the Deployment Committee in making recommendations and the timing of those events.

CHAIRPERSON: H'm, h'm.

ADV PRETORIUS SC: I am told by our researcher who has been assisting me, Chair, that the JSE's Screening Committee in 2019, January 29 compiled a shortlist of possible appointments to various positions in the judiciary. The Deployment Committee met in this regard and made its
10 own recommendations on the 22nd of March 2019 after the shortlist was compiled.

And the interviews of the Judicial Service Committee occurred in April 2019. So there was this shortlist in January. The Deployment Committee meeting recommended judges in March and the interviews took place in April 2019. That is just the timeline.

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: Yes. In previous sessions, Mr President, I cannot remember whether involving including the one
20 where you appears but I think when Mr Mantashe appeared, this was touched upon. I have gained the impression, I think from Mr Mantashe's evidence, that while the Deployment Committee does get involved in recommending, I think he put it like that too, names for – of people to be considered for appointment to government.

I gained the impression that the issue of judges does not go to the Deployment Committee. Now I may have misunderstood but that certainly the impression I have got. So I was a little alarmed when I heard that there was a case where it happened. [laughs]

PRESIDENT RAMAPHOSA: [laughs]

CHAIRPERSON: Now one gets concerned because maybe some of the candidates or judges because of their existing at the time before they are appointed as judges, existing
10 relationship with the ruling party might get to know for example that the Deployment or that party supports them. I do not know.

PRESIDENT RAMAPHOSA: [laughs]

CHAIRPERSON: And one would not like, you know, any issues such as factionalism that one might see in political parties get into the judiciary. So I am concerned about that, you know. So, has the party itself taken a position that even those who wish to be judges the – or at least maybe some of them, or they will – the Deployment
20 Committee will deal with who should be appointed or who should not? Or was this just an exception? Was it something that should not have happened but did happen?

PRESIDENT RAMAPHOSA: [laughs]

CHAIRPERSON: [laughs]

PRESIDENT RAMAPHOSA: Chairperson, I think I would

like you to look at this in a positive light.

CHAIRPERSON: H'm.

PRESIDENT RAMAPHOSA: With a positive spirit.

CHAIRPERSON: H'm.

PRESIDENT RAMAPHOSA: The governing party's agenda is to transform our country from the horrible past that it was and to transform it wholly and completely and to ensure that various institutions, not only Parliament or Executive, various institutions are so representative of the
10 demographics of our country.

And I want to hasten to add that without the governing party's initiatives in this regard, many of the transformative processes that we have today in our country would not be there. Quite frankly, they would not. Many people will deny this but that is a fact.

The governing party has led the process of transformation and that includes its own views on the transformation of the judiciary. Either to, we had a wholly untransformed judiciary and it is the governing party's
20 insistence and in latter days, the issue I have dealt with yesterday of having women in the judiciary, has been an ongoing insistence by the governing party.

Now the best way for the governing party to be able to engender this transformation has been yes to discuss like I would say any other institution. And I know

yesterday somebody was saying you know there are even lawyers' bodies and attorneys' bodies and advocates' bodies who when even judges are supposed to be presented or nominated, they themselves nominate.

They put names forward and they have views including various bodies even not legal fraternity entities. So that is the lobbying processes. And as I have said yesterday, lobbying happens all the time. And similarly, for an institution like the governing party to now have a
10 situation where its own views, its own proposals are now shifted aside the way it is told that you may not do it, I think would be going against the grain of what happens generally in society because in that case it would no different.

Of course, his voice would have a little bit more weight but nonetheless it also needs to have its voice heard. And I did say yesterday that the safety with all this is that in the end the governing party is not the appointing party. It is not. It may well have a bearing but I was to
20 say I know of no judicial officers who have relationships with the governing party.

And in fact, I would say the judicial officers should not have a relationship with the governing party. Even how they vote, I do not want to know how they vote. But in the end, it is – the governing body must play a role in further

transforming our judiciary and bringing in more women, bringing in more black people. By black people I mean the full gambit of Black, Coloured, Indian and African.

So the influence that it has, it is tempered by the appointment of the Judicial Services Commission. Now yesterday on the tea break we even reflected that some of the – even the suggestions that the governing party has had have actually at times been pushed aside and the JSE has gone ahead to appoint people who the governing party
10 did not – who – ja, who the governing party would possible have wanted. It has gone ahead to appoint other people.

So that is why I am saying, acting Chief Justice, I would like to implore you to look at it in a positive light rather than in a negative light. I do not believe that it does the harm that many people would think it does. And it happens all over the world. I mean, governing parties do make proposals as to whether finally those people are appointed, it is the appointing authority.

And the good thing as – I think – I do not know
20 whether it was – yes, it was Mr Pretorius who said our constitution sets up a much higher bar, much better. And I once heard a chief justice in the US saying that the South African constitution, they say the best but one of the best. That is what they seem to have said.

So the bar for us is higher. So the influence, even

of the governing party, would you know be almost impossible to reach that bar.

CHAIRPERSON: Ja-no, I think that one thing that needs to be made clear is that the process for the appointment of judges ...[intervenes]

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: ...enables anybody and everybody who wishes to comment on any candidate to send comments to the JSE.

10 **PRESIDENT RAMAPHOSA:** That is true.

CHAIRPERSON: To say I think this candidate is suitable, this one I do not think is suitable, this one has got challenges or whatever. That is how transparent our process is.

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: And in that context, there is no provision that says the ruling party should not send comments.

PRESIDENT RAMAPHOSA: Yes.

20 **CHAIRPERSON:** You know. Anybody and everybody and any organisation may do so, you know. It may well be that where those comments are sent – we go back to the issue of transparency – are sent transparently to the JSE.

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: Then they get subjected to scrutiny in a public forum at the interviews where as if they are not send

transparently then there is – there may be a problem.

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: Ja, okay.

PRESIDENT RAMAPHOSA: Okay.

CHAIRPERSON: Mr Pretorius.

ADV PRETORIUS SC: Yes. I am just referring back for clarity to the provisions of Section 174 of the constitution which enjoins you, Mr President, to appoint the judges of the Constitutional Court.

10 **PRESIDENT RAMAPHOSA:** Yes.

ADV PRETORIUS SC: And then to appoint all other members of the judiciary on the advice of the Judicial Service Commission.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: So you do have that part. But here is a distinction, is there not, between governing party making policy statements to guide organs of state as the ruling party or the governing party?

20 A distinction between that situation and the Judicial Service Commission receiving recommendations of particular persons, named persons from the Deployment Committee comprising of very senior government officials particularly in the context of the government expressly saying we must – the governing party saying we control the leaders of power and we have a system of democratic

centralism.

So there is a degree of authority that comes from, as the Chair has pointed out, that comes from the judicial – from the Deployment Committee to naming judges, not implementing, or advising on policies of transformation but naming particular individuals. Is that not a problem?

PRESIDENT RAMAPHOSA: I revert back to what I said that the safeguard in all this is that the governing party is not the appointing party or entity. And I want to repeat.

10 There have been times where the governing party would have wanted a particular candidate and that candidate in the end was not appointed and a different one was.

And to me that just shows the robustness of this whole process because yes in a way it shows a preference but the preference in the end is not the appointed person or official and there are many other entities that would show their own preferences. It is possible that to say a COSATU which is a fairly powerful organisation state its preference but in the end it is just a preference. It is not
20 the apppointer of those people.

So I guess maybe we differ on that but I differ advisedly in saying there is a safeguard and I think the drafters of the constitution has given us that wonderful safeguard but in the end the appointment of judges will never be the terrain or the responsibility by a governing

party but it will be by another institution.

CHAIRPERSON: Of course it is also true, Mr President. We all know that within the structure of the JSE there would be quite a number of members of the JSE who come from the ruling party and therefore can be said to know what the ruling party stands for and what it would like to achieve in terms of transformation. I just mention that because, one, there would be a number of MP's who come from Parliament who are members of the ruling party.

10 The Minister of Justice was party of the Judicial Service Commission and would probably all the time be a member of the ANC. So, but I am just mentioning that there are those other people as well who would be expected to seek to look at the – at what needs to be done to achieve a judiciary that is ...[intervenes]

PRESIDENT RAMAPHOSA: Transformation.

CHAIRPERSON: ...transformed. Yes.

PRESIDENT RAMAPHOSA: Ja.

CHAIRPERSON: Both in terms of race and gender.

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

CHAIRPERSON: Ja, ja.

PRESIDENT RAMAPHOSA: Chair, yesterday you made a proposition which I responded to quite warmly when you said: You know what, we do should be underpinned by transparency. And I would like to, once again, say yes. To

me that is a rather wonderful and positive proposition which obviously needs to be looked at.

CHAIRPERSON: Ja.

PRESIDENT RAMAPHOSA: Because we are not going to be able to diverse if one can use that, any political party, be it the governing party or the opposition or any other from expressing its preference. I do not think that is going to happen but if we say having done so be transparent so that it never gets seen as being underhand or happening in
10 dark corners.

And by the way, on the Judicial Services Committee or Commission, there sits other parties as well and those parties will invariable also discuss ...[intervenes]

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: ...amongst them their own structures ...[intervenes]

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: ...who they believe would be
20 best placed.

CHAIRPERSON: Yes, yes.

PRESIDENT RAMAPHOSA: And so, they will also, and this is, you know, how politics works, they will come with their own mandates and thoughts and put them forward. And in the end, it is really that contestation and... So I do

not think we should say the governing party should not have structures that will deal with the preferences that it can put forward.

CHAIRPERSON: H'm. Thank you. Mr Pretorius.

ADV PRETORIUS SC: Mr President, as foreshadowed earlier today. If I may ask you to take your Presidential hat off and put your hat of President of the party on and I do not have to be so polite.

PRESIDENT RAMAPHOSA: [laughs]

10 **ADV PRETORIUS SC:** What the Chair said the first time you testified in your capacity as President and Deputy President of the African National Congress was the following. If I can just recite it once more and then as you to please address his concerns.

He said:

“Well, talking about the fact that the ANC acknowledges that there were certain shortcomings, there were certain things that had might not have done properly and so on.

20 I think that is quite important that acknowledgement but I would like you, maybe before you finish today or even tomorrow, I would like you to identify the actual areas where you say as a party we have done our homework. We think this is where we did not do what we

were supposed to do properly.

This is where we did something we should not have done.

So we identify exactly the areas where as a party – you say here we did not do things the way we should have and we acknowledge...”

In other words, he was asking to move from the general to the specific. And the reason he was doing so, principle, is to enable him to “look at what should be put in
10 place for the future so that there is no repeat”.

So may I ask you to address, please Mr President, those issues?

PRESIDENT RAMAPHOSA: Yes. In my opening statement when I addressed you, Chair, as President of the ANC. I did say that the ANC owns up to a number of things that did go wrong but we did not attempt to as we should have. And we have made missteps along the way and being the governing party we should have been much more prudent we should have been much more aware of the
20 consequences of some of the things that we did not do well.

And maybe the nature of our transition from the past possible informs this because in the context of extreme inequality where access to political office seems to present one with few opportunities for instead of

material advancement and the pursuit of political office could lead to political patronage. One of the issues we made some huge missteps on.

Now with regards to the ANC itself. We have owned up to this malady which I would term a decline in organisational integrity. We have owned up to it. And in the contestation for political office, processes being manipulated and to advance the interest of certain individuals and people.

10 And within our ranks there emerge another malady which is factionalism. Then we had divisions and they manifested themselves through factionalism and through that our ability to then tackle a major, major national project which is corruption, was faulted and debilitated through the factionalism that resided in our own organisation that also resided – that impacted its leadership.

 And in the end, it then led the factionalism led to a number of people having invested interest in maintaining
20 certain wrong practices. And the other fault line was patronage. Emerged a system of patronage within our ranks and our ability to act against corruption through organisational processes was made difficult in our ranks.

 And the other problem, of course, had to deal with just how the organisation could fund itself, the party

funding. And we have not in the past had an official policy on party funding. Who we can take money, where we can refuse money and too led to enormous problems within the organisation.

And the other problem has been, you know, just the weakening of institutions. And our own problems and the factionalism that existed in our ranks led to the weakening of institutions and even government institutions and that could be said to be borne out with what we saw
10 with some of the institutions, SAA and so forth because they too became factionalised. So the weaknesses in the party then got translated in the state.

But the question that possible that you ask what corrective measure are we taking to deal with this so that we can give a sense that we are moving away from all of these wrong practises. Now, obviously, in our situation we have embarked on a process of renewal. Renewing ourselves and getting the organisation to adhere to values that are embedded in our constitution and making sure that
20 we have rid our organisation of corruption and corrupt people and leaders who may be implicated in corruption.

Now that is part of the renewal process and dealing with this process quite effectively. And now this is in fulfilment of our conference resolutions that had directed us to take steps against corruption and significant progress

is being made but it also enables and empowers us as an organisation to lead the process and institutions that we have been charged with overseeing by the people of our country which is in government that having started from the organisation to act against corruption, to adhere to values of movement.

We then began to translate that into what we do in this day. Now some of the actions that we have been going on, embarking on in the state, how we have been acting
10 against those people who have been yes either implicated and being charged with corruption, and how we are also taking corrective measures to reposition state institutions.

The MPA is a case in point. This is what has happened in recent times as emboldened by our conference resolutions, we have taken these corrective measures. The MPA was riddled with a lot of controversy, a lot of maleficence.

And we have straightened that out and the work is by no means complete but we are doing that. The Revenue
20 Collection Service, SARS, is one case in point and now the SSA and the South African Police and many institutions in government are now being in a way cleansed. And this we do as we are armed with what our base has directed us to do.

The base being the governing party, the African

National Congress. Because what we do in the ANC is what finally enables us to do what we are now doing in government. We have embarked on a path, Chairperson, where we are taking serious steps to cleanse our state and also our party. And this is a process. It is not a one-day event. It is by no means going to be completed in a short space of time.

There is much work that needs to be done. Within our own works we have strengthened and we had this
10 structure before but we have strengthened our Integrity Commission and even the terms of reference of that commission have been amended to enable the Integrity Commission to call on ANC members and leaders to appear before it and to explain themselves if they have been said to be involved in maleficence either in the party as well as in the state.

And through this, we are dealing with members who have crossed the line. As we have said. We drew the line in the sand and if you cross that line there is
20 reconning that you now need to countenance because it has been a necessary step on our part to deal with these acts of corruption.

And in doing so we want to – we are repositioning the ANC; we are renewing the ANC but we are also cleansing those institutions that by of being the governing

party in government; we are responsible for.

So that process is an overarching process and we are determined to move ahead with it. Yes, sometimes we make missteps. We may have reversals but we are determined to continue moving forward. For instance, we are the ones – it is the governing party dealing with matters of political party funding because it is the governing party that took a resolution that we should have transparency in party funding.

10 And now we have an act of Parliament and it has been done, if you could say, at great sacrifice because now the governing party has put structures on itself with regard to party funding but it was a necessary step to take. And it has now happened and the party is strapped for cash but it was necessary that this cleansing process should happen as we move on.

 And we are also in the process of instituting within the party itself. Processes such as lifestyle audits so that in the part we should – and the discussion is ongoing and
20 how it will be done – we should have people who will subject themselves to lifestyle audits so that we can be clear and in a transparent manner that people will rid themselves of any form of corruption.

So this, Chairperson, these are the steps. Now will they translate into ridding our institutions in

government of corruption? I believe so because in a way it is just as well that we have started it in the party. If we had done a top down just in the government only and it remained in the party, it possible would not have worked. So we are doing the cleansing process, the renewal process in the party and it will translate as it is already translating itself in government.

Will it be robust enough to last? I would like to believe so because as the governing party we are duty
10 bound to engage the partnership and doing all this for the people of our country because they are the ones who are going to be almost the guardians to say: You have taken these steps to renew yourself and that is why we will support you and if you do not then we will not support you.

We have suffered quite a lot of loss of support because of corruption and for us it is an existential challenge and for us to continue existing we need to renew ourselves, cleanse ourselves and by definition in the end the institutions who have been placed in charge of in
20 government will therefore also have to correct. So it is a dual objective and the process has started and it going to gain momentum going forward.

CHAIRPERSON: Thank you, Mr President. Do you think that the party did enough to deal with the situation relating to the influence of the Guptas after Mr Mbalula had raised

the alarm at the MEC Meeting at 2011 and of course after the landing of the Gupta aircraft at Waterkloof and with all the media articles that were coming up with in between from 2010 on what is about statements about the Guptas and so on? Does the party think that in relation to acting on those, it acted correctly? Or a lack of action. [laughs]

PRESIDENT RAMAPHOSA: [laughs] Chairperson, there was some action but it was not enough.

CHAIRPERSON: Okay.

10 **PRESIDENT RAMAPHOSA**: It was not enough. I mean, in relation for instance to the Gupta family's influence. I think we were blindsided by the fact that this family were friends to the ultimate leader of our party and that blindsided us. But there were occasions, for instance when Mbalula mentioned it in the MEC. Yes, there was no immediate action but he was brave enough to raise it and that level of alertness was just not there because we were blindsided the fact that these were friends of the President.

20 And when the plane landed at Airforce Waterkloof Base the then Secretary General spoke out. He spoke out against this and almost immediately. And when I had the occasion when the Gupta brothers came to the ANC headquarters to discuss this and other matters with us, I was one who specifically raised this and said this should

never have happened and it put our President who is your friend in great difficulties.

So answering your question; was it enough? No, it was not enough. And it is for that reason that we have admitted and it happened, as I said in my evidence when I spoke as the President of the ANC, that there was contestation in the party itself with regard to how deal with all these matters. Factionalism, the divisions in the party and how you respond to acts of corruption.

10 There was contestation. And we have led the process of change and renewal in the party. And the party, the governing party is a living organism and it has had its own challenges. It is not the first and it is not the last governing party that has had to go through these challenges. Many parties around the world, from time in memorial, do have these types of challenges.

20 Now, of course, in our case as it happens in other countries as well, it has a direct impact on the state, on the government and on the nation. And in our case, we are putting ourselves before the nation and say we are renewing ourselves. We have admitted our wrong steps as the then Secretary General of our organisation, Gwede Mantashe said in his diagnostic report to Conference that these are the problems that we are facing and we are facing loss of support. We need to change.

And contestation around that it then intensified but I firmly believe that line that we drew in the sand, it remains firm and the African National Congress is on a path of renewal and will continue to demonstrate that it will put the people of South Africa first and serve the people of South Africa precisely what it was formed for. Thank you.

CHAIRPERSON: Thank you, Mr President. Mr Pretorius.

ADV PRETORIUS SC: Thank you, Chair. In your affidavit, Mr President, you analyse the various elements of the
10 project of state capture rather than simply using a label broadly to describe the events of the past ten years at least.

You break it up into the various elements in the state capture what we refer to in the legal team as the big picture which involves not only isolated acts of corruption or even many, may acts of corruption but rather an organised project of substantial proportions which involves not only acts of corruption, it involves repurposing of state-owned entities, repurposing of government departments,
20 appointments, dismissals aimed to promote the project, the weakening of law enforcement agencies. We will deal with that detail in due course.

But for the Chair the distinction between a collective grouping of acts of corruption on the one hand and the project of state capture on the other will be very

significant in his findings and the legal team will address the Chair in due course in that respect.

But in answer to your response to the Chair's question. There is perhaps another perspective that I think for the sake of completeness deserves your comment. And that is during the period under review there was a political process taken place. You described it in paragraph 76 of your statement or your affidavit.

You say:

10 "It needs to be remembered that governance is not 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 rely to a large measure on the political balance of forces within the Executive, within the governing party, and within society
20 more broadly..."

Now the implications of that statement, if I may say, Mr President, are profound because they talk about a balance of forces. A contestation, as you put it, between those forces. These are not just opportunistic isolated acts of corruption. There is a political project at play. And

that circumstance compelled you in your own statement to take what you call the final option, Option 5, where you say:

“The final option which was what I chose was to remain in my position as Deputy President, to work with others in the Executive, to resist abuses and bring about change where we could and to sustain the work of social and economic transformation.

10 It was by no means an act of acquiescence.

I believe this gave me the opportunity to resist some of the excesses that took place which I speak to in the statement.

This work in my view limited the extent to which state capture may have unfolded...”

20 So what you are describing is your resistance on isolated occasions to a force with which you are in contest and which force in fact holds the balance of power. That is why you had to resist. So far from this being a series of corrupt acts opportunistically seized upon by individuals. What was one was dealing with here was a situation where those opposing forces in contestation with the work of yourself and any others were dominant.

They controlled the fate of the party and in that sense they controlled the fate of the country. So this was,

if one regards in the context of your own evidence what was happening over the period of state capture, was a conservative exercise of power by the ruling party over descending forces. Is that a fair comment?

PRESIDENT RAMAPHOSA: Well, it is fair. I think one should also see the option that one chose to stay in and yes resist. And I did say that if one had stayed in and been the gallant which was expected on every turn, one could have been fired. So you had to choose your battles.

10 You had to choose which ones would lead to tilting the balance.

And fundamentally, it was also not so much a resistance but it was also staying in so that through, you know, if you like the democratic process, you could affect the change, working together with others. Affect the change that was necessary. And also begin to lead the renewal process.

And fortunately, the highest decision making body of the organisation took a very clear and firm decision on
20 dealing with corruption and also on renewal and getting the ANC to be repositioned and also forging unity within the movement.

So armed with that we were then able. Yes, there has been contestation as often happens in many organisations but also to tilt the balance of forces so that

the renewal process becomes the order of the day where we no longer have to be butting our heads against those who resist renewal. It should be – we are aligned against maleficence; corruption and we will act against those who engage and things like that.

And including, you know, simple things like for instance in the party things like - you know quite often in political organisations people will engage in acts of assaulting others and we have to act against those and
10 sometimes they are glossed over but we have got to act against those because they depart from the values of your organisation.

Abuse of women, that needs to be acted on. Acts of say patriarchy in the organisation. So those are the things that we tried to rid out of the governing party and tilt the balance so that more and more within the party realise that this is the best way in which the ANC can lead. This is the way in which the ANC can rightfully say that we have earned the right to be the leader of government. Ja.

20 **CHAIRPERSON:** Of course, when you talk about being fired, Mr President. Although you or any member of the Executive could have been fired from that position, nobody could fire you from the position of Deputy President of the party in the absence of any misconduct.

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: Ja, you would remain in that position.

PRESIDENT RAMAPHOSA: For sure.

CHAIRPERSON: Ja.

PRESIDENT RAMAPHOSA: Ja.

CHAIRPERSON: Okay. And it is a powerful position.
Second in command in the ruling party.

PRESIDENT RAMAPHOSA: [laughs]

CHAIRPERSON: [laughs] It has not changed, Mr
President. [laughs]

10 **PRESIDENT RAMAPHOSA:** Well, it is – you are part of
the collective. Yes.

CHAIRPERSON: Ja.

PRESIDENT RAMAPHOSA: You are part of the collective.

CHAIRPERSON: Okay, alright.

PRESIDENT RAMAPHOSA: Ja.

ADV PRETORIUS SC: Yes. Well, implication of that and
it arises elsewhere in your statement as well, Mr President,
is that when you say you would have been fired, the
implication is clear, there is only one person who could
20 have fired you in that time.

PRESIDENT RAMAPHOSA: That is right.

ADV PRETORIUS SC: That was President Zuma.

PRESIDENT RAMAPHOSA: Indeed.

ADV PRETORIUS SC: You have been cautious and in
naming names but that is clear he was part of the State

Capture Project.

PRESIDENT RAMAPHOSA: Well, yes, I mean I could have been fired and ...[intervenes]

ADV PRETORIUS SC: Who would have fired you?

PRESIDENT RAMAPHOSA: Who would have fired me? The president often acts also. I mean, I guess he would have fired me.

ADV PRETORIUS SC: Yes.

PRESIDENT RAMAPHOSA: It is a given. He could have.
10 Could have fired me, I should say. I guess he never got close to that but he could have. Like now I can fire others. So, ja, that was the case.

ADV PRETORIUS SC: Well, the statement or the implications are clear. If you say you were compelled given the balance of forces to choose Option 5 and to be strategic about your intervention against the symptoms of state capture which you were. If you say, as you have just said, had I chose another option I would have been fired. There is only person who would have fired you.

20 **PRESIDENT RAMAPHOSA**: Indeed.

ADV PRETORIUS SC: That is the former President.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: In your evidence thus far, Mr President ...[intervenes]

PRESIDENT RAMAPHOSA: Let me just say. It is not so

much that one was afraid of being fired. It was much more about seeking as I said to stay in - to bring about the change. It was not so much that one wanted to hold onto this position at all costs. No. I mean, even being in that position a persona like me was a great sacrifice because once life would have been a lot easier and much more pleasant.

But it was to stay in to bring about the change. The change that we are leading and proceeding forward
10 with now. And many people may interpret it in a variety of ways but it has been a collective process of moving on with this change and it is change that will take time because there is much more to be done as we move forward.

ADV PRETORIUS SC: I did not mean to infer at all, Mr President, that you are motivated by self-interest.

PRESIDENT RAMAPHOSA: Yes. No, no I did not think you were saying that. [laughs]

ADV PRETORIUS SC: Right. Power, yes, but self-interest, no.

20 **PRESIDENT RAMAPHOSA:** [laughs]

ADV PRETORIUS SC: I mean, ;power within the party, of course. And I think that is clear when you talk about the contestation of forces. But the point I was making and I think we have been through this now sufficiently is that for you to achieve what you wished to achieve you had to

operate strategically against the balance of powers against you.

PRESIDENT RAMAPHOSA: Precisely.

ADV PRETORIUS SC: And those were not isolated individuals performing isolated acts of corruption. They were concerted and united in their project.

PRESIDENT RAMAPHOSA: Precisely.

ADV PRETORIUS SC: In your evidence thus far, Mr President, you have used the term, and dare we say
10 correctly, state capture as a phenomenon that we must all accept occurred.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: But it is one thing to propound the label. The Chair has a difficult task of isolating the elements of state capture and providing an analysis historic and otherwise in relation to each element of state capture and then the most difficult task, his third task that he has assigned to himself repeatedly, of making recommendations which would assist in ensuring that these
20 years do not repeat themselves.

In your affidavit you detail the elements of state capture and I think perhaps constructive to isolate the various elements of state capture that you put in your paper or in your affidavit. So that we are not just left after you evidence with just two words but there is some meat

on the bones, as it were.

Because right in the beginning in 2018 when the opening address was made by the legal team before the Chair, we positive the essential task of the Chair and that was to determine whether and to the extent to which the period under review was characterised by a series of acts of corruption on the one hand or by an organised project of state capture on the other and that has been the focus of the Chair for the last three years.

10 But you isolate certain elements of the State Capture Project as follows. You say, firstly, the allocation and distribution of state resources determined by a network of persons outside and inside government acting in collusion and acting contrary to constitutional and legal norms and rules.

 In other words, state capture as a project of the reallocation and distribution of state resources that should go to the constitutional goal set in our constitution but rather are redirected for private personal gain both within
20 and without government.

 When you talk of state capture, do you acknowledge that that has been to a large part the evidence before the Commission? Does that exist?

PRESIDENT RAMAPHOSA: Yes, my own understanding as well as what I believe has ensued in this Commission

testifies to the existence of state capture because state capture in the end is a systemic process and it is organised.

And as we have seen it the way it has happened or manifested itself, it is proceed in a very organised way in the creation of the network of a number of people and in this case it was so well organised that those people had protection so they could proceed with all they needed to do in the form of diverting allocated, say, funds. At last we
10 dealt with that.

But also began to touch on some policy processes where policies were touched on and even the legal processes were even changed and it then led to transactions that had to be entered into and some of them, you know, were repetitive type of transactions.

And all of this happened for private gain to advance the interest of a few people and it was all a process of collusion. Those people who were part of the network, colluded with each other in the way they were
20 appointed to these institutions.

It was know that if this one is well-placed here they will have this type of influence. They will then be able to channel certain transactions in that way and that way and then they will rand seeking in the process and kickbacks would happen a lot easily.

And it became – they became emboldened lastly because of the protection that they had. The protection gave them cover and they could proceed with all the acts that they went on with.

So it really centred around filling certain positions with certain people and getting them to act together, collude towards a stated objective which is syphon as much money as you possible can out of the system so that a few people can then gain. That is how I have understood
10 the evidence that has been put here.

But in the processes weaken as many institutions as you possible can and place people who are pliable, who will be able to do our bidding at all times. And that is why they were bold enough to say yes if you do not do this you will be removed. And indeed it ended up with people being removed and people being appointed and all that.

So that is, you know, how I think it manifested itself.

ADV PRETORIUS SC: This allocation and redistribution of
20 state resources, as you say in your statement, to the extent that it is part of the State Capture Project, is not directed to the public good as determined by laws and policies and by our constitution but for private financial and other gain or benefits. In other words, it is a diversion away from the public good into the private

process.

PRESIDENT RAMAPHOSA: Indeed it did that, diverted allocated resources from the benefit of the people to the benefit of a few. But one of the other derivatives of this is that it increased the cost of nearly everything for the state. In some instances many more people than were necessary were employed to do basically the bidding of those who had protection.

10 And two, the goods and services that were then procured came in much more expensively and in some cases possibly maybe 30% more than what it would have costs. In some cases even 100%.

But the worst part I think is that it had a poisonous effect on the state itself because no doubt as people in other structures saw what was being done in other institutions they just needed to feel that well this is path for the course. This is what can be done and then it starts descending further and further to various other parts of government institutions.

20 And I think that is the worst part because in certain instances people would have said: Well, if this family can do that, we think we can do the same in other parts of government. We can even do better. And if they could have a monopoly of say government procurement processes, so can we.

And I guess the other twin of that is that it disempowered the state. And as I said earlier, those who resisted being used in this way were either booted out or they left out of their own volition because they could not stomach it all. So it had all these rather unpalatable results.

ADV PRETORIUS SC: You raised an important element of the big picture, Mr President, is that hand-in-hand with the execution of the State Capture Project is the observation
10 that this is facilitated - and this is from your paper, from your affidavit - by a deliberate effort to exploit or weaken key-institutions of the state.

PRESIDENT RAMAPHOSA: Ja.

ADV PRETORIUS SC: For example, Law Enforcement Agencies or even Parliament in its oversight capacity. And if I may quote that to you for your comment from paragraph – well, I do not have the paragraph number but... I you will just bear with me a moment?

PRESIDENT RAMAPHOSA: [No audible reply]

20 **ADV PRETORIUS SC:** You say in paragraph 169 of your affidavit:

“Law Enforcement Agencies were vital to the success of state capture...”

There is a misprint there. So I am not sure that that sentence should read as it is here.

“Their weakened state crippled them in their obligation to root out and ...[indistinct]

CHAIRPERSON: I am sorry. Mr Pretorius, what bundle are you reading from? I think the President wants to ...[intervenes]

ADV PRETORIUS SC: Oh, para 169, Bundle 3.

CHAIRPERSON: Paragraph, page?

ADV PRETORIUS SC: Page 82, Bundle 3.

CHAIRPERSON: Aha, okay.

10 **PRESIDENT RAMAPHOSA**: Yes.

CHAIRPERSON: And it is paragraph 169.

ADV PRETORIUS SC: Para 169.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: You have that?

PRESIDENT RAMAPHOSA: I do. Yes.

ADV PRETORIUS SC: If I may quote back to you your words, Mr President. In relation to Law Enforcement Agencies, you say:

20 “Their weakened state crippled them in their obligation to root out and punish those guilty of corruption and state capture.

Evidence that has been previously provided to this Commission makes this plain.

The weakening of Law Enforcement Agencies allowed corruption to go unpunished,

perpetrators to be protected, and the public purse to be looted without consequence.

It also led to experienced personnel leading the ranks of these agencies thus denuding them of the experience needed to investigate and successfully prosecute the sometimes complex schemes of those involved in state capture...”

Those are your words. Do you have any comment?

PRESIDENT RAMAPHOSA: Well, it is so, Chairperson,
10 that one of the targeted institutions that state captured really captured as our Law Enforcement Agencies and the damage that has been done there has led to the weakening of law enforcement and ultimately the rule of law where people, they just act with impunity and get away with a whole number of misdeeds because our Law Enforcement Agencies, as I have said, were weakened.

And those who were upright and good, either left of they were booted out and that weakened those institutions. And maybe less experienced people then
20 came in and some were compromised and some maybe not compromised but the weakening then happened and it all cascades downwards.

So the process of rebuilding all that and we have got some really good people in there. We have got to rebuild, repurpose all that. And it is going to take time I

am afraid. Sometimes as South Africans we expect a magic wand that we will just wave a magic wand and boom everything will be you know as good as we want it to be.

It is going to take time because state capture embedded itself in the sinews, in the muscle fibre of the state and even changed the culture of how things are done and to root all that out is going to, I am afraid, is going to be a process but we must stay committed to the task.

And sometimes South Africans who are filled with
10 doubt and rejection and complete opposition even to those who are trying to affect those changes and outright dismissal and criticism but the work has to be done. And unless we stay focussed on doing the work, all is lost.

CHAIRPERSON: And I guess it makes sense and a lot of logic from their point of view that if you have a scheme that involves the Commission at grand scale that you should say we should make sure that when it comes to the police and the prosecuting authority, we should have our people there because otherwise we will be arrested and we
20 will go to jail.

So from their point of view, you can understand why they would want to make sure that they have got the – they weakened these institutions and they have got their people so that they would escape arrest and prosecution.

PRESIDENT RAMAPHOSA: Yes, it is so. If I may posit

another way?

CHAIRPERSON: H'm.

PRESIDENT RAMAPHOSA: Those who captured the state did – I wanted to say sprinkle.

CHAIRPERSON: H'm.

PRESIDENT RAMAPHOSA: [laughs] But sprinkling is not the word.

CHAIRPERSON: Ja, ja.

PRESIDENT RAMAPHOSA: They actually did populate a
10 number of structures in government with their accolades, their own people who in some instances continue to doing their bidding. But then there has also been resistance. The resistance is there, it is fierce and sometimes they qualified back. They are fighting back against this change that needs to take place and it is resistance against things being done correctly.

And all this, and just to put it very simply, acting
Chief Justice, is to make sure that in our country we do things correctly. We do things according to the law, we do
20 things according to the rules, and we also as either leaders, officials, and people of our country, we have to correctly in line with the contract that we have entered into all of collectively, which is our constitution and the laws we have.

And this is what we should be all about. So the

real project is to say let us go back to the basics of doing things correctly. Whether you dub it corruption free or whatever. It is just acting correctly in state and of course in the private sector as well. Let us be known as people of a nation that will act correctly and abide by the best of the rules that sort of underpin our civilisation. Let us have that.

So for me that is the real project against maleficence and corruption. And that is what will define us
10 as a nation. All we want is to say let us be defined by our own goodness, our own ability to do things correctly and abide by the laws and by the rules so that those who are against this national contract we have should be dealt with because they are spoiling everything for everyone else.

And we should not agree that there should be those who will not play the games by the rules and which is what happens naturally when we play games, like in football or whatever. If you violate the rules you are booted out.

20 **CHAIRPERSON:** There are consequences.

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: H'm.

PRESIDENT RAMAPHOSA: There are consequences. There should be accountability. And it should be whoever it is. If you have violated that rule of soccer or rugby,

there should be a consequence. And you should know upfront that there I have violated what we all agreed will be the rules of the game. This is our project. So we must succeed.

CHAIRPERSON: Mr Pretorius.

ADV PRETORIUS SC: One element that you have touched upon, Mr President, is not only the redirection, the reallocation of state resources at the cost of principle the poor people in South Africa but the incalculable damage
10 done to state institutions requiring even further expenditure in the form of bailouts and the like. That I think is evident from the evidence.

PRESIDENT RAMAPHOSA: Indeed.

ADV PRETORIUS SC: You would agree?

PRESIDENT RAMAPHOSA: [No audible reply]

ADV PRETORIUS SC: The letter that you distributed to ANC members in August 2020 puts it this way:

20 “On a hugely different scale but with the same effect is the capture of state institutions by public interest facilitated by politicians and officials at the highest level...”

And to put it differently and to return to the essential point of these questions, Mr President, is that we are not dealing here in the period under review with isolated and disorganised acts of corruption. What we are

dealing with is an organised project with all the features that you have mentioned, exercised in concert by those at the highest levels of party and government. Is that correct?

CHAIRPERSON: Well, we are at 13:00 o'clock, Mr Pretorius.

ADV PRETORIUS SC: You said that Chair.

CHAIRPERSON: [laughs] So I will give you time.

ADV PRETORIUS SC: Thank you.

10 **CHAIRPERSON:** Let us take the lunch adjournment, Mr President.

PRESIDENT RAMAPHOSA: Thank you.

CHAIRPERSON: It is 13:00 o'clock. We will resume at 14:00 o'clock. We adjourn.

PRESIDENT RAMAPHOSA: Thank you.

INQUIRY ADJOURNS FOR LUNCH

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV PRETORIUS SC: Thank you Chair.

20 **CHAIRPERSON:** Maybe before you proceed Mr Pretorius, Mr President can I ask you a question that relates to something you said yesterday, which might not be what Mr Pretorius is dealing with right now, but I do not want to forget it.

Yesterday when you gave evidence with regard to

the dismissal of Minister Nene, you indicated with reference to a question that you had been asked to deal with by the Commission, that the reason why ... the reason why you proposed that President Zuma should consider appointing Mr Pravin Gordhan as Minister of Finance, without suggesting that he should take back Minister Nene, was that you believe that maybe he would not want to take Mr Nene back, because I think I may be mistaken but you may have used the word trust, that maybe you no longer
10 trusted him and so on.

Was that based on a discussion you had had with him, Mr Zuma or that was just your own suspicion that he had dismissed him or fired him?

PRESIDENT RAMAPHOSA: Chairperson, it was more based on my own conclusion that once something like that has happened when the President has dismissed you, you know taking you back even on proposal by others, could be problematic because your initial missile meant that there was no longer any trust and the circumstances around this
20 talked to a trust issue.

So that is why we proposed someone else, ja.

CHAIRPERSON: Well, I paid attention to that, simply because it is not consistent with a media statement that was issued by President Zuma by the time, either on the 10th of December 2015 or on the 11th of December 2015

with regard to Mr Nene's dismissal.

I do not have the statement here, but we do have it ... I think it was included in Mr Pravin Gordan's bundle when he gave evidence here. In that statement Mr Zuma spoke very highly of Mr Nene as the Minister of Finance. I cannot remember the term that he used in that media statement but it was like he was your star performer.

He used the term which meant he had performed very well as Minister of Finance, and he said they were
10 releasing him so because he was your, and I say your governance candidate for a certain position in the Bricks Bank, and so the reason why you were asked to deal with the question was because if he had performed so well as the Minister of Finance, one would have thought that firstly he would not be released easily but if he was released and the market reacted the way they did, it would be very logical for the President to bring him back.

But that was important because it is important to analyse that, because when Mr Nene gave evidence before
20 this Commission, he said that story was a fabrication. Effectively he was saying there was nothing like I was really being released to go to that position.

I was hoping that Mr Zuma when he came here, excuse me, would deal with that as well. So I do not know whether you want to comment on that. Certainly the media

statement that was released by President Zuma at the time, spoke very highly of Mr Nene as Finance Minister, which did not suggest that he did not trust him.

PRESIDENT RAMAPHOSA: Let me just say Chairperson, it was political speak and it is best to leave it there.

CHAIRPERSON: Ja. I understand.

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: I understand. Can I, for the sake of completeness can I ask something else now with regard to
10 Minister Gordan? I see that in your affidavit when you dealt with the discussion among the ANC officials of the name of Mr Brian Molefe as a replacement of Mr Gordan, you say that it was discussed.

But what you do not say which I would like to find out, is what I think other officials of the ANC that the Commissioner asked to depose to affidavits, have said namely that it was a proposal from Mr Zuma that Mr Brian Molefe, that he wanted to replace Mr Gordan with Brian Molefe.

20 I just want you to confirm whether it is not that you left that out because you have no recollection of it, but that you know about it. That was the case or maybe you just do not have a recollection of it.

PRESIDENT RAMAPHOSA: No, no, no I think it would have been an oversight on my part, but the former

President Zuma did propose him.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: And it did not carry support.

CHAIRPERSON: Yes, yes and then with regard to Mr Pravin Gordan, I think Mr Gwede Mantashe mentioned in his affidavit, maybe in his oral evidence as well, that Mr Zuma mentioned also when I think there was a challenge with regards to the intelligence report that he referred to, there was a challenge I assume from within the officials.

10 He ... Mr Zuma also said something along the lines that his relationship with Mr Gordan had broken down. Is there something you remember?

PRESIDENT RAMAPHOSA: I do remember, that was mentioned.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: And it did not really find its way into my statement because one was dealing with a whole range of other issues.

CHAIRPERSON: Yes.

20 **PRESIDENT RAMAPHOSA:** Yes. He did allude to the fact that his relationship with Mr Gordan had broken down.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: Is that something that you had observed in any gatherings where both of them were there or is it

something you yourself might not have been aware of?

PRESIDENT RAMAPHOSA: It was coming.

CHAIRPERSON: Ja.

PRESIDENT RAMAPHOSA: One kept on picking it up.

CHAIRPERSON: Yes, yes.

PRESIDENT RAMAPHOSA: Ja. It did not just suddenly happen.

CHAIRPERSON: Ja.

PRESIDENT RAMAPHOSA: It kept coming. I mean, these
10 are two people who had worked so closely together in the
past.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: That it was in the end difficult
to decipher ...[intervenes]

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: That to be the real reason.

CHAIRPERSON: Real reason, yes.

PRESIDENT RAMAPHOSA: Ja.

CHAIRPERSON: Okay, right. Thank you. Mr Pretorius?

20 **ADV PRETORIUS SC:** Thank you Chair. The present aim
is to complete by four o'clock and then the President has
asked for a short period of time to make a closing
statement. If that is in order?

CHAIRPERSON: Okay.

ADV PRETORIUS SC: There are a number of isolated

issues to deal with, but they all come back to the same theme that we discussed this morning Mr President. The one issue, rather one of the issues that you raise as being an aspect of State Capture, is what has been described as the poisoning of the public discourse with misinformation to divert attention from their wrongdoing.

There are various aspects of disinformation or misinformation that have been a subject matter of evidence before the Chair. Amongst them are the spider web
10 document which was related to the dismissal of Mr Nene and the check mate document which you are aware, related to the dismissal of Minister Gordan.

But what I would like to deal with is your statement, in paragraph 26, Bundle 3 at page 18. I will read it to you if I may:

“It is important to acknowledge the use of ideological inputs to transform society where socio economic inequalities exist (in developing countries in particular) as we are,
20 to question legitimate institutions and conceal State Capture under the guise of reformation and or transformation.”

In other words using retric which on the face of it, is legitimate for to conceal illegitimate activity and then in that context, if I may ask you and quote back to you, your

own statement about the use of the RET acronym, radical economic transformation.

In 2017 you delivered an address on the title unpacking radical economic transformation and it is perhaps in this context worth placing it on record if I may read it to you. You can comment then:

10 “Part of the problem with the current conversation we say about radical economic transformation is that the term has often been misused, misrepresented or misunderstood. We now know that some highly paid PR specialists ...”

And we know they are the ones residing in the United Kingdom:

20 “Contrived the plan to use terms like radical economic transformation and white monopoly capital to launch a publicity [indistinct] in defence of their clients. It was part of defining a new narrative where those who stood in the way of their client’s interests, were presented as being opposed to ‘radical economic transformation’ and representing the interests of ‘white monopoly capital’. It has therefore become accepted in many quarters that the term radical economic transformation is often

10 deployed to either mask or justify activities that could best be described as State Capture. Some people use the term radical economic transformation to proclaim measures that are intended to cement their radical credentials, rather than actually achieve meaningful improvement in the lives of the poor. However, if we are to progress as a democratic nation, we need to ensure that we are not distracted or side tracked by the misuse of the term.”

And it is interesting that that address was made by you in 2017. Do you have any comment? Is that still your view?

PRESIDENT RAMAPHOSA: Yes, it is still my view. I think the term radical economic transformation is a very legitimate term that describes a program of economic transformation that is being fostered by the governing party and properly articulated it really should be socio
20 economic radical, economic transformation.

Ja, so largely because people bastardised radical economic transformation it started mutating into retric without much substance, without focussing on the real issues of socio economic transformation that are so needed in a very practical way in our country, and it

became a political type of figment and labelling that then descended into people doing wrong things and hiding behind the shield of what they have now termed themselves to be RET forces.

Which have been doing things that really go against the grain and against the policy positions of the African National Congress. So they bastardised that term and have really reduced it into a lobby group, not even a lobby group but a faction.

10 That is what it has now become and we need to go back to the term socio economic transformation which correctly depicts the policy positions of the African National Congress and yes, you can underpin that by saying it must be radical.

 It must be urgent. It must be overarching and one can package all those terms or those words around this real important program of socio economic transformation that must be embarked upon in our country. So you had this media entities from outside our country being the ones
20 who sort of propelled it forward, who spread it to achieve certain political objectives that advance in my view State Capture, and that also got involved in spreading you know, untruths about you know, certain people and for as long as they could you know do so, then that would label those people are marginalise them.

In a way even destroy them because they would spread rumours and we still have a measure of that where people either in social media or anywhere else, try to act against those that they believe are their opponents through rumour mongering, leaks in the media.

To target certain groupings or individuals to achieve their own ends and when that film in the UK, I think it was called Bell Pottinger collapsed. We thought that we would go back to real political basics and shed ourselves of all
10 those very long labels and go back to you know, radical socio economic transformation which is what the African National Congress should be about.

Yes, at our conference the term radical economic transformation was used, but it has been bastardised and it has been reduced to just a slogan and what it should really be about, it should be about in a very practical way advancing the interests of our people.

ADV PRETORIUS SC: The background to the next question Mr President, you will recall that when you
20 testified before the Chair in April this year, I asked you the following question. For yourself Mr President, what were the sign posts along the road or along the way of the path of State Capture that first alerted you to the existence of something much more than corruption? What was it for you that alerted you to the fact that State Capture was a

phenomenon that needed to be dealt with and you replied that you needed to look at the various markers for yourself, that indicated to you where you were.

You have also said in your second statement that at some point you had to make a conscious decision and the decision you finally made, was to remain in your position.

PRESIDENT RAMAPHOSA: Ja.

ADV PRETORIUS SC: And to be strategic about your intervention. We will deal with some of your interventions
10 ...[intervenens]

PRESIDENT RAMAPHOSA: Ja.

ADV PRETORIUS SC: In due course. You also talk about the conclusion you drew in December 2015 when Mr Nene was removed from cabinet. Minister Nene was removed from cabinet. Are you able now to say what those markers were for you, and may I just preface that question with another comment?

But given the overwhelming evidence before the Chair, it is really difficult to accept that people did not
20 know what was going on. They may have been strategic in certain instances, but they knew. What is your comment about the sign posts?

What is your evidence about the sign posts?

PRESIDENT RAMAPHOSA: I think, yes indeed. I mean there were a number of sign posts and you are absolutely

right and if the impression was ever put forward that we really did not know that would be the wrong impression, because there were signs.

There were a number of sign posts that were along the way and some of those were for instance with Speaker Mbalula standing up in the National Executive Committee of the ANC and saying what he said, that he got to hear about his appointment from the member of the Gupta family.

10 Now that startled many of us, but that was a sign post and that maybe we did not heeded that it said turn left and we carried on is another question which talks to our as I said lack of alertness and a few others like the landing of the plane and all that.

 Now at the Waterkloof air force base. Now what we were not fully aware of, we saw these sign posts, certain anonymous actions which did not really link up to what was reasonable, but the full thread and the network of what was happening in Transnet, in Eskom was not apparent and that
20 is why in my statement I said those who were involved in the State Capture project so hid their imaginations.

They were hidden. There were transactions at board level and so on and one could say well, the media raised the issue of the locomotives and all that, and one could not immediately join the dots, because the dots quite

often are disjointed and you need to have a thread, pick it up and join all of them.

So that was lacking, but the sign posts were there and as I said ja, there was the lapse I called it. There was also the lack of alertness. Were we complicit? The answer is no. Could we be said to have been negligent? It could well be that ... but complacent we were not.

Even those of us who decided to stay in the game, to well resist, but also to bring about the changes, the
10 changes that we are seeing now are happening because some people decided to stay in and make strategic choices and embark on strategic actions along the way, as they felt they could.

Now whether people think that the choices or the strategic actions one took were too few or not I mean were too meek, is a decision or the judgment they have to make, but being in the ring, is what some of us preferred to do and when you are in the ring, you are involved in a real battle.

20 Sometimes I should say some of the battles that one got involved in, are those that are not known. They are not apparent. Because when you are in the ring, you are constantly involved in you know ...[intervenes]

CHAIRPERSON: In punching Mr President.

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: Yes. Well, the ... talking about the State Capture in the SOE's that those who were involved were hiding what they were doing, I just mentioned that it will be quite important that going forward you know, the cabinet does things maybe differently from the way it was doing things before, whenever it was given names of CEO's and board members, because one of the things that happened at Eskom on the evidence that has been given here, is that the somebody from outside of Eskom, I cannot remember if
10 it was Mr Salim Essa or one of the Gupta associates, actually sent in to Eskom a letter saying to the Chairperson of the Eskom board at the time, Dr Ngubane that the board must take the following decision about the Sunday Times, the Mail & Guardian and the City Press which had published certain articles that they did not like.

Dr Ngubane took that and put it to the board and the board agreed. So I mentioned simply because as you said the board members, the appointment of boards went to cabinet. Okay. Mr Pretorius?

20 **ADV PRETORIUS SC:** Thank you Chair. You said in your answer Mr President, that we were not complicit. May I suggest that the we there was not the overwhelming and powerful majority and that there was a substantial force as you put it, contestation between the we that you say you have represented and those that were actually aqueous

and supportive of the State Capture.

Would you accept that?

PRESIDENT RAMAPHOSA: I need to understand fully.

ADV PRETORIUS SC: Let me put it another way.

PRESIDENT RAMAPHOSA: Sorry, I apologise.

ADV PRETORIUS SC: When you said we were not complicit.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: You asked the rhetorical question
10 were we complicit.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: The answer is no.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: And you said that with assurance.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: Perhaps that might be qualified
because it is overwhelmingly probable that because you
were forced with others, into a strategic response, there
was a large proportion, perhaps even the majority of the
20 governing party that was complicit. That did follow the
path by those who led the State Capture project.

PRESIDENT RAMAPHOSA: Yes. Yes, indeed. I mean
there were those who were really actively involved and
there were those who were acquiescent and there were
those who chartered a different path.

ADV PRETORIUS SC: And those who were acquiescent in the sense that they must have known what was going on but were content to let it run its course.

PRESIDENT RAMAPHOSA: Indeed.

ADV PRETORIUS SC: One of the sign posts that you referred to Mr President in your statement, is the dismissal of Mr Nene that occurred in December 2015 and your remark in regard to that is that Mr Nene's dismissal signalled that the process of State Capture, these are your
10 words, had now succeeded to an extent that the most strategic organ of state treasury had now been captured. Perhaps the word first on the centrality of treasury in relation to the control of state finances and their proper disbursement.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: What is your comment in that regard?

PRESIDENT RAMAPHOSA: Well, treasury is one of those key ministries in any government that is centrally placed
20 where the ... it is the repository of the nation's wealth really, its finances and it occupies such an important position because it really drives the financing of all the programs that government is involved in.

It also drives the depth position of the country. They are actively involved day in and day out and

concerning our debt around the country but it is also actively involved in accumulating the revenue that we get as a nation from taxes and a whole lot of other sources of revenue.

So it plays that key role as far as I am concerned. So when or maybe you want to get to the question first, yes.

ADV PRETORIUS SC: Well, the question if I may then is that when such an institution of state is captured as you
10 say had now been captured, say significant to put it mildly step in the execution of the State Capture project, correct?

PRESIDENT RAMAPHOSA: It is.

ADV PRETORIUS SC: That happened, that step was taken by whom? Who dismissed? It is an obvious question, but there has to be a name.

PRESIDENT RAMAPHOSA: No, it is former President Jacob Zuma who did dismiss the minister.

ADV PRETORIUS SC: Took that very important step.

PRESIDENT RAMAPHOSA: Indeed.

20 **ADV PRETORIUS SC:** And its significance is not lost in the evidence that is before the Chair, by the Chair and obviously in your statement by yourself. Related to that and the disinformation campaign is the operation spider web report that preceded the dismissal of Mr Nene by a few months and that report, which emerged in the public

domain was styled an intelligence report.

It was called that. I am not saying it was necessarily an intelligence report, but what transpired is important and it involves the intelligence services. The document suggested that treasury had been captured by apartheid era intelligence operatives as well as white monopoly capital in order to control the country's finances.

When I read this document it reminded me of a remark made by the then President Zuma about a month
10 earlier, where he told me that there are apartheid agents within the treasury. I recall conveying this remark to the Director General at the time, Mr Lungise Fusile.

I dismissed it as a conspiracy theory. However, it was clear to me that the treasury did not enjoy the support and confidence of the President. That was Mr Nene's evidence. Now it is significant to link that back to your evidence about this information and the misuse of terms, such as white monopoly capital.

To conceal the State Capture project and to
20 promote it and here is an example. this is another sign post as it were that happened as early as July that these tactics or strategies were in place, but what is also a matter of concern, do you know anything about that document and about attempts to understand where that document came from and who was the cause of its

distribution?

PRESIDENT RAMAPHOSA: Well, not so much where it came from. I just know its effect. Its effect was such that it consolidated this conspiracy theory that treasury had been captured and it was you know, being used by other forces.

Now to me it was quite clear that this was a conspiracy and it was false and in the end with the passing of time, it became clear what its effect or its consequences
10 were really all about. Because the officials we have in treasury are quite astute, quite loyal.

They serve the interests of our country with the diligence and distinction and there was no such capturing of that entity that is so important in the life of our country. What they were doing is to do their work, and they were essentially resisting being captured.

They were resisting the capture of treasury and somehow they needed to be painted with black paint. They needed to be, it was decided that they should be demerged
20 and their reputations should be damaged and all now with hindsight, it is quite clear that it was part of the machinations of State Capture to damn treasury with the view of achieving capture process.

ADV PRETORIUS SC: Before we leave the issue of the spider web report, there was evidence that at the time

Minister Mahlobo was the minister responsible for state security. He was approached by officials of treasury to assist in providing information for intelligence in relation to the sources of that document.

That document does seem to have the characteristics of involvement in the State Capture project, as turned out in December. There was never any follow up from state security. Do you know anything about that? Is that not a matter of concern?

10 **PRESIDENT RAMAPHOSA:** No, I did not know that it was not followed up. I did know that the process of finding out an investigation was underway but I did not.

CHAIRPERSON: Well, Mr Pretorius I do not know whether it is that same report or another report in respect of which Dr Lubisi says in his affidavit he had asked the DG of state security to help investigate that report and despite many reminders he never got any feedback.

ADV PRETORIUS SC: Yes, well perhaps it is no coincidence that when Minister Gordan was removed from
20 cabinet, he was removed on the basis it appeared of another report that had similar characteristics, the check mate report.

It is that report that never surfaced, except in a photograph. There was evidence about that and the then President was approached and really avoided the topic by

saying he cannot really remember, it may have been a verbal information.

I am not sure whether it is the check mate report you are referring to Chair.

CHAIRPERSON: Ja, I cannot remember but Dr Sibisi does deal with it in his affidavit. Of course we in regard to the intelligence report that was relied upon by Mr Zuma, Dr Dintwe did give evidence about it and said he had spoken to President Zuma and asked for it, and President Zuma
10 had made certain undertakings.

I do not know, I cannot remember whether one of the undertakings was that he was going to furnish it to him, but he left office without furnishing it to him, and quite a long time had lapsed since he had made that undertaking to him.

The period between Mr Zuma making that undertaking to Dr Dintwe and Mr Zuma leaving office as President was quite a long period, but I do remember. So, and Dr Dintwe's evidence once to say the least, it was
20 quite ... at least I think he was saying that there were question marks about the existence of such a report.

ADV PRETORIUS SC: Yes. Mr President has direct knowledge of the ... that matter and perhaps we can ask him to deal with it now.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: Because it does relate to the spider web report.

CHAIRPERSON: Ja, okay.

ADV PRETORIUS SC: What the point of these questions is that they were reports in hindsight to us clearly linked to attempts to undermine or even capture treasury. That they were fake intelligence reports on the face of it and that in fact at least one of the reports was directly used by the sitting President at the time to justify the removal.

10 To recall Minister Gordan from London and to justify his removal. One would have thought that an alert permitted, efficient, well equipped as it was, intelligence network would have been able to secure information about that.

 After all it does not appear to be the most difficult task ...[intervenes]

CHAIRPERSON: Ja.

ADV PRETORIUS SC: For an intelligence agency to deal with, but I will come to that in a moment. Perhaps we can
20 divert for a moment to the check mate report. You were at a meeting as I understand your statement or your affidavit, at which the then sitting President referred to the report as justification for his dismissal for Minister Gordan.

 Would you ... if you could relate that to the Chair please?

PRESIDENT RAMAPHOSA: Well, yes. we were at an official's meeting, ANC headquarters and former President Zuma expressed his quiet and unhappiness about what he thought was advised was going to be happening during a trip what we call an investor's road show trip in London and thereafter in the US by Minister Pravin Gordan and the Deputy Minister Jonas who were together with the officials, were travelling around the world after the presentation of either the budget, I forget the timing now or the medium
10 budget statement.

One of the two, which they always do once the budget or MTB ...[intervenes]

CHAIRPERSON: Probably it would have been the budget because it was in March.

PRESIDENT RAMAPHOSA: Oh yes.

CHAIRPERSON: Ja.

PRESIDENT RAMAPHOSA: Then it was the budget.

CHAIRPERSON: Ja.

PRESIDENT RAMAPHOSA: They always do after the
20 budget is presented, they travel around the world. They go to the UK, they go to the US and from the US they go to places like New York. Thereafter they go to California and they go visit all the investors.

The institutions that buy our bonds, that buy our debt really. To explain more fully, he then told us that he

has received a report that suggests that they are going to be badmouthing the country and the government and he was most unhappy with that and had given an instruction to the Director General of government, then Dr Precious Lubisi to call them back.

When that happened and he knows all the details, they were about a few hours before they boarded a flight to go to the United States, and he found them and he said come back and they came back and soon after that and he
10 told us, he told us to answer your question Mr Pretorius, that he had an intelligence report to that effect, that they were going to say all sorts of negative things about the country and all that.

It was then that some of us vocalised or voiced our disbelief. He showed us what looked like a photographed piece of paper. I think two pages or three pages that testified or spoke to this assertion that he had put before us. So we disputed the, you know the standing of this and he then had taken the decision that he would remove.

20 It is then that ...[intervenes]

ADV PRETORIUS SC: I think in your defence Mr President, I think you put it a lot more strongly at the meeting according to [indistinct]. That you would not accept the dismissal of a minister based on this sort, I do not know what term you used to describe it, but that was

one of the occasions on which you took a stand.

PRESIDENT RAMAPHOSA: Yes. I together with others, felt that this was not the basis to dismiss a minister, let alone a finance minister and his deputy on the basis of what we believe was a flimsy report from an intelligence source that was not part of our structures. Unverified, and we ... I felt that it was not correct to act like that because it would just really jeopardise the standing of the country particularly as they were going to see our bond holders in
10 the US, and at the same time they are dismissed, they are recalled, had to cancel appointments, recalled and come back.

I then did say we are going to be asked about this. When we are asked about this we will have to speak out against ... you know that and he said yes, he knows that we will be asked and I made it a point to say I will be speaking out against this.

So what ensued thereafter was, I was on a trip ... work trip to the Freestate and as soon as I landed, there
20 were journalists waiting and I then made my statement. Thereafter the National Chairperson of the ANC at the time, or no.

He was the, was he Secretary General? He also made a statement and the then Treasury General also spoke. This was to me a moment of great allow.

Something that should never have happened, had happened and I felt I needed to take a stand on this issue.

CHAIRPERSON: This was of course a few months after you had had a discussion with the Deputy Secretary General of the party where in December 2010, no December 2015 when you told her that you were contemplating resigning ...[intervenes]

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: As a result of the appointment of Mr Des
10 Van Rooyen.

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: So this happened a few months in March or ...[intervenes]

PRESIDENT RAMAPHOSA: Indeed.

CHAIRPERSON: Ja. Okay.

ADV PRETORIUS SC: Just for the time sequence we will go back to it now. Mr Nene's dismissal occurred on the 9th of December 2015. Minister Gordan's removal on the basis of the check mate report reportedly happened in 2017.

20 **PRESIDENT RAMAPHOSA:** Yes, 17.

ADV PRETORIUS SC: Now you concluded in December 2015 as you say treasury had now been captured, you have told the Chair about the centrality of treasury to control of state expenditure and its centrality to the process of State Capture or the State Capture project.

You intervened and your intervention certainly in relation to the appointment of former Minister van Rooyen was successful, because at that stage Minister Gordan was appointed.

PRESIDENT RAMAPHOSA: Yes, it was.

ADV PRETORIUS SC: So it seems that your intervention at that stage strategic or otherwise, did have an effect. What else did you do after December 2015? I mean you were now successful in your intervention. What other
10 interventions were there? 2017 is a long way down the line.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: Again your intervention appears to confirm stand, and well it did not have the desire ... Minister Gordan was not retained. So I suppose in that sense the intervention did not have the effect of setting aside Gordan's, Minister Gordan's removal.

But the point I am making is were there not occasions for other interventions that you feel free to talk
20 about through the Chair?

CHAIRPERSON: And I guess some might not be acts of intervention Mr President, but maybe acts of resistance of State Capture.

ADV PRETORIUS SC: Yes, in other words getting back to the question what you knew and what did you do with that

knowledge.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: In concrete terms.

PRESIDENT RAMAPHOSA: Yes. Someone this morning sent me a quotation from some place and he said the strongest people are not those who shall stand in front of us, but those who win battles we know nothing about. I find that to be quite profound, because what may seem like there were only a few instances.

10 It is what is apparent but there are a whole hosts of a number of other battles that one got engaged in quietly and silently to bring about the change that we are today seeing. I mean there are quite a number. I remember once there was an attempt to set up the commission of inquiry into the banks.

 Largely after the one bank also had closed the account of one company. A Gupta related company and the view was that set up a commission of inquiry because there was collusion in the way they acted without actually really
20 proving it and it was supposed to be a judicial commission of enquiry, and some of us said that will be the wrong thing to do, because immediately one of the strongest institutions that we have in our country, in our economy, is the best ... one of the best banking systems in the world.

 You were then subjected to this type of commission

of inquiry which would be immediately ... immediately get even the investing world from outside, they have lost confidence in our banking system, because sometimes or mostly that is what attracts people to invest in South Africa.

They look at our key indicators and say one of the key indicators is of course a beautiful country, it is a great climate and it has got a good constitution, strong, independent judiciary and banking sector that is quite
10 advanced and modern and one of the best three or so in the world.

So we argued that that will be the worst thing we could do. We should instead just find out exactly why these accounts are being closed. So it looked like a sledgehammer was going to be used to kill a mosquito. So there was a very strong push, a strong thrust to help this commission, and we resisted that, and a number of others, and there were quite a number of instances where like this quotation says that it is those battles that we know nothing
20 about, but there were battles.

In some in committee, some in discussions, some in various forums. That is where I say there was no complicity. There was just the process of saying we have got to turn this ship around and it was almost like turning the Titanic around, because it takes its own time, but we

were convinced and convicted that it will be turned around, and I am rather glad to be around to see that we are turning it around and we are repositioning this ship so that it can start sailing in the right direction, and the service of our people and in the interest of our people.

ADV PRETORIUS SC: The occasion of the closure of the Oak Bay bank accounts is another occasion when you quite took a stand on quote, and I would like to deal with that separately in due course, because it relates to another
10 issue and that is how cabinet operates.

But it does seem, if I may just quote Dr Dintwe's evidence in relation to the check mate report. He says:

"I am sitting with the President."

He says:

"When time is right I will explain to yourself. I
hear people saying there is a report
somewhere. That report may not be existent
because as the President sometimes I get
verbal reports, but I never wanted to conclude
20 that the report was non-existent because he
said it may not exist."

That is Dr Dintwe's comment. it seems to me a vastly different picture painted there by Dr Dintwe's narrative of his meeting with the President, where he says that the existence of the report was all but denied in your

evidence where the report was actually shown at a meeting.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: Well, that is notwithstanding our state security establishment's best efforts, and I put that in inverted commas.

CHAIRPERSON: You want to clarify Mr Pretorius, that where you are reading from, Dr Dintwe is referring to ...[intervenes]

10 **ADV PRETORIUS SC:** Dr Dintwe's evidence.

CHAIRPERSON: Mr Zuma and not the current President.

ADV PRETORIUS SC: Ja, Mr Zuma.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: Yes. Yes, the former President. No, that is important Chair. Because he is a public ...[intervenes]

CHAIRPERSON: Ja, you know. There is a reference to President.

20 **ADV PRETORIUS SC:** Yes. You are quite correct Chair, with respect. Dr Dintwe was relating a meeting, the contents of a meeting with the former President about the check mate report and the point of that is that it seems to be related to or narrate a completely different version of the existence or otherwise of the check mate report as to what you observed yourself in that meeting.

Of course, to return to the point I am making, despite the best efforts and I put that in inverted commas of our security establishment. The origins of the report and the spider web report which in retrospect were significant because they have the features of the State Capture project as you narrated, were never discussed.

We may get back then to the question arising. I trust that it is not going to be another mystery at least, in so far as it is necessary as to what we did after three
10 years of Commission work. But after the dismissal of Minister Nene, but there are three incidents at least where you did feel empowered, with some effect a good effect.

The dismissal of Minister Nene. That this minister, the dismissal of Minister Gordan and the closure of the Oak Bay bank accounts and cabinet's involvement and the degree of cabinet's involvement therein. Were there not other occasions that you can relate to the Chair about where you felt possible and desirable to intervene, because a lot was happening.

20 **PRESIDENT RAMAPHOSA**: Yes, I just scratched my head. There were a number of occasions really. On a whole host of issues and may I say that some of those either occurred in cabinet. Some occurred elsewhere in legal interactions and some had to do with other appointments.

People who one felt were not the best that could be

appointed. So many things. In a situation like that, many things are always on the go. Many things are always happening that you have to have your antenna up to pick them up as they go on.

ADV PRETORIUS SC: What would you say Mr President as you are being asked, I cannot shy away from it, that either the forces behind and controlled by the former President were so strong that they compelled only limited very strictly duke responses?

10 Because many were complicit either through silence or cooperation in the State Capture project or it was not so that there were ... there was a substantial and significant part of the executive that were not complicit that were in opposition to the State Capture project.

 Substantial amount of the party were complicit. Why was the opposition not more vocal and not more frequent. Why was it simply these isolated incidents? If you are asked that question and I am asking that question, what would your answer be?

20 **PRESIDENT RAMAPHOSA:** Well, I would suppose that many of the colleagues who might not have agreed with some of the things that were happening, chose to be strategic to be so strategic and work within the system to bring about the changes, and as I said, and some people may be right.

That as I said you know, one had a number of choices and even if they are not here to articulate those choices that they had open to them, it objectively means that they had those choices and they opted, those who were not in favour of going along with the whole process of State Capture, they opted to be strategic and in a way to choose their battles.

In a way as they chose their battles, we know not some of the battles that they won. Because there were
10 those battles that were fought and I guess the only badge they would wear is that they were not complicit, but if your suggestion is that they were complicit through their silence, I would actually disagree with it.

ADV PRETORIUS SC: Well, it is with hindsight but it does seem to be a reasonable and logic conclusion from all the evidence, including your evidence is that the former President was firmly in control. What he did was known and the fact of the State Capture project or rampant corruption, however one wants to term it, at the hands of
20 members of the executive SOE's, and other sectors of our society, all that was known and that those that opposed it were in the position you described.

They were compelled to be strategic in their responses because they knew if they spoke out and were any more vocal than they were, they would be removed or

dismissed or however dealt with. The implication of that is that the ruling party under Mr Zuma was he is governing effective, well majority may be the wrong word, but it was in control.

It was not in aberrance or a mistake. It was actually what was running the country. It was a government [indistinct].

PRESIDENT RAMAPHOSA: That is certainly true. The ANC was in control. It was the governing party which
10 means it was in control, as it is now and there were a number of people who frankly did not go along with the sense, some who did differ, were replaced may not have appeared like they were dismissed but they were replaced.

A number of my colleagues felt that they should be strategic. They should do things that will advance the interest of people as a whole and what I am able to once again repeat here, is that their silence or inaction should never be construed as having been complicit.

It was, you know you worked in a big super
20 structure that was given to move in a particular direction and so therefore you had to be strategic. You had to choose your moments and it is just like in any situation you speak out and at the right moment where you feel that what you want to say will have an impact or you do things when you know that they will have an impact.

So the criticism that people just sit there to safeguard their own positions and did nothing, I think is a bit too harsh. There are indications and some of them may not be that obvious to everyone. Of things that they did. The battles that they won which we do not know about. But the important thing is that were they complicit?

Not everyone was complicit.

CHAIRPERSON: Well, we are at ten past three and bearing in mind the understanding that we will finish at
10 four and then the President might want to say something. Let me raise this issue Mr President. What is there in terms of our systems, now and maybe the systems of the government party that would make people react to another episode of Stat Capture differently from the way they did with regard to the first one?

I ask that because while there may be arguments for and against about strategic decisions as to how to deal with the situation and while it might not be easy to say this choice was totally wrong, this was the one that was totally
20 right.

While it might not be easy to say that. The fact of the matter is we do know that between 2010, 2011 and I think beginning of 2018 or 2017, on the evidence that has been given here by Mr Holden on the money flows, the Guptas and their entities were able to access about 57

billion rand of tax payer's money.

So even if one were not to criticise a particular option that may have been taken, one wants to say what would be the best and most effective way in which another episode would need to be dealt with by different stakeholders, with the options that were made in regard to the first one, you know the best to be adopted or are were in a position where if the second episode were to happen, pretty the same thing would happen?

10 What would you like to say Mr President?

PRESIDENT RAMAPHOSA: Chairperson, I think we have reached a water shed moment. Release or let me start off with the establishment of the Commission. Was a cross roads for us. We either established a Commission or we did not.

I hold the belief that if we did not establish the Commission, we would have continued to waddle in you know, a situation where corruption continued unabated, in the dark, much as in the public protector had already
20 revealed portions of it, but the cross roads we reached was that we chose the right path and the right path was to establish this Commission.

This Commission has given us the moment of truth. It is a water shed moment. It is ... we have arrived at a juncture. An important juncture to the point, and it is a

defining moment for us, to the point where I do not ever envisage in our continuing journey of our democracy that we should and will have another State Capture moment.

So I see this as the one and last State Capture occasion or moment for us and we have reached, we have hit rock bottom as a country, as a nation and the only way must be up. We must rid ourselves of the vestiges of State Capture and it will take us some time and this is where we need to work together.

10 Everyone of us as South Africans, rid ourselves of this cancer of corruption and in doing so, as I said earlier, for us who are part of the governing party, it starts in the party. It starts in the party. How we renew ourselves and force that renewal process how we strengthen our own internal processes in the African National Congress, because when we do so, that is what then strengthens the government.

20 The Deputy Secretary General of the ANC was telling me that she has had interaction with the Vietnamese and the Vietnamese have said to her we would like to work with you as you have embarked on a path that we also traversed.

We started as you are with renewing the party. Taking corrective measures in the party and thereafter, we use that as a platform to reform government, to correct

things in government and they add another one which I rather like.

The third one is to strengthen the laws. To strengthen the regulations on a continuous basis to make sure that this never happens. So in the party we are renewing the party and seriously so and may I add that in the past, yes there was a lot of talk and talk, but and in the later parts or the earlier parts of this year we have started to demonstrate to ourselves and to all in sundry that we
10 are serious about dealing with corruption.

We were strengthening our structures. We are dealing, we are strengthening structures such as you know, our integrity commissions which is a very important and may I add powerful body within the structures of the ANC, and our disciplinary processes are now becoming more and more robust and in doing so, we are changing ourselves. There is a metamorphosis that is underway within our party.

A very positive one. Thereafter it is government
20 and I will talk about it later as we conclude. A number of steps that we are taking. So Chairperson and then we will deal with the laws, but Chairperson what I am essentially saying is that what is it that people of South Africa can look forward to, doubtful as a number of them may be, it is a renewed, reformed and rejuvenated party that is in

government, and of course the joyous burden we have is that we still retain a great deal of support amongst our people and therefore we have got to cleanse ourselves and to make ourselves more presentable to the people of the country.

That if it sounds like a promise, I would like to depict it more as a reality in the making. That this is becoming real, as evidence by the steps we are taking not only in the ANC, but in the state as well. Some of the
10 steps which may not be apparent to everyone, are the reality. I very much, and I refer to it in my statement.

I very much appreciated an analyst who was able to look very closely through the looking glass or microscope at some of the interventions we have made and that JP Landman who takes time to scrutinise everything that we are doing, and rather than react to the headlines, look at the changes that are underway and conclude that change is taking place, even as many would be dismissive and even be insulting which they are entitled to.

20 But he argues that the wheels of change are underway and I want to testify to that, and I want to touch on that a little bit as I close. So change is happening. It may be slower than what people would like to see happening, but we reached a water shed moment and we are changing and it is irrevocable change.

We will change because we must. Thank you.

CHAIRPERSON: Mr Pretorius?

ADV PRETORIUS SC: Chair, I would like nothing more than to hear a firm instruction to sit down after three years but I do have forty minutes left here. If I may.

CHAIRPERSON: No, no, no continue Mr Pretorius.

ADV PRETORIUS SC: One issue that you deal with and you have touched on it in your evidence is the manner in which cabinet functions.

10 **PRESIDENT RAMAPHOSA:** Yes.

ADV PRETORIUS SC: Given that it is the highest executive decision making body that governs our country, it is an important matter, Mr Amoniat of treasury that presented the Commission with a long affidavit and he dealt amongst other things with cabinet and he analyses the three occasions on which cabinet made very, very important decisions.

20 One was the nuclear deal in December 2009. The other was the appointment of the Commissioner of SARS in 2014 and the other was the decision to intervene to the extent that it ultimately did in relation to the closure of the Oak Bay accounts, and he bought a common denominator there that on each occasion the disciplined and lengthy procedures ordinarily followed by cabinet by way of preparation were not followed.

These were three what are referred to as walk inn matters. So without the benefit of two weeks of preparation, proper documentation, proper research, proper information, cabinet was presented with a decision to go ahead with the nuclear deal.

At least issue a request for proposals subject to certain conditions. For an amount that was in the trillions, three times our gross domestic project product. The decision to intervene, to protect the interest of a private
10 family, the closure of the bank accounts matter and an important issue, the appointment of the Commission of SARS which in the context of your evidence in 2014 was a very important step.

What is your comment on the what quite frankly Mr Amoniat describes as an abusive cabinet process in order to get very important decisions by.

PRESIDENT RAMAPHOSA: Yes, there was a process where cabinet processes were both abused and misused. They resulted in very important matters arriving if I can use
20 that word, colloquially arriving in cabinet and being presented to be more precise to cabinet without proper processing, without the normal gestation period that various matters go through where matters are properly discussed and properly canvassed after having been researched properly, the cabinet member being properly

drafted with all the attachments that bear testimony or evidence to what needs to be put before cabinet and then cabinet committee discusses and thereafter, it then gets into the cabinet system.

So the ones that Mr Pretorius has alluded to went under the fans. Under that fans and that could have led to various real difficulties and challenges for the country, and you wanted to know what else some of us were able to do to either change things.

10 This is one of them. For instance the nuclear deal. Which I could have mentioned, but it slipped my mind and treasury played a very critical role because we said this matter needs to be properly researched by treasury and the fundability thereof, to see whether we as a nation can afford this.

 The work that they did at you know, the instance of a number of people, including ourselves, was that then resulted in a conclusion that this would be just too far expensive for us. So those are some of the areas where
20 yes, cabinet processes reduced.

 What are we doing about it? We now have a cabinet process and system that will prevent that from happening. Matters that have to be presented to cabinet have to be properly canvassed. There are those that are termed the presidential contemporary issues, but those are

matters that by virtue of the importance and urgency, can be tabled under that topic and is usually what the President puts forward, but not substantial money laden propositions.

So the new and, well it is not really new but it is a continuation of that cabinet process which we are now insisting needs to be adhered to. That process is now fixed in stone, so those things slipped under the fans.

ADV PRETORIUS SC: Thank you Mr President. The
10 matter you referred to earlier Chair, relating to Dr Lubisi.

CHAIRPERSON: Oh, yes.

ADV PRETORIUS SC: That dealt with the affidavit, it appears in Bundle 3 at page 172. The cabinet memorandum that cabinet considered at the time of the closure of the bank accounts issue being raised in cabinet, that cabinet memorandum was leaked to the media.

CHAIRPERSON: Oh, yes that was the matter
...[intervenes]

ADV PRETORIUS SC: And there was a quite a controversy
20 about the circumstances under which that occurred. Dr Lubisi then had a meeting with the then Director General of state security, Mr Arthur Frazer and asked that the leak be investigated and a report be provided to Dr Lubisi.

But no such report was ever forthcoming. That I think is what you are referring to. Do you have any

comment on that events that apparently cabinet memorandum was leaked?

PRESIDENT RAMAPHOSA: It is one of those furious events where a cabinet member who was leaked, was investigated but the report never came.

ADV PRETORIUS SC: Ja, a mystery that we will have to live with.

CHAIRPERSON: If you could come back to the mic Mr President.

10 **PRESIDENT RAMAPHOSA:** Oh, I apologise.

CHAIRPERSON: You spoke away from it so I could not hear.

PRESIDENT RAMAPHOSA: I apologise Chair, yes.

CHAIRPERSON: If you could repeat your answer.

PRESIDENT RAMAPHOSA: Yes, yes. I was saying that it was one of those furious events where a cab member was leaked, and we have never really had such in our cabinet system, that all of a sudden this one was leaked and it was leaked to achieve a particular end and a particular
20 narrative which was being directed from somewhere.

ADV PRETORIUS SC: Yes, there has been much evidence about the closure of the bank accounts issue and cabinet's involvement, but it is rather extraordinary is it not, that cabinet should be called to get involved in a matter of really private interests.

Even though there might have been a public element involved. Do you agree?

PRESIDENT RAMAPHOSA: I agree with that. It was rather strange to us that the whole cabinet was subjected to a process of discussing the closure of a bank account. It is one of those where we raised the concern and the alarm and which, where it was suggested that the best way to deal with it was to establish a Commission of inquiry.

Which would have had a negative impact on the
10 economy, as it would have impacted the interests ...
negatively impacted the interests of investors and our bond
holders in our economy. So it is one of those that one can
sight as having diverted if you like.

ADV PRETORIUS SC: Thank you. In relation to a question that the Chair asked earlier about the future intentions in relation to issues discussed in evidence Mr President, there are a number of reforms that you set out in paragraph 168 of your statement.

Which include matters of policy, legislation and
20 administration. Do you wish to comment on any of those?
Perhaps take a minute or so to place them on record.

PRESIDENT RAMAPHOSA: Where do you pick that up? I know where they are?

ADV PRETORIUS SC: Page 168. I will get [indistinct].

PRESIDENT RAMAPHOSA: So it is yes, yes, yes. 168. It

is quite a long paragraph. Let me get closer to the mic.

CHAIRPERSON: I guess Mr Pretorius the President can emphasise those that he wishes to emphasise.

ADV PRETORIUS SC: If you do wish to emphasise, you have referred to a number of them. I just wanted to ...[intervenes]

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: Give you that opportunity should you wish to use it. Then there is just one other issue to
10 deal with.

PRESIDENT RAMAPHOSA: Yes, I would like to emphasise a number of them because they really speak to the changes that we are if you like enforcing and gendering, a change in government whilst many would think or suppose that not much is being done, there is a lot that we are doing and most of it is really addressing the capture of the state that we have been through.

For instance what we are seeking to do is to strengthen the capacity of the state and this one is a more
20 long term process and it is underpinned by a whole lot of other initiatives that we are embarking on in terms of how the institutions of the state should function.

But one of the really wonderful and innovative changes that we have brought about, is we have always had the school of government where the government

servants are trained, but we have transformed that and it is a school of government where I also can attend.

In a way borrowed from the, if you like the Chinese model where even cabinet ministers every year have to go to school and I have a great pride in saying that is what I would like to do. Go to school. Our school of government is coming up with very clear policies, modules that all of us will be put through and that relates also to local government level, and we are also continuing to change
10 and ensuring that there is greater coordination and transparency in government.

The level of transparency we want to deepen and so that all in sundry can see that we are going to change. Performance agreements of ministers have been made public and we have provided copies of that to yourselves, and another important change Chair, is professionalising the public service.

This in itself is going to talk to ridding us of the State Capture culture. Where we expect our civil servants
20 to be well qualified for the work they do, well trained and well experienced and well prepared and we will also be ridding our government system of political patronage, because State Capture was also about patronage, where people were employed because they knew so and so or they were employed because they had to do the bidding of

the state capturers, we are working on that and changing that.

We are going to make the public service and local government administrators careers of choice. We are going to cascade downwards as well, through local government. Our local government sector is in very much need of transformation and complete reform and we will be doing so.

We, the intergovernmental coordination we have
10 instituted what we called the district development model, which is confirming in some ways what has also been done in a number of areas but were institutionalising it at government level so that we should get rid of the silo mentality.

The State Capture found fertile ground in the silo type of work, where they were able to plant their people all round and had the institutions working in a silo manner and they were the only common denominator themselves in all this.

20 So what we are seeking to do, is to have a district development model which breaks down the cycles and enables our government structures to work both horizontally as well as vertically. The whole lot of processes.

We are reintroducing the policy and research unit in

the presidency which was gotten rid of. Our law enforcement is now going to be much greater focus as well as security. So Chairperson, the processes that we are now involved in, are vast, they are deep.

The reform and reclaiming of SARS which is a very important government agency from the capture that it had been subjected to, is a very important process of change and transformation that we have instituted since this administration has been in office.

10 So those who might think that not much has been done and achieved, I keep saying but watch this space, not in the future but now as it is unfolding and I guess we will be more turbo charged when this Commission finishes its work because it is as it is meant to come up with a whole range of proposals that we will want to implement and I see us as a country much as we may have enormous challenges at present of an economic nature, social nature, health nature but we are a country that is going to rise.

20 Rise from the mess that State Capture subjected us to. I think right now compared to what we had a few years ago, we are in a much better position and this is where I would call upon South Africans that let us all be part of the solution as we move forward rather than bemoan what has happened in the past.

Of course we must use the past so that the past is

never repeated and this is exactly where I believe we should be as a nation and the direction that we should move in. We are getting better positioned. We are not yet where we ought to be.

I can say that without any equivocation. But we are better placed now in that we are moving forward rather than backwards. We are moving forward rather than sideways. I have great confidence in the ability of the people in the state structures.

10 But I would also like to say also want to invest and instar my belief in the people of our country as a whole including those in the private sector, because they too have a very important role, because the private sector Chair, also played a very big role in State Capture.

Not collectively but there were certain elements of the private sector that aided and abetted where we got to and they too have a responsibility to make sure that we do rise from this mess that our country was subjected to.

CHAIRPERSON: Mr Pretorius?

20 **ADV PRETORIUS SC:** If I may just deal briefly with two issues. Mr President, one of the features of the period under review was the demise of an active and well capacitated anti-corruption task team which was in effect guttered and produced to really a shell during the period under review.

You talk in your reforms at paragraph 211 of the national anti-corruption strategy very briefly what is envisaged.

PRESIDENT RAMAPHOSA: What we envisaged through this Chair, and I will continue talking about this also into the future. Is to you see, corruption as it has manifested itself, was a front to the people of South Africa. There is not a single person that you can talk to in South Africa who is in favour of corruption, except those who participate in
10 it.

Even they will find different ways of labelling it and given that corruption meditates against the interests of our people. We thought that we should set up a structure, a structure that is going to involve the citizenry of our country so that we can promote and encourage active citizenry but we can also through that also promote whistle blowing.

Because one of the things that was damaged, was this process of people blowing the whistle. Blowing the
20 whistle and saying there is something wrong that is happening. So those who would blow the whistle, started you know receding, fearing because those who blew the whistle were badly dealt with.

They were dealt with harshly. They were either suspended. They were either railroaded out of their jobs

and some suffered immensely to a point where they lost their jobs and did not have you know, income for their own livelihoods.

So we want to promote that, that people should feel free to whistle blow and we need to have more robust policies on whistle blowing so that we can protect the whistle blowers. There should be more transparency in society and we should also advance professionalism within our own structures.

10 Now that is the strategy and I am just really sort of in very brief, that is a strategy broadly but we should also get the civil society structures involved in the forum and the forum must be an active forum of not only people in government, they should have people outside of government who will work with us.

 So we launched this forum and we are looking forward to the forum doing its work because it will have a number of committed stakeholders as part of it. So what this means is that we are now beginning to deal with
20 issues of corruption much more seriously and we will have many more eyes reigned on what we do in government, so that the incidents of State Capture should never ever happen again and this is what gives me confidence about not having State Capture rearing its head.

 In the health sector we set up that type of forum as

well. So Chairperson, I think given what I have just said and a whole lot of other things we will be able to have a better handle on incidents of corruption going forward and this will help us also to transform our laws.

Another important area which I have also touched on in my statement is reforming our procurement systems. It is in procurement where you know as they say, not everyone who is in government is a crook, but all the crooks tend to go to focus on procurement because that is
10 where the money is.

So we need to transform that and make sure that we reposition so that the procurement takes place much more transparently. People must see what their monies are being spent on. I have seen that in a number of environments where one visits in some cases every cent that is spent is clearly delineated and the citizenry is able to see that this is where our money goes, we see it right at the local level and right up as well and we therefore need to use as many initiatives and strategies to address this
20 demon of corruption.

CHAIRPERSON: Well I am happy Mr President you have touched on some of the matters that I also regard as very important, if we ... if our fight as a country against corruption is to stand any chance of success because I have said here that the protection of whistle blowers is

crucial, because they play a very important role and if we do not have proper protection for them, then our fight against corruption will be weakened in a very serious way.

Two, changes to procurement would be also very crucial and three, the identification of the right people to occupy positions, certain strategic positions in SOE's and government departments, the criteria for the appointment of members of boards of SOE's what type of people should be appointed.

10 The processes which lead to their identification and appointment. All of those things are going to be crucial if we are to stand any chance of putting up a good fight against the Commission. So I am happy that you are mentioning more or less the same things.

ADV PRETORIUS SC: Two issues remain. I am not sure we have time to deal with both of them Chair, but ...[intervenes]

CHAIRPERSON: Yes.

20 **ADV PRETORIUS SC:** You have been pretty insistent and consistent in asking each senior official member of the executive who comes before you to detail the association or otherwise the Gupta family. That is contained in the President's statement.

I do not know if you wish to rely on that or we should not deal with it.

CHAIRPERSON: Well, he dealt with it briefly yesterday, but to the extent that he ... there might be things that he might not have dealt with, it is important for transparency that he deals with it.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: But as I say, yesterday he did deal with it. I am not sure whether there is much to add.

ADV PRETORIUS SC: Mr President, it is in Bundle 2, page 8.

10 **CHAIRPERSON:** Would that be a bundle that would be behind him? I think somebody will ...[intervenes]

ADV PRETORIUS SC: It is one of the earlier bundles.

CHAIRPERSON: It would be written on the spine Mr President.

PRESIDENT RAMAPHOSA: Yes, I will find it.

CHAIRPERSON: Bundle 2, okay. Alright.

ADV PRETORIUS SC: Yes, it is an affidavit that you gave to the Commission some time ago.

20 **PRESIDENT RAMAPHOSA:** I should recall. I cannot see it immediately but that is fine.

ADV PRETORIUS SC: You gave it in 2019 in July, and ...[intervenes]

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: The reference you may look for, is paragraph 4.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: Do you have anything to add to your evidence yesterday? Do you want to ...[intervenes]

PRESIDENT RAMAPHOSA: Well, I thought you were going to read it.

CHAIRPERSON: It is a few paragraph Mr Pretorius.

ADV PRETORIUS SC: I am happy to read it if you ...[intervenes]

CHAIRPERSON: He can read them to you Mr President.

10 **PRESIDENT RAMAPHOSA:** Yes, yes.

CHAIRPERSON: It is a few paragraphs.

PRESIDENT RAMAPHOSA: Because I do not see it immediately here, but ...[intervenes]

CHAIRPERSON: Okay, maybe my registrar must assist you Mr President. He will come and assist you. Mr Pretorius is offering his bundle.

PRESIDENT RAMAPHOSA: You are very kind Mr Pretorius this afternoon or this minute only.

ADV PRETORIUS SC: That is noted Mr President.

20 **PRESIDENT RAMAPHOSA:** Which paragraph?

ADV PRETORIUS SC: Paragraph 4.

PRESIDENT RAMAPHOSA: Yes. Yes, do you want me to comment?

ADV PRETORIUS SC: If you have any comment to add to what you said yesterday in evidence.

PRESIDENT RAMAPHOSA: No.

ADV PRETORIUS SC: It is up to you.

PRESIDENT RAMAPHOSA: No, I do not have any further comment.

CHAIRPERSON: Ja, no I think he is right. I have just quickly looked at the paragraphs. He, in substance what he said yesterday is what is in the paragraphs.

PRESIDENT RAMAPHOSA: Yes, indeed.

CHAIRPERSON: Ja, because it is paragraphs ...
10 paragraph 4, 4.1 up to 4.4. After that he discussed something else.

ADV PRETORIUS SC: Okay, and then just finally if I can place on record we did prepare to deal with issues related to the affidavit of Mr Nkwinti and matters related to the Department of Rural Development and Land Reform. They are a matter of record and we simply do not have time to deal with it.

But it is not through omission.

CHAIRPERSON: Mr Pretorius, I am not sure what you are
20 saying. I was attending to ...[intervenes]

ADV PRETORIUS SC: Yes, there was one issue ...[intervenes]

CHAIRPERSON: Yes.

ADV PRETORIUS SC: That we had prepared as a legal team to deal with.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: But simply do not have time to deal with it. It is a collateral issue to ...[intervenes]

CHAIRPERSON: Ja, okay.

ADV PRETORIUS SC: To deal with land affairs.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: I just wanted to place that on record.

CHAIRPERSON: Of course, if there is a matter that is
10 important that you have not been able to cover it would remain open to the legal team subsequent to today to ask the President to comment on ...[intervenes]

ADV PRETORIUS SC: Thank you Chair, we will produce those questions to writing.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: And present them to the President's office so that there is in fact no omission.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: Thank you.

20 **CHAIRPERSON:** Okay, okay. Would those be your questions then?

ADV PRETORIUS SC: Yes, thank you Chair.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: Thank you Mr President.

CHAIRPERSON: Mr President, I understand you wish to

say something at this stage before we conclude.

PRESIDENT RAMAPHOSA: Well, yes I do and it really most part of it will be just to thank you Chairperson, once again for the opportunity to make the statement. I did come with the measure of trepidation to be subjected to your questioning and the questioning of the evidence leaders, and I leave here with many scars and with blood dripping below my clothes, but none the less I would like to thank you for the opportunity of being able to present
10 largely part of what we have been through.

In a way despite the evidence that has been presented before the Commission, and despite the excellent work by many one would say investigators, your investigators, academics, as well as the really truly outstanding journalists in our country, what is true Mr Chairman is that we may never really finally know the true and the real costs to our country of State Capture.

Because figures abound, they are stated in various quarters, but what we do know is that it ran into billions.
20 We may be able to establish how much of public funds have been stolen by how much cost, by how much costs in terms of goods and services may have been inflated because the goods and services that had to be procured reflatd to extract rands and to extract those bribes and kickbacks.

Also what it has cost to investigate these cases and also to prosecute those who are responsible. It may be possible to quantify the infrastructure and services that could have been provided to the people of our country, with the funds that were stolen and wasted as a result of State Capture.

It is something that we should be able to compute in one way or another. We could quantify this in terms of say hospital beds, commuter trains, the houses that we could
10 have built and the social grants that we could have offered to our people.

Water, reticulation, maintenance of our roads and a whole number of public goods that State Capture robbed our people, but what is more difficult to measure is the broader costs to our economy and to our society broadly. It is difficult to measure the effect of State Capture on business and consumer confidence and the loss of investment because the State Capture also had an over-
20 arching impact on our ability to attract investment, because as investors looked at us as a country they just saw a country that is mired in corruption, a state that has been captured by a particular family and nobody wants to invest in a country like that, where one family runs everything in the body politic of the country.

We similarly cannot quantify the impact of State

Capture on our standing internationally and our image because State Capture damaged that image and our standing is something that is often talked about, just like our standing now recently, following the unrest that we had.

It was damaged and we have to go through perhaps years to repair the image that we have always had. Now what State Capture as I said earlier also did, was led to the departure of public service from the public service of
10 highly qualified people, experienced people and either because they refused to be part of it, or they presented a threat to those who were part of such activities.

It is likely Chairperson, that State Capture also discouraged many talented young people from joining government, which has significant implications to the public service of tomorrow, and what we seek to do now is to represent government service to the people of our country, especially young people and call upon them to come and serve their nation and their government and we
20 want to make government service something that is attractive to young people.

By weakening our security forces which was another area as we spoke about, as well as law enforcement agencies, the actions associated with State Capture placed the security and the integrity of our country at risk.

Perhaps the most devastating and lasting cost of State Capture and corruption it effects on the confidence of the people of South Africa in the leaders and officials who put so much trust and confidence and responsibility.

So State Capture has damaged people's confidence in the rule of law, in public institutions, in law enforcement agencies and even to some extent in the democratic process. That is what makes the work of this Commission so important and so essential.

10 The people of our country look to this Commission Chair, to uncover the truth as you demonstrated ever since you have been at your work that you can, you are uncovering the truth. They also look to this Commission to identify those who are responsible and to recommend measures that should be taken against those who are responsible, as well as ensure that we prevent State Capture from ever happening again.

20 It is a vital part of our broader process of reckoning this moment of decision, of acknowledging mistakes and ensuring accountability. Now as a young democracy, it is vital that we are willing and prepared to confront mistakes that we have made and correct them.

 The work of this Commission will help us as it must, to make a clear and decisive break with the corrupt practices that have cost our country so much. It is

important to acknowledge that we would not have reached this point.

This Commission would not be sitting now, had it not been for the determined actions of South Africans, many of whom marched in the streets of our country for testing against corruption and demanding clean government which they are entitled to.

It was the people of this country who in their various formations, stood up to what they saw as acts of
10 gross wrongdoing and abuse of power. They were not prepared to allow the hard one democracy, to be eroded for the wealth of their nation rather, to be seconded.

In so doing, they demonstrated that despite the damage caused by State Capture, our democracy remains robust and resilient. They have shown the value of our constitution. The institutions that support our democracy, our independent judiciary, our free media, our vibrant civil society and our active citizenry.

The experience has also shown that within our state
20 owned entities, within our public service, within parliament, legislature and councils, there are men and women of integrity and capability. People who resisted the pressure on them to participate in wrongdoing or to be willing accomplices to all the wrong things that were happening.

It is the essential honesty and decency of these

people Chairperson and indeed of South Africans across society that will enable us to rebuild and to recover. I applaud the commitment and courage of many witnesses who appeared before this Commission, to give an account of what went wrong.

Some did so with a great deal of trepidation themselves, a great risk to reveal themselves while there have been certainly been systematic failures. Governance lapses or errors. The fundamental reality Chair, is that
10 State Capture happened because certain individuals each made a deliberate decision to engage in acts of corruption and criminality.

It is just, correct and necessary that they face the consequences of their actions. Having born witness to the crimes of State Capture, the worst thing we can do is to allow it to ever happen again. We have a shared responsibility as the people to leave the era of State Capture firmly behind us and to act together to prevent corruption in all its forms.

20 This means amongst other things that we must reinforce the checks and the balances within our democratic dispensation that are meant to prevent the abuse of power. We must also strengthen our institutions. Institutions that were established to support democracy and effectively capacitate our law enforcement agencies.

We need to safeguard the freedom, the independence and the diversity of our media. We must professionalise the public service and we must also attract skilled and professionally inclined people back into the public service.

As I said earlier, we also need ... I want to put it in my concluding statement, we need to give whistle blowers the protection that you also spoke about Chair, because without whistle blowers we will not be able to tackle
10 corruption effectively and those who would want to participate in corruption should know that other people will blow the whistle and that those whistle blowers word will be heeded.

So therefore we must protect them in law and in practice. We need to entrench new approach to the funding of political parties, so that no party should ever get tempted to want to raise funding in ways that are going to raise a number of questions.

We need to protect the judiciary from interference
20 and ensure that the courts of our country continue to be accessible to all South Africans. But more importantly, as a nation we have signed a contract amongst ourselves to say the judiciary will in effect be the final arbiters of the disputes that we will continue to have amongst us and once they have made their judgment, that should be the

judgment that we abide by.

Above all, we need to celebrate and encourage active citizenship for that is our greatest defence against the abuse of power, against the theft of public resources. In my statement to the Commission and in the cause of my testimony, Chair I have sought to indicate my personal knowledge of the events under investigation.

The decisions that I took and the considerations that informed those decisions. As a person who occupied
10 a position of authority during the state of State Capture, rather the State Capture era, I must say I take full responsibility for the choices that I made myself and the actions that I took.

I will not run away from those decisions. I have also sought to outline some of the measures this administration has taken to end State Capture. I articulated quite a number of those in my opening statement, and have reiterated here that we are taking corrective measures to obliterate State Capture and that it
20 will take time, but we are going to stay the course.

The progress that has been made over the last two and a half years, should I hope stand as a testament to my own commitment and the commitment of the administration that I lead to deal decisively with corruption and State Capture. Finally I wish to express Chair, on behalf of

myself and on behalf of all South Africans, sincere gratitude to the Commission, to the evidence leaders, to the staff of the Commission and finally to yourself for the great service that you are doing to our nation.

As a country we are emerging from a difficult period. Together we have chosen a path of rebuilding, path of renewal, a path of transparency, a path of accountability. Also a path of justice and the rule of law. Now I have every confidence Chair, that no matter what the
10 challenges are that lie ahead, that we will walk this path together and we will prevail and Chair, I would like to thank you personally.

You and I have discussed the various logistical challenges and the various matters where you have wanted to elongate the life of the Commission because you are still doing work and needed more money. I do believe that the money that has been spent, has been well spent.

I look forward to receiving the report and want to thank you once again for allowing me to come to the
20 Commission. It was not an easy decision for a sitting head of state to come and subject themselves to questioning in the Commission.

Even my fellow heads of state in the region questioned me and said why would you do such a thing? Head of state, going to be questioned and I said something

really wrong happened in our country and to put it right, I have got to go as the head of state.

So thank you very much. Thank you.

CHAIRPERSON: Thank you Mr President for your concluding statement. I must also take this opportunity to thank you Mr President, for the support that you have given to the work of the Commission throughout the life of the Commission.

You have indicated that I had to from time to time
10 approach you, because there were funding challenges for the Commission and yet the Commission still needed to do its work, and I must say that whenever I have done so Mr President, I have found great cooperation from you and your support for the work of the Commission as being very clear and that has been very important to ... for the Commission to the Commission as a whole.

We appreciate it very much. We might not have got as much as we wanted each time, but that is the nature of budgeting and so on. You do not always get everything.
20 But never the less, we got a lot of support from you Mr President.

We got a lot of support from the ministry of justice. We got support from treasury as well. So we appreciate that very much. I must also take this opportunity to thank the members of the Commission's legal team. I must also

thank the members of the investigation team and I must thank the various persons who have been sanctuaries or acting sanctuaries of the Commission over the past three and a half years.

I must thank all the staff of the Commission for the wonderful work that all of them have done to make sure that the work of the Commission was done successfully. We have had a long time when we even had night sessions to try and expedite the work of the Commission and
10 throughout everyone who was asked to work in the evenings, worked over weekends sometimes, overtime.

They all gave support and I know that the members of the legal team and investigation team, there have been times in the life of the Commission when they really sacrificed a lot and worked during months when there was no certainty about funding.

But they were very committed to the work of the Commission and funding would come late, but they did not leave. They continued. I just want to express my
20 appreciation for all of those sacrifices. I must also thank the various lawyers who assisted witnesses and implicated persons who appeared before the Commission.

I must thank various witnesses and implicated persons who made themselves available to give their versions, to avail themselves for questioning. We thank all

of them. I must say Mr President, that our plan was that you as the President should be the last witness.

But certain things happened recently which may require that I make some decisions in regard to certain applications and by law I must decide them in accordance with what is expected. I will consider them properly and decide them, but our plan was exactly what I have said.

But of course, if an application that is properly motivated is placed before me, I have got to apply my mind
10 to do it properly. I cannot say well, the President has testified so I cannot allow you, irrespective of whatever. So but our plan was that the President would be the last witness.

But I just want to mention that we continue to ask some people for affidavits to clarify certain matters that we pick up as we prepare, analyse evidence and prepare the reports. So but we will continue with that work Mr President and in due course you will get the report and from my side, I cannot wait for the day when I hand over
20 the report and know that I am done, and leave it to you Mr President and maybe others to decide what to do with the reports.

So, but I just want to take the opportunity to thank you. I also thank the staff in your office for the cooperation they have given to the Commission. Because

the Commission had to interact with your office regularly and once again, thank you for availing yourself Mr President, and indeed what you said was the end of your closing statement, is important.

I do not remember that aid of state, as sitting head of state has in our own country submitted himself to the Commission and effectively said, ask me whatever questions you want to ask me about these matters, and I will do my best to answer which is what you have done.

10 I think it is very important for our country and thank you very much.

PRESIDENT RAMAPHOSA: Thank you acting Chief Justice. I should just say that I just want you to be aware that there is a new sheriff at treasury and if you ever need further money, he may not be there.

CHAIRPERSON: Ja. I thought I would stand a better chance with him than the previous one. Thank you. Mr Pretorius?

ADV PRETORIUS SC: Thank you Chair.

20 **CHAIRPERSON:** Okay, thank you. We are therefore going to adjourn at this stage. We adjourn.

HEARING ADJOURNS

END OF PROCEEDINGS