

**STATE CAPTURE INQUIRY**  
**PARKTOWN, JOHANNESBURG**

**20 AUGUST 2018**

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## SESSION 1

**CHAIRPERSON**: Good morning everybody. Today marks the first day of the first session of the hearings of the Judicial Commission of Enquiry into allegations of State Capture, Corruption and Fraud in the public sector including organs of State. Mr Paul Pretorius, the Head of the Legal Team will let everybody what's going to happen today and in the next few days in terms of witnesses that will be called but I would like to open with a few remarks in relation to the Commission. As we all know, this Commission was formally appointed on the 25<sup>th</sup> January, 2018 by way of a proclamation no 3 of 2018 published in the Government Gazette of 25 January, 2018. Its background is well-known to all of us. It was appointed pursuant to the remedial action taken by the Public Protector in terms of her report styled State of Capture which was confirmed by the judgment of the North Gauteng High Court. As we all know, the report of the Public Protector was released in October 2016 and the judgment of the North Gauteng High Court was delivered in December 2017 and this Commission was appointed in January. It is necessary to talk about the scope of the investigation that will be conducted by this Commission. It's scope is to be found in the Terms of Reference which were published in the Government Gazette to which I have just referred. This is necessary to remind everybody what this Commission is about and to remind all concerned to about the kind of information or evidence that will be relevant to the investigation of this Commission so that people who have that information or that evidence may come forward and give the Commission information that is relevant to its Terms of Reference. The Terms of Reference of this Commission are to the effect that this Commission was appointed to investigate matters of public and national interest concerning allegations of State Capture, Corruption and Fraud. The Terms of Reference have nine paragraphs or clauses which set out the scope of the investigation of the Commission. They read as follows:

1. The Commission shall inquire into make findings, report on and make recommendations concerning the following guided by the Public Protector's State of Capture Report, the Constitution, relevant legislation, policies and guidelines as well as the order of the North Gauteng High Court of 14 December, 2017 under Case No 91139/2016.

1.1 That is the following that I have just referred to, whether and to what extent and by whom attempts were made through any form of inducement or for any gain of whatsoever nature to influence members of the National Executive including Deputy Ministers, Office Bearers and/or functionaries employed by/or Office Bearers of any State Institution or organ of State or Directors of the Boards of SOE's. In particular the Commission must investigate the veracity of allegations that former Deputy Minister of Finance, Mr Mcebisi Jonas and Ms Mentor were offered Cabinet positions by the Gupta family.

1.2 Whether the President had any role in the alleged offers of Cabinet positions to Mr Mcebisi Jonas and Ms Mentor by the Gupta family as alleged.

1.3 Whether the appointment of any member of the National Executive functionary and/or Office Bearer was disclosed to the Gupta family or any other unauthorised person before such appointments were formally made and/or announced and if so, whether the President or any member of the National Executive is responsible for such conduct.

1.4 Whether the President or any member of the present or previous members of his National Executive including Deputy Ministers or Public Officials or employee of any State Owned Entities (SOE's) breached or violated the Constitution or any relevant ethical code or legislation by facilitating the unlawful awarding of tenders

by SOE's or any organ of State to benefit the Gupta family or any other family, individual or corporate entity doing business with Government or any organ of State.

- 1.5 The nature and extent of corruption, if any, in the awarding of contracts, tenders to companies, business entities or organisations by public entities listed under Schedule 2 of the Public Finance Management Act No 1 of 1999 as amended.
- 1.6 Whether there were any irregularities, undue enrichment, corruption and undue influence in the awarding of contracts, mining licenses, Government advertising in the New Age newspaper and any other Governmental services in the business  
10 dealings of the Gupta family with Government Departments and SOE's.
- 1.7 Whether any member of the National Executive and including Deputy Ministers, unlawfully or corruptly or improperly intervened in the matter of the closing of banking facilities for Gupta-owned companies.
- 1.8 Whether any advisors in the Ministry of Finance were appointed without proper procedures, in particular and as alleged in the complaint to the Public Protector whether two senior advisors who were appointed by Minister Des van Rooyen to the National Treasury where so appointed without following proper procedures.
- 1.9 The nature and extent of corruption, if any, in the awarding of contracts and tenders  
20 to companies, business entities or organisations by Government departments, agencies and entities in particular whether any member of the National Executive, including the President, public official, functionary of any organ of State, influenced the awarding of tenders to benefit themselves, their families or entities in which they held a personal interest.

Those are the Terms of Reference of this Commission which may be amended, varied by the President should he consider it necessary to do so. It will be clear from the Terms of Reference of this Commission that the scope of its work is wide and that there is a lot of work that the Commission needs to do.

Today is only the first day of the first session of the hearings, there will be other sessions. We are hoping that we are going to have another session before the end of the year and we will have further sessions in the New Year.

As you know, over the past few months the Commission has been hard at work trying to ensure that it can start its work and it would be ready for hearings as soon as possible.

10 We are able to start today and deal with certain matters this week and in the next few weeks. We believe this session could take three weeks but there is a possibility, depending on a number of things that it could take up to four, five or six weeks. Then there will be an adjournment and we will then have another session before the end of the year.

While the hearings are going on, the work of the Commission will be continuing by way of investigators but I need to talk about some of the challenges that we have had as a Commission. You will be aware that in the previous media briefing I alluded to the fact that we did have certain challenges in the process of security clearance which is done by the State Security Agency and I indicated then that this Security State Agency had not  
20 been able to meet our expectations and requests in terms of an expeditious processing of security clearance. I indicated that that time that I was going to be writing to the President to ask him to intervene because previously he had indicated to me that if there were challenges I should approach him. I did write to the President and that was at the beginning of August, I think the letter was dated 1<sup>st</sup> August. That letter was delivered. At

this stage as of Thursday, the report that I got that there is not much that the State Security Agency had done in terms of expediting the security clearance processes. At this stage if there is anything that has happened since then, it might have happened over the weekend of Friday over the weekend but, as far as I know we still have that challenge and I hope that this will be resolved pretty soon because we have already lost a long time. Already when we had the media briefing, we had had quite some time when we were expecting the State Security Agents to fast-track some of these processes. We are hoping that it will be resolved the work that the Commission needs to do is urgent.

We are constantly asked how far we are and I have a team that is working day and night  
10 to try and make sure that the work of the Commission is given the urgent attention that it deserves but the fact of the matter is that a Commission such as this depends to a very large extent on Government Departments for certain things. It depends on the co-operation of Government Departments for many things. At this stage there are Ministers that we have had to deal with and at Ministerial levels those that we have dealt with have been very supportive, have been very co-operative but sometimes there are challenges with regard to officials.

We have had some delays also in the dealings of the Commission with the National Treasury over the past few months, so much so that on two occasions, I have had to ask the Minister of Finance to intervene so that there could be progress and on two  
20 occasions, on each occasion that I have asked the Minister of Finance, he has given the Commission full co-operation, he has been supportive and he intervened successfully so that progress could be made. We have those challenges, we hope that all concerned including officials in various Government Departments appreciate that this Commission needs full and proper co-operation from all of them. Indeed, the Terms of Reference of the Commission as well as the regulations make it quite clear that Government

Departments must give full co-operation to this Commission. We are going to continue to do the best we can but I thought it was important to mention that for certain things we really have to depend on other people.

A few weeks ago, we issued a public notice where we invited the public, anyone who has information that is relevant to our investigation with evidence of allegations of State Capture and Corruption and Fraud relating to the work that we are doing, having regard to the Terms of Reference to come forward and give that information to the Commission. The response has not been what we were expecting. The response has been quite disappointing. I would like to take this opportunity once again, ask the public to please, if  
10 they have information, to come forward. We are all, everybody wants this Commission to finish this job as soon as possible but obviously if it is to its job properly, it needs to have information and we all know that there are many people out there who know and who have evidence and who know some of the things that were happening but if they don't come forward, that doesn't help this Commission and that doesn't help this country.

This Commission is an opportunity for all of this in this country to play a role to contribute to finding a solution to two very important issues to us as a Nation.

1. Corruption
2. State Capture

And of course, for purposes of this Commission the two are linked. State Capture, if the  
20 allegations that we are going to investigate are proven to be true, includes individuals who may have decided that they would want to be able effectively to make decisions that should be made by constitutionally appointed functionaries of the State. That is something very serious, that is something that should not be allowed and that's part of the reason why there is this Commission.

People in Municipalities, people in Provincial Governments, people in National Government, do they not have any information? Public representatives who serve in different capacities. Members of the Executive, National, Provincial, do they not have any information? We urge all South Africans who love this country to come forward and assist this Commission in order that we may resolve this problem.

In conclusion, I just want to say the team attached to the Commission and all the stuff of the Commission have worked very hard for us to be where we are today. If one compares the time taken by other Commissions from the time they were appointed to the time they started having their first hearings, we are not doing badly, we have also done reasonably well and it is because of the hard work of the legal team, officials of the Commission despite the delays that have happened mainly because of the co-operation and support that we need from Government Departments. Thank you.

At this stage I think the Head of the Legal Team, Mr Pretorius, would want to make an opening statement.

**ADV PAUL PRETORIUS SC:** Thank you Chair. The opening address that I am about to give on behalf of the Legal Team is the product of a consensus building exercise that the Legal Team has adopted over the past few month that we have been about our work and would just like to take the opportunity, you know the Legal Team, Mr Chairman, but may I introduce them for the purposes of the public and I will go from left to right in no particular order: Advocate Leah Gcabashe, Advocate Thandi Norman.

**CHAIRPERSON:** Sorry Mr Pretorius, is Mr Pretorius audible right at the back? Okay, thank you.

**ADV PAUL PRETORIUS SC:** Thank you Mr Chair. Advocate Maleka on the right, Advocate Mokoena, Advocate Sello, Advocate Buthelezi and behind me, Advocate

Molefe, Advocate Hofmeyer will attend next week and Attorneys Mabunda and Rob are also present assisting the Legal Team and the Secretariat respectively.

Mr Chair, the purpose of the Opening Address is really to explain to the Chair at this early stage how the evidence leaders understand their mandate, their role in the work of the Commission and how they have planned and will plan to lead evidence before the Commission.

The second purpose of this address is to ensure that at the outset we establish a mode of operation that communicates clearly and completely to the public, one of our most important constituencies what this Commission is investigating, the evidence that the  
10 Legal Team will present and the issues that the Legal Team will traverse in its presentations to you Mr Chair.

Firstly, the legal framework under which we operate begins with the Constitutional provision that provides that the President is responsible for appointing Commissions of Inquiry. This Commission has been appointed by the President, the former President, to investigate allegations of State Capture, allegations of corruption and allegations of fraud in the Public Sector including organs of State.

We are governed by the provisions of the Commissions Act of 1947. This Act confer certain powers on the Commission as well as certain duties. The Terms of Reference which had been promulgated to which you have referred Mr Chairman, bind the  
20 Commission and set out in more detail the matters which this Commission is obliged to investigate and I will deal with Terms of Reference in detail in due course, repetition notwithstanding Mr Chair.

Regulations have also been promulgated, these govern the proceedings of the Commission, they also give the Commission certain powers, for example to search

premises and seize documents but only on the authority of a Warrant issued by a Judge. The Commission has also issued and promulgated its own rules, these govern the proceedings of the Commission.

In terms of all these instruments Mr Chairman, our hearings will be held in public but in appropriate circumstances, hearings may be held *in camera*, that is to the exclusion of the public. Arrangements have also been made for evidence led before you Mr Chair to be transcribed and placed on the Commission website.

In addition, the evidence to be led will be the product of the work of the Investigations Team and the Legal Team acting together and in co-operation. However, as you have  
10 said Mr Chairman, we will also rely to a large extent on evidence provided by members of the public and members of Government and we note too as you have Mr Chair, that Term of Reference 3 reads that all organs or State will be required to co-operate fully with the Commission and we would expect no less.

The role of the Legal Team then in summary Mr Chairman has been and is still to provide legal support to the Commission, particularly in setting up die Commission to present the evidence obtained and prepared by the Investigation Team or in certain cases by the Legal Team to you Mr Chairman and then to provide such assistance as were able Mr Chair in directing investigations and by compiling research and making submissions on findings and recommendations.

20 As you have stated Mr Chairman, this Commission has its origins in an investigation conducted and a report issued by the former Public Protector and that report in its title page reads that it was a report on an investigation into alleged improper and unethical conduct by the President and other State functionaries relating to alleged improper relationships and involvement of the Gupta family in the removal and appointment of

Ministers and Directors of State Owned Enterprises resulting in improper and possibly corrupt award of State contracts and benefits to the Gupta's family businesses.

The Public Protector made certain findings but did not complete her investigation. That is now the task of this Commission but the Terms of Reference of the Commission have widened the scope of the investigation materially beyond that which the Public Protector dealt with. So Mr Chairman, the question arised what broadly speaking is the scope of our investigation.

The first issue is how far back does this Commission go? More than one communication already made to the Commission raise an issue of the time period to be covered by the  
10 Commission. In particular the question has a reason, how far back does this Commission go? That question has not yet and fully and finally answered by the Commission and appropriately so. The Chair will obviously be asked by the Legal Team to consider submissions in this regard to the extent appropriate and when appropriate.

The first approach to this issue Mr Chairman is of course that the text of the Terms of Reference dictate what factual occurrences this Commission is required to deal with. These events have obviously occurred within a fixed time period. But there are more general Terms of Reference dealing with issues that are not restricted to a particular time period. For example those Terms of Reference that require the Commission to investigate the nature and extent of corruption in State entities and that and that all the  
20 levels of Government. In this regard perhaps a few remarks Mr Chairperson. It is self evident that the very essence of our 1996 Constitution was to bring to an end a political system that had indeed been in a word captured by a Government acting in their interest of a privileged minority at the expense of a disempowerment marginalised and impoverished majority. Our Terms of Reference direct us at lease in the first instance

perhaps to a different period and to at least arguably answer a different question. That is has the State again to a large or lesser degree been captured. Has it been possible, we will ask once again to distort and manipulate State entities in such a manner and to such a degree to serve the interests of a privileged few and Mr Chairman, we will in our submissions raise the issue about the significance of this question been asked now in 2018, how did this occur and how could it occur if it did occur in a Constitutional democracy post 1996. In other words and in short Mr Chairman, the broader question signified by our Terms of Reference, read as a whole, may be asked. Has the democratic project envisaged by our Constitution been derailed and if so, can it be brought on track and how? The best emphasis Mr Chairman that State Capture as you have stated is not just about corruption. It is not even just about widespread corruption. Corruption may be part of State Capture but it is more than that. State Capture at least in theory would, if proven, concern a network of relationships, both inside and outside Government whose objective would be to ensure the repurposing of Government Departments, officials and State Owned Entities, all for private and illicit gain.

So Mr Chairman, the essential questions and this is by way of introduction, that the Legal Team will submit that the Commission should ask are the following:

Firstly, what occurred within the Terms of Reference, a series of random and disconnected act or was it an organised and comprehensive manifestation of State Capture?

The second question, did what occurred, concerned not only active corruption but also a deliberate weakening of Constitutional Government and a repurposing of Constitutional State structures? In other words, was there in our recent history a deliberate attempt to

weaken democratic processes and to shift political and policy decision-making away from Constitutionally appointed and Constitutionally accountable bodies.

Did what occurred involve a systematic undermining of the country's laws and principals? Did this happen at the hands of a network of alliances between persons and entities both inside and outside the State and did what occurred if it is found by you Mr Chairman to have existed or to exist still, have as its goal the diversion of State funds and State resources into private hands?

And if all that is shown or all those questions are answered at least to a degree? A further questions which arises is, what is the impact of all that on Constitutional goals such as  
10 development, empowerment, service delivery, transformation and redressing the inequalities of the past?

The Legal Team Mr Chairman will submit that the Commission might investigate circumstances where the allocation and distribution of State resources is determined or might have been determined by a network of persons outside and inside Government acting contrary to Constitutional and legal norms, directed not in terms of our laws and policies but for the private financial gain of members of that network and facilitated by a deliberate effort to weaken key State institutions.

A further question we may have to address as a Legal Team before you Mr Chair, is whether the existing Legal Framework in fact permitted a redirection of resources from  
20 State owned entities and State entities into private hands in the manner found to have occurred. Put differently, the question may be asked to what extent was the redirection of State funds and resources found to have occurred, allowed by prevailing laws and policies.

Dealing now with the approach to evidence that the Legal Team will adopt Mr Chair, it is necessary to pause a moment. It is important for the Legal Team to state before you Mr Chair that this investigation can assume no facts. Any findings that we will put before you will have to be based on evidence led before you Mr Chairman and the scope of that evidence will be determined by the Terms of Reference. So where the Commission Mr Chair is asked to interrogate an issue, the Legal Team will not presume a particular outcome. Witnesses that we call before you may have different, even contradictory versions in relation to a particular allegation of fact or set of facts and it is our function as a Legal Team to operate objectively and to explore all material and relevant versions.

- 10 But Mr Chair, as you said at perhaps it was the first public gathering which you addressed for the first time in February this year. You outlined three major issues that the Commission would interrogate.

Broadly speaking and in summary, firstly did State Capture ever exist in South Africa in the period covered by our Terms of Reference?

Secondly, does State Capture still exist in South Africa and if the answer to these questions is in the positive, how can State Capture be eradicated through policies and measures put in place to ensure that it does not re-occur or at least ensure that the risk of it recurring is minimised.

- 20 It bears emphasis Mr Chair that the answers to all these questions, both general and specific lie within the powers and duties of the Chair. It is the duty of the Investigation Team to find the evidence. The Legal Team's duties are to present the evidence and make submissions. Obviously the Investigation Team and the Legal Team will work in co-operation and as yet, no substantive findings have been presented to you and no substantive findings we understand has been made.

In the approach we will adopt Mr Chair, we will refer at the basis of our submissions and the basis of evidence to the Constitutional State and then question whether its institutions and laws have been undermined or manipulated. For the purposes of this presentation and later for our evidence and submissions, we will regard the Constitutional State in at least two aspects.

The first on the left-hand side of that screen, the offices and institutions which are relevant to our enquiry subject to what I will say below and secondly the backbone of laws, policies and ethics that support that structure.

10 So we have and I will refer to this briefly in a moment, the three branches of Constitutional State, Parliament, the National Executive and the Judiciary. The National executive headed by the President who appoints the Cabinet, who in turn would run or control the Departments and under their aegis, the SOE's and other State entities would operate. That whole framework of persons, officials and institutions is governed by much legislation and much more legislation than is apparent on the screen and I will refer more detail to some of that in a moment but for the moment the Constitution, the Executive Members Ethics Act and Code, the Prevention and Combatting of Corrupt Activities Act, the Public Finance Management Act and Treasury Regulations are but a few of the relevant legislative instruments that we will refer to.

20 So the evidence will recognise Mr Chairman that there are indeed three branches of Government and each branch of Government has an association with issues of alleged State Capture. Parliament has conducted its own investigations into allegations of State Capture, e.g. various Committees have been investigating allegations relating to financial mismanagement and Governance at Eskom. The Department Home Affairs, the Department of Mineral Resources, The South African Broadcasting Corporation, the

Passenger Rail Agency of South Africa and others have also been the subject of investigations and many of their issues investigated are related to allegations of State Capture.

The Judiciary too has dealt with many cases involved in allegations of State Capture in carrying out its tasks of interpreting and applying the law and imposing it on their Executive and other State institutions. Obviously, these decisions bind this Commission and the most important of these Mr Chairman is the one you refer to, *The President of the Republic of South Africa v the Office of the Public Protector and others, a 2018 decision of the full bench of the Gauteng Provincial Division.*

10 **CHAIRPERSON**: I beg your pardon, that is 2017 you mean.

**ADV PAUL PRETORIUS SC**: 2017 yes.

**CHAIRPERSON**: You said 2018.

**ADV PAUL PRETORIUS SC**: Yes, I stand corrected, thank you Mr Chairman. It's reported in 2018. Our Terms of Reference Mr Chair focus then to a large degree on the Executive Branch of Government as the Legal Team understands the Terms of Reference, they mandate the Commission to investigate mainly the capture of and corruption in Government Institutions and State Owned Entities. Thus the focus of the Legal Team will be on Executive Government and State Owned Entities and not, at least in the first instance, the Legislature or the Judiciary. Our Terms of Reference do not take  
20 us there.

Of course this approach is subject to any finding that you may make Mr Chairman and of course subject to any submissions to the contrary that may be place appropriately before you.

One of the first issues that we will deal with in evidence is the issue highlighted in the first Terms of Reference and that is the issue of Ministerial appointments and dismissals. We know as a matter of Law and Practice Mr Chair, that the President and his discretion dismisses and appoints Ministers but it is not an entirely unfettered discretion in the submission of the Legal Team. In doing so the President is bound in our submission by at least Section 96 of the Constitution read with the Executive Members Ethics Act and the Code. So Section 96 of the Constitution states Mr Chair that members of the Cabinet and Deputy Ministers must act in accordance with the Code of Ethics prescribed by National Legislation.

- 10 Section 96 (2) reads that, *“members of the Cabinet and Deputy Ministers may not undertake any other paid work, they may not act in a way that is inconsistent with their office or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests, nor may they use their position or any information entrusted to them to enrich themselves or to improperly benefit any other person”*.

The Ethics Code which is enforced by Section 96 of the Constitution and the Act requires that, *“the President and they Cabinet must always behave in the best interest of good Governance, with integrity, in good faith, loyalty and never in a way that is inconsistent with their position. They may not share privileged information and they may not use their*  
20 *position to benefit themselves or to benefit other parties”*.

The Public Protector in her Report indeed highlighted aspects of the Code in relation to Cabinet appointments and the Commission’s Terms of Reference deal with Cabinet appointments and in the submission of the Legal Team, related dismissals directly and

although this is somewhat repetitive Mr Chair, perhaps the repetition is understandable and perhaps can be useful.

Term of Reference 1.1. reads: *“In particular, the Commission must investigate the veracity of allegations that former Deputy Minister of Finance, Mr Mcebisi Jonas and Ms Mentor were offered Cabinet positions by the Gupta family”*.

The second Term of Reference related to this series of Terms of Reference requires the Commission to investigate whether the President had any role in the alleged office of Cabinet positions to Mr Jonas and Ms Mentor by the Gupta family as alleged.

And the third related Terms of Reference is somewhat broader. It reads: *“Whether the*  
10 *appointment of any member of the National Executive functionary and/or office bearer was disclosed to the Gupta family or any other authorised person before such appointments were formally made and/or announced and if so, whether the President or any member of the National Executive is responsible for such conduct”*.

In regard to these Terms of Reference Mr Chairman, the Legal Team will seek to lead evidence in regard to the following:

Firstly, whether the alleged office of Cabinet posts were in fact made for our task is to examine the veracity of evidence alleging that they were indeed made.

Secondly, if so, whether the former President indeed acted unlawfully and improperly in relation to the appointment of members of Cabinet, and

20 Thirdly, whether third parties, e.g. the Gupta family, played an unlawful or improper role in Cabinet appointments and if so, whether the former President was aware thereof. And if proven, the Legal Team will make submissions in regard to the extent that this conduct

constitutes or might constitute a violation of provisions of the Constitution and indeed of the Law.

Mr Chairman, in relation to these particular Terms of Reference, the Legal Team will also ask what further consequences Ministerial dismissals and appointments might have had, e.g. the question arises how these dismissals and appointments might have affected Board and Executive appointments at State Owned Entities, what affect this might have had on Governance at State Owned Entities and other State entities. How procurement practices might have been affected by these appointments. Put differently Mr Chairman, where certain Ministerial dismissals and appointments intended to further allege State  
10 Capture and did they have this effect.

Mr Chairman, much of the evidence led before you in accordance with the Terms of Reference, we will deal with the issue of the allocation and distribution of State funds and State resources.

We know and it is trite Mr Chairman, that Government Departments and State Owned Entities have the ability to procure goods and services on their own behalf and on behalf of the State. The object of that procurement, apart from the direct object of obtaining the goods and services is to further in our submission Constitutional principles and Socio-economic objectives. There is a raft of legislation together with Constitutional provisions that governs that procurement process, that governs the allocation and distribution of  
20 State resources and some of those are listed on the right hand side of that screen and I will deal with some specific aspects of that legislation in due course but it is not only the Constitution, the Public Finance Management Act and the related Municipal Finance Management Act but also the Preferential Procurement Policy Framework, the Prevention and Combatting of Corrupt Activities Act, the various pieces of legislation and policies

governing State Owned Entities, the Companies' Act and the Fiduciary Duties which are imposed on Directors.

One of the Constitutional principles has been well expressed in an academic article by Pieter Labuschagne where he states: *“One of the underlying values of the Constitution is to address and correct the imbalances of the past to create a moral, just and equitable dispensation so in the new democratic order the State is regarded as the custodian of resources and income and the State must ensure that these resources are channelled in such a way as to address socio-economic needs and social inequalities”.*

10 I have referred Mr Chairman to the legislation which governs the allocation and distribution of State funds and resources. Section 195 of the Constitution is instructive in this regard and I apologise for the small print. Section 195 is with having direct regard to in our submission Mr Chair. It states that public administration must be governed by the democratic values and principles enshrined in the Constitution including the following principles:

1. A high standard of professional ethics must be promoted and maintained.
2. Efficient economic and effective use of resources must be promoted.
3. Public administration must be development oriented.
4. Services must be provided impartially, fairly, equitably and without biased.
5. People's needs must be responded to and the public must be encouraged to  
20 participate in policy making.
6. Public administration must be accountable.
7. Transparency must be fostered by providing the public with timely, accessible and accurate information.

8. Good Human Resource Management and Career Development practices to maximise human potential must be cultivated.
9. Public administration must be broadly representative of the South African people with employment and personnel management practices based on ability, objectivity, fairness and the need to redress the imbalances of the past and to achieve broad representation.

Section 217 of the Constitution deals directly with procurement, it is also relevant and will be relevant throughout the evidence that we present to you Mr Chairman. It reads: *“When an organ of State in the National, Provincial or Local sphere of Government or any other*  
10 *institution identified in National Legislation contracts for goods or services, it must do so in accordance with the system which is fair, equitable, transparent, competitive and cost effective. Sub-section 1 does not prevent the organs of State or institutions referred to in that sub-section from implementing a procurement policy providing for categories of preference in the allocation of contracts and the protection or advancement of persons or categories of persons disadvantaged by unfair discrimination”* and then reference is made in Section 217 to National Legislation.

So Mr Chairman, we return then to the first part of our Terms of Reference, particularly Term of Reference 1.1. The general introduction to Term of Reference 1.1 reads: *“And*  
20 *requires us to present evidence to you Mr Chair as to whether and to what extent and by whom attempts were made through any form of inducement or for any gain of whatsoever nature to influence members of the National Executive including Deputy Ministers, Office Bearers and/or functionaries employed by/or Office Bearers of any State Institution or organ of State or Directors of the Boards of State Owned Entities”*.

And our submission Mr Chair, Term of Reference 1.1 is at the heart of allegations of State Capture. It requires the Commission to investigate whether at least in the first instance, outside third parties, that is persons who do not form part of Government and are not accountable as Government, attempted to influence improperly members of the National Executive, Office bearers and employees of State institutions and organs of State and State Owned Entities, Directors and Executives and all this presumably for unlawful gain. Of course Mr Chairman, carefully read it is not only outside third parties who might be guilty of conduct referred to in 1.1 conceivably, one member of Government may also improperly influence another member of Government.

- 10 We move on then Mr Chair to Term of Reference 1.4 which reads and enjoins this Commission to deal with by way of evidence and investigation *whether the President or any member of the present or previous members of his National Executive including Deputy Ministers or Public Officials or employee of any State Owned Entities (SOE's) breached or violated the Constitution or any relevant ethical code or legislation by facilitating the unlawful awarding of tenders by SOE's or any organ of State to benefit the Gupta family or any other family, individual or corporate entity, and we stress there the words, or any other family, individual or corporate entity, doing business with Government or any organ of State.* As is apparent Mr Chairman, this Term of Reference focusses on the unlawful diversion of State resources and finances away from their intended
- 20 beneficiaries and objectives and to individuals and companies and entities who would have had no lawful right thereto, in other words, for private and illicit gain.

There are some examples Mr Chair of evidence that is under preparation that will in due course be presented to you and these bear mention. The Legal Team will lead evidence on and submit that this Commission should investigate who the intended beneficiaries were of any unlawful award of tenders. Amongst those beneficiaries might be the Gupta

family and their associated entities. Organisations such as Trillion and Regiments may also have been involved. The Legal Team will also submit that the Commission should investigate where the persons inside the State or persons related to them could be included amongst those beneficiaries and it may be that the purpose of distributing financial benefits was not only for direct financial gain but also to maintain power and influence in regard to any proven State Capture manifestation.

So under this head, Mr Chairman, the Legal Team will ask that the Commission investigates amongst other things, State Owned Entities, their procurement practices and in particular a number of alleged illicit transactions. For example again Mr Chairman, 10 there has been some work done in relation to allegations that at Eskom there was a deliberate effort to favour the Gupta family in awarding a coal supply concession. At Transnet there are allegations that locomotive supply contracts were also inappropriately awarded after bribes were allegedly paid to Gupta related parties. And at Denel it is alleged that in appropriate joint ventures were being set up that would have resulted in significant profits from arms supply, contracts being diverted and justifiably to Gupta related companies. These are all subject to investigations, subject to evidence, subject to your findings and submissions.

The Legal Team Mr Chair, will also submit that the Commission should, when dealing with State Owned Entities, examine contracts allegedly unlawfully induced executed for 20 private and illicit gain also at a collective level. The Commission might examine the timing of these contracts, their frequency and size, the manner in which they were concluded and in particular the persons and entities involved and the relationships between them. This in order to determine whether these individual contracts themselves were or were not part of State Capture or remain part of State Capture.

In this particular aspect of its investigation Mr Chair, the Legal Team will submit to the Commission that it might ask whether the incidents and extent of corruption shown, were directly or indirectly linked to Cabinet appointments, appointments of Boards, State Owned Entities, appointments of State Owned Entity Executives and appointments of Procurement Officials. Were these contracts and their execution to the extent proven, linked to a failure of governance at all levels of Executive Government. In short, the Legal Team will request the Commission to investigate whether these contracts are the result of undue influence exerted for unlawful gain. This again will be covered by Term of Reference 1.1.

- 10 The Legal Team will also ask Mr Chair, that the Commission investigate entities other than State identities where the same patterns emerge and will ask whether similar conclusions could feasibly be drawn about State Capture and its manifestations, e.g. the Free State Department of Agriculture is alleged to have made unjustified payments in relation to the Astina Dairy Farm Project where the actual beneficiaries may have been third parties not entitled to such benefits including Gupta related entities.

Term of Reference 1.6, Mr Chairman, enjoins the Commission to investigate whether there were any irregularities, whether there was undue enrichment, corruption and undue influence in the awarding of contracts, mining licenses, Government advertising in the New Age newspaper and any other Governmental services in the business dealings of  
20 the Gupta family with Government Departments and SOE's.

Of course Mr Chairman, it is obvious that unlawful tender procurement is not the only manner in which State resources and funds may be diverted away from their intended objects and for private and illicit gain. There are other means of misappropriation that the Commission will be asked and indeed is required to investigate, e.g. the alleged diversion

of the State advertising budget to the New Age newspaper and the television channel, ANN7, the corrupt or irregular awarding of Government contracts, mining licences and other Government services, e.g. airport landing rights or immigration facilities. What is instructive about this Term of Reference, however Mr Chair is that it focusses solely on the Gupta family unlike other Terms of Reference which are broader and refer to other families or entities.

1.10 Term of Reference 1.7 deals with an allegation that the Gupta family and Gupta owned companies received at least at an attempted level some form of protection from the National Executive. The Term of Reference requires the Commission to investigate and the Legal Team to lead evidence on whether any member of the National Executive including Deputy Ministers, unlawfully or corruptly or improperly intervened in the matter of the closing of banking facilities for Gupta-owned companies. This is a discreet Term of Reference and it requires the Commission to investigate in summary whether the National Executive or any member thereof, unlawfully, corruptly or improperly intervened to prevent private banks from closing Gupta company bank accounts.

Term of Reference 1.8 Mr Chairman, deals with the issue of whether any advisors in the Ministry of Finance were appointed without proper procedures, in particular and as alleged in the complaint to the Public Protector whether two senior advisors who were appointed by Minister Des van Rooyen to the National Treasury where so appointed without following proper procedures. This to Mr Chair is a relatively discreet term of reference. It deals with the appointment of advisors by Minister Des van Rooyen allegedly without following proper procedures. Of course appointment of advisors by Minister rests entirely in our submission within that Minister's discretion.

The Legal Team will ask the Commission however, to investigate the following issues: What procedures needed to be followed in respect of such appointment; were they followed and significantly a related question was Minister van Rooyen even aware of the appointments.

It bears repetition that the Legal Team will in all cases Mr Chairman, request the Commission to investigate whether to the extent proven, isolated incidents were or are part of a larger undertaking with each part playing its deliberate and intended role.

10 That brings us Mr Chair to two discreet Terms of Reference dealing with the nature and extent of corruption referred to in Term of Reference 1.5 and the nature and extent of corruption referred to in Term of Reference 1.9.

Term of Reference 1.5, carries out own emphasis, talks of the nature and extent of corruption, if any, in the awarding of contracts, tenders to companies, business entities or organisations by public entities listed under Schedule 2 of the Public Finance Management Act as amended. This Term of Reference may be noted Mr Chair, differs somewhat from the strict State Capture theme contained in the other Terms of Reference and if one goes back to the heading of the Terms of Reference one reads: “as has been pointed out both by yourself Mr Chairman and by the Legal Team that the Commission is required to investigate State Capture, corruption and fraud so the Legal Team will submit that the Commission is enjoined to deal with corruption and fraud which does not necessarily constitute State Capture and this highlighted in these two Terms of Reference. The requirement here on the understanding of the Legal Team is not to investigate only or even all specified and individual acts of corruption but rather to focus on their cumulative

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nature and extent. This Term of Reference is extremely wide as you have pointed out in relation to the Terms of Reference generally Mr Chair. It requires investigation into the award of tenders by public entities listed under Schedule 2 of the Public Finance Management Act and there are some 21 Schedule 2 institutions. They include the Airports Company, they include Armscor, they include the Central Energy Fund, they include Denel, the Development Bank of Southern Africa, Eskom, they include South African Airways, the Central Energy Fund, the South African Broadcasting Corporation, South African Express, the South African Nuclear Energy Corporation, Telkom and Transnet Limited. A vast amount of work then would require to be done in this regard.

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Term of Reference 1.9 is in similar terms but has a qualification. Term of Reference 1.9 requires investigation and recommendations in relation to the nature and extent of corruption again our emphasis, if any, in the awarding and contracts and tenders to companies, business entities or organisations. In this instance by Government Departments, agencies and entities and a qualification which in our submission Mr Chair, does not limit the general introductory part of the Term of Reference, reads in particular whether any member of the National Executive including the President, public official, functionary or any organ of State influenced the awarding of tenders to benefit themselves, their families or entities in which they held a personal interest.

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So it will be noted Mr Chairman that the first part of this Term of Reference is worded in the same way as the first part of Term of Reference 1.5 and accordingly similar considerations to the interpretation and application of Term of Reference 1.5 apply to Term of Reference 1.9 but in this case it is submitted that the Commission is directed to investigate contracts and tenders awarded by firstly, Government

Departments at a central level, Government Departments at a Provincial level, Government Departments at a Municipal level, Government agencies and Government entities.

As far Mr Chairman, as Terms of Reference 1.5 and 1.9 are concerned, the Legal Team will in due course submit to you Mr Chair that a thorough analysis of the nature and extent of corruption in public entities and at all levels of Government should be investigated. This will no doubt involve expert research and analysis of such a nature that will enable the Chair of the Commission to formulate recommendations for remedial action. The Legal Team may in this regard submit  
10 that the appropriate stage to the Commission that it might need to draw on existing expert research. The Legal Team will also Mr Chairman, where necessary suggest to the Commission that it might initiate its own investigations into public entities and Government entities in order to better understand what made some organisations or parts of organisations more vulnerable to corruption than others. To investigate what structures and processes have proved better able than others to withstand the corrosive effects of corruptions, the question remains, are there some general lessons Mr Chair, to be learnt that can inform a wider project of Government renewal.

Mr Chair, I see it is quarter past eleven, would this be appropriate time, I have  
20 somewhere to go but not very long.

**CHAIRPERSON:** I think it would be the appropriate time, we will take the short tea adjournment. It is now quarter past, we will be back at half past eleven.

**ADV PAUL PRETORIUS SC:** Thank you Mr Chairman.

**SESSION 2**

**CHAIRPERSON:** If we say we will start at half past. We will start at half past. Thank you Mr Pretorius. Proceed.

**ADV PAUL PRETORIUS SC:** Thank you Mr Chair. If I may Mr Chair – I would like to deal with a general topic before proceeding further and dealing with the particular witnesses and evidence to be lead and it is to do with a theme that will pervade the presentations made to you in evidence and the submissions in due course to be made before you, Mr Chair and it deals with the essence of Constitutional Democracy and its potential breach – which may be referred to in evidence and may require submissions  
10 and findings in due course. In our submission, Mr Chair, the essence of a representative democracy and in particular a Constitutional Democracy, such as ours, is that the people entrust to the law maker, entrust to the executive and entrust to the judiciary the responsibility to act in their best interests and in particular they should be held accountable if they fail to do so.

In summary and again I refer to the article by Pieter Labuschagne – the essence of representative government is that the elected government act in the interests of those that it governs. Essential to that relationship is that officials can be held accountable when they fail to act according to this obligation and in particular they can be called to account if they act fraudulently and corruptly. We will submit in due course, Mr Chairman  
20 that the ability of the populace the people in general to hold an elected government accountable depends in large measure upon them being properly informed and upon them receiving proper and accurate information. It also depends on people being held criminally accountable for unlawful acts. Part of what this Commission will be asked by the legal team to examine, Mr Chairman, is whether there were attempts to take control

of the public narrative and discourse and if so, whether this was a manifestation of State Capture in South Africa.

What, the question will be asked, was the role of the New Age Newspaper. What, the question will be asked, was the role of Bell Pottinger. Did the state, it will be asked, support the New Age Newspaper and if so why? To the extent that such support might be shown the question is – Was this simply to allow individuals and entities access to state funds or was it to do with the control of the public narrative or was it to do with both and very importantly a theme that will be explored throughout is – have any wrongdoers that might be shown to be such been held to account both within and outside of government, 10 to the extent that the Commission may find that they have not been held to account - further questions can be asked. Is this inefficiency or is it the result of some other cause or possibly is it also a manifestation of State Capture? The question arises will it be necessary to call our government and its law enforcement agencies to account as well.

Returning to the terms of reference then, Mr Chair. It is to be noted that these terms of reference may be added to, varied or amended from time to time – that is the prerogative of the President. The Legal Team may well make submissions to the Chair in this regard – when and to the extent necessary and to the extent appropriate.

Dealing then with the final stages in time and the findings report and recommendations as dealt with in the terms of reference. The first part of the terms of reference place various 20 obligations on the Commission.

- It shall inquire into
- It shall make findings
- I shall report and finally

- Make recommendations.

Term of reference 7 expands on this duty to a degree and records that the Commission shall, where appropriate,

- refer any matter for prosecution
- further investigation or
- The convening of a separate inquiry to the appropriate law enforcement agency, government department or regulator regarding the conduct of certain persons.

Mr Chairman that is clearly too early to state – with any certainty what the investigations will produce. The detail and extent of the evidence that will ultimately be lead and therefore what submissions the legal team will make to the chair, but what can be stated with a reasonable degree of certainty is that the legal team submissions in regard to the findings, report and recommendations that the Chair might make will address the following questions and in the summary I repeat, Mr Chair some of the questions referred to earlier on in this address.

- i. Firstly: Did the State Capture exist?
- ii. Does it still exist in the second place?
- iii. If so how can it be dealt with?
- iv. Has the evidence shown a series of isolated or disconnected occurrences or
- v. Has the evidence shown an organised and comprehensive plan that could be labelled “State Capture” and that has informed all or some of these occurrences?
- vi. Sixthly, has the full extent of any plan of State Capture and its implementation been proven?

**vii.** Seventhly, to the extent that harm has been done to the state, to government, to state entities and state owned entities – can that harm be remedied? If so. How?

Lastly, what can be done – both in the short term and the long terms to prevent a recurrence of what might be found to have occurred and the facts that it might be found to have had. Is prosecution of offenders enough or is more required? Should consideration be given to legislative amendments, to policy review, to restructuring and reorganisation and public entities and their governance? Do provision regulating procurement need overhaul or is it the persons rather than the processes that might be found to be at fault. If the processes are not at fault. How can compliance nevertheless be ensured?

10 In regard to accountability we might mention briefly that of course our criminal law deals with wrong doing mainly through the prosecution of individual criminal wrongdoers. However, wrongdoers have found to have acted in concert may also be called to account as a collective. The Chair, Mr Chairman, will no doubt, in the future, consider reference for prosecutions, further investigations or separate inquiries and these may – if appropriate and in appropriate submission and in appropriate circumstances include the power to make use of the provisions of Section 204 of the Criminal Procedure Act in appropriate circumstances and very briefly Section 204 of the Criminal Procedure Act directs that if witnesses answers frankly and honestly all questions put, the shall be discharged from prosecution with regard to the offence so specified and with regard to  
20 any offence in respect of which a verdict of guilty would be competent upon charge of relating to the offence, so specified.

Now of course, Mr Chair, this Commission has no power to direct the use of Section 204, but if the Commission has the power to direct prosecutions – perhaps in appropriate circumstances it might be persuaded by whomever concerned and in appropriate

circumstance to recommend the lesser remedy provided for in Section 204, but again it must be stressed that no decisions have been made in this regard and it is all subject to appropriate submissions and appropriate consideration by yourself, Mr Chair. At the stage that factual evidence is complete then Mr Chair. The Legal Team may be asked, by the Chair, to lead expert evidence on recommendations, particularly in relation to terms of reference 1.5 and 1.9 the nature and extent of corruption as has been dealt with above or it may lead such evidence on its own initiative.

Dealing now briefly and in summary, Mr Chair, with the evidence actually to be lead in the next two weeks. Later today Adv Norman will make a presentation dealing with reports already received by the Commission and in the public domain. A summary of the content of these documents and the basis of their admission will be dealt with by Adv Norman. These reports may be admitted for what they are and dealt with in evidence – particularly to the extent that evidence is necessary to deal with any controversy that may be contained on a factual basis and otherwise, in these reports.

Over the past few years, and these will be dealt with in detail, Mr Chairman, there have been a number of reports and studies into allegations of State Capture. These include the Public Protector's Report, Parliamentary Committee Reports, Reports commissioned by Treasury, Report commissioned by state owned entities and others. The Commission may be asked to have some regard to those reports, but the legal team will not without further evidence hold them out as being correct.

The legal team may propose that the Commission should not undertake work which will be a repetition of work already done – particularly where there is little or no controversy in relation to facts found and conclusions drawn. But Mr Chair, where there is controversy or possible controversy the legal team together with the investigation team will inevitably

have to do its own inquiry investigative work and thereafter the Commission will be asked to make its own findings.

There will also, towards the end of next week, Mr Chairman, be some expert evidence by your leave in relation to “State Capture” as a concept generally. We know, Mr Chair, that State Capture is not a concept or practice unique, to South Africa – as will be explained in the evidence of experts the phenomenon has manifested in the past in many other countries, it still does. It has manifested too in countries which may be described as democracies in transition, in particular. Experts will deal with these phenomena – a particular expert may be called more than once and more than one expert may be  
 10 called to deal with the various aspects of the Commission’s work, in this regard, but we stress Mr Chair that the fact that reference will be made to State Capture in other democracies, particularly those in transition, is not to diminish its significance in South Africa – on the contrary we may learn from a comparative analysis. Its prevalence and the apparent ease with which it appears in other democracies may sharpen our own vigilance in South Africa. We will also be assisted by the experience of other countries who have had to deal with State Capture with their successes and their failures.

Then there will be evidence on procurement Mr Chairman and that will take place this week. The Legal Team Adv Thandi Norman will seek to lead the evidence of the acting Chief Procurement Officer of National Treasury. The purpose of this evidence will be to  
 20 place before the Commission matters relating to procurement prescripts and policy. Procurement prescripts and policies are will be submitted, central to the Commission’s terms of reference. Some of the questions which the Legal Team will in due course seek to deal with are: Firstly, is the procurement framework prevailing in our country comprehensive and adequate. Is it possible to manage the existing system in such a way as to prevent abuse. Has State Capture insofar as it might be shown and proven been

enabled or permitted by weaknesses in the procurement framework. Simply put, Mr Chair, is it the people or the policies or both and how best are any shortcomings in the procurement framework and its management addressed.

Mr Chair, if I could introduce an interactive slide that will ultimately appear on the Commission website which fundamentally outlines the structure of the executive from the President to Boards and Executives of Departments and State Owned Entities, particularly State Owned Entities. The Legal Team will commence leading evidence on the issues raised in items 1.1; 1.2 and 1.3 of the Terms of Reference. The witnesses will be led by Adv Mokoena, Adv Sello and myself. The witnesses to be called will be  
10 Ms Mentor, Mr Jonas, Minister Nene, Minister Gordhan and others. It will deal with the alleged undue influence by private interests in relation to President – the President and cabinet appointments. What should be noted in this regard in this regard, Mr Chair, is that this evidence will not necessarily be entirely consistent. Our mandate is not to prove a particular version of events. Our mandate is expressly to investigate the veracity or truth of allegations relating to Mr Jonas and Ms Mentor. The resolution of dispute is a fact that might emerge falls within the province of the Chairperson.

The Legal Team is also of the view, Mr Chairman, that appointments cannot be properly interrogated and understood without having regard to their preceding dismissals and the circumstances in which these took place. These matter too will be covered in evidence.

20 As stated Mr Chair, item 1.6 of the Terms of Reference covers a arrange of issues. It deals with the illicit provision of Government Services in favour of private interests. The team leading the evidence under this heading is lead by Adv Maleka and includes Adv Hoffmeyer and others. Amongst the issues that will be dealt with in this session, Mr Chair, and there will be other issues dealt with later is the alleged attempted and actually

appropriation of Government Advertising Budget for the benefit of the New Age Newspaper and possibly the ANN7 Television Chanel 2.

The Legal Team will also seek to present evidence of a witness from Government Communication Information System and that witness will testify about the value structure of the institution, from its inception to date. The procurement processes within the institution and how those values and processes were allegedly undermined when the institution fell under the jurisdiction of Minister Muthambi. Then we will deal, in this session too, with protective steps taken – perhaps unlawfully, perhaps corruptly, perhaps improperly – perhaps all three in relation to members of cabinet or cabinet interfering in the attempts by private banks to close bank accounts of Gupta – the Guptas, the Gupta's associates and Gupta related companies. The question we are required to answer or to lead evidence in respect of is whether any minister or deputy minister acted unlawfully; corruptly or improperly in intervening when several banks closed or sought to close the bank accounts of the Guptas or Gupta related companies.

Then we will get to phase two of the Commission's work. Evidence would be lead at a later stage in this Commission's proceedings by your leave, Mr Chair and this work will hopefully enable the Commission to benefit directly from the work of the investigation team recently appointed and under the direction of Terence Nombemebe. There are, Mr Chair a number of state owned entities whose affairs the Terms of Reference require, in the submission of the Legal Team the Commission to investigate and lead evidence on. These include Escom that team will be led by Adv Maleka. Transnet that team will be lead by myself. Denel that team will be lead by Adv Geabashe. South African Airways that team will be lead by Adv Hoffmeyer. The South African Broadcasting Corporation a team lead by Adv Norman and the Public Investment Corporation team lead by Adv Buthelezi. There will be others as well.

The Free State Vrede Dairy Farm issue, sometimes referred to the Estina issue, will also be dealt with under the management of Adv Geabashe together with certain other issues in provinces and municipalities. Many of the issues relating to, for example state owned entities, are already in the public domain, as will become apparent when Adv Norman addresses you. We will of course not ignore this information as a legal team Mr Chair, but the investigations will no doubt not be limited to information at present in the public domain and relation to state owned entities, Government Departments, Procurement, and the alleged diversion of state resources from its intended goals to illicit private interests, involves a number of discreet issues that need to be dealt with and these matters might

10 include, but not limited to, Mr Chair, alleged undue interference in the appointment of state owned entity boards and executives.

Alleged breaches which might have resulted in standards of corporate governance and ultimately alleged irregular procurement practices. To the extent that procurement irregularities have resulted in financial loss or prejudice. The Legal Team will seek to present to the Commission evidence related to the extent of that loss, if proven and the extent to which the socio ...[indistinct] objectives enjoined by the Constitution have been undermined or simply not met. As far as recommendations are concerned the Legal Team will consider submissions to the Chair in regard to ensuring proper corporate governance and in particular recommendations relating to procurement management.

20 Mr Chair, I have already dealt with requirements placed on the Commission by Terms of Reference 1.5 and 1.9. As already stated in the view of the Legal Team – there is a clear need to rely on detailed research and detailed commentary. As already stated, the Commission will of course conduct its own research and investigations and into corruption generally and scheduled to institutions and at all levels of Government, but in our view the reliance on research conducted or to be conducted outside the Commission

cannot be under estimated in the view of the Legal Team the Commission will in addition no doubt require expert assistance in regard to recommendations in dealing with the findings that might be made in relation to corruption generally.

Then to conclude with a few remarks Mr Chairman. It may appear from what the Legal Team has put before you thus far. That the work of the Commission is intended only to uncover alleged wrong doing on the part of persons within Government and persons outside of Government and to ensure that they are called to account for their alleged deed insofar as such maybe proven before you, but to regard the work of the Commission in this light alone would be to ignore at least one of its more important aims.

10 Mr Chair, in the leading publication on Public Inquires by Bear QC reference is given - the learned author has highlighted a major purpose of a public inquiry as being to restore public trust and confidence in Government to the extent that this Commission might show that this country has been beset by the phenomenon of State Capture, the obvious demand on the Commission will be to recommend what needs to be done to address such a finding. Mr Chair, experts on State Capture that we have consulted thus far – tell us that South Africa is exceptional amongst post-colonial democracies in the manner in which the international phenomenon of State Capture has been responded to, by our judiciary – by aspects of Government – by our Chapter 9 institutions – by civil society. It is exceptional in the way that this phenomenon had been responded to. It is exceptional in  
20 the way it has been and continuous to be investigated and dealt with. So, if in continuing this work viable solutions can be examined and proposed in its recommendation, Mr Chair. We submit to you that this Commission can indeed play a positive role, not only or South Africa, but internationally as well. The is the Legal Team’s opening. Thank you.

**CHAIRPERSON**: Thank you very much Mr Pretorius for that opening statement. You indicated that the next item would be the presentation of reports, if I remember correctly by Adv Norman. Is that correct?

**ADV PAUL PRETORIUS SC**: Yes, subject to one qualification, Mr Chair, and that is that there are various legal teams eager to place themselves on record and perhaps you may consider a short adjournment to consider that Mr Maleka will be dealing with this aspect of this morning's proceedings and I am not sure whether you would want to meet these teams in chambers prior to continuing to allow them to place themselves on record or how you would wish to deal with it.

10 **CHAIRPERSON**: Do you know how many there are, in terms of ...

**ADV VINCENT MALEKA SC**: Chair there are many. My respectful suggestion is that, before you even meet them in chambers or otherwise invite them to place their names on record – who they appear for and what sort of directions they may be invited to make with reference to the interest they represent.

**CHAIRPERSON**: Mr Pretorius, maybe it would be better to let them come forward and say what they are asking me to do and once I have an idea then maybe we – I can meet them in my temporary chambers here without – when they indicate what they would like me to do, for them or their clients, at this stage I am not asking for any ...[indistinct] I would be wanting just an indication – I think maybe let us do that – do you have  
20 something to say about taking that direction Mr Pretorius?

**ADV PAUL PRETORIUS SC**: No, no as you please Mr Chair. I would just suggest that we adopt the court procedure to avoid chaos of this legal representative introducing themselves in order of seniority.

**CHAIRPERSON**: Well, I think I am going to ...[indistinct] let me take an adjournment now and Mr Maleka, Mr Pretorius or the Commission's Legal Team or some of them can then bring those legal teams over to my chambers so I can – they can introduce themselves and then we will take it from there. We will come back here.

**ADV PAUL PRETORIUS SC**: Yes.

**CHAIRPERSON**: Is that right?

**ADV PAUL PRETORIUS SC**: Thank you.

**CHAIRPERSON**: Yes. So we will take a short adjournment now and it should take not more than 10 minutes. Thank you. We adjourn

10 **COURT CLERK**: All rise.

**HEARING ADJOURN**

[End of recording]

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**SESSION 3**

**CHAIRPERSON**: Mr Pretorius?

**MR PAUL PRETORIUS SC**: By your leave Mr Chair Advocate Maleka will deal with the next session of proceedings.

**CHAIRPERSON**: Thank you. Mr Maleka?

**ADV VINCENT MALEKA SC**: Thank you very much Chairperson. As we have indicated to you in Chambers, there are several of our colleagues who appear for a number of individuals who have been implicated. Or may well be implicated, by witnesses who are going to testify before you in the next several days. All of those persons have been given  
10 notices in accordance with the requirements of Rule 3 of the rules and regulating the proceedings of the Commissioner. And they have indicated that they like to make some submissions to you in order to make directions regarding their rights if any to cross-examine witnesses who may be testifying before you and also any choice or election they may make in regards to filing their own opposing sworn statements. And who their rights to testify in person with or without additional witnesses. Subject to your direction I would like to invite you Chair, to invite those other colleagues to place their names on record and indicate who they represent and also indicate to you what sort of directions they would like you to make. I know that one of them Mr Chair is Mr Mike Hellens, and perhaps he should start not only because of his colour or seniority but the enthusiasm  
20 with which he indicated that he would like to lead this part of the discussion on behalf of the implicated individuals.

**CHAIRPERSON**: Thank you, we have – I've had a discussion with the legal representatives of various parties in my temporary chambers here. May I invite you maybe in the order in which you spoke in chambers to come forward and place yourself

on record and indicate what you would like to say and maybe Mr Pretorius might wish to remove the file on their, thank you.

**ADV MICHEAL HELLENS SC:** Thank you Mr Chairman, my name is Micheal Hellens Senior Councillor of Johannesburg, I appear together with Mr Dawid Joubert SC instructed by Rudi Krause of BDK Attorneys on behalf of Mr Ajay Gupta. But I do so in relation to the rules 3.3 notices served on the 6 of August in respect of the evidence of Ms Vytjie Mentor and Mr Themba Maseko. They were left at the gate of the Saxonworld residence of Mr AJ Gupta. I do not appear in respect of the evidence or implications of the evidence of Mr Mcebisi Jonas. I also represent with the same team Mr Ajay Gupta in  
10 respect of any other allegations that maybe made and we heard a wide ranging and very able introduction by Mr Pretorius. On the lengthen and breath of that which is going to be dealt with in this commission. It would appear to us that we may be due a number of other 3.3 notices, but at the moment we just have those two. And as indicated in chambers we would invite the evidence leaders to engage with us and to give us such notices as soon as possible.

To sketch the back ground or the introduction to our appearance here is that naturally has with the rest of the nation, we've known that the commission would start. But when and how and what the mechanics would be were not known to us until at least the 3.3 notices were served the rule 3.3 notices were served and in part also the able address of Mr  
20 Pretorius. So now the planning from our side can ably begin but the rules as your aware and the public should know require us firstly to be give reasonable - given reasonable notice and we know sir that the commission had to start somewhere somehow and you've done a lot of work in being ready to prepare. So we make no complaint of what is technically short notice we simply propose to put in place by if you give us leave to negotiate with the evidence leaders, a reasonable time frame in which to deal with the

evidence. At the moment I am speaking in relation to the evidence of Vytjie Mentor and Mr Maseko but I speak also broadly to my learned friends on my right and left. In relation to such future pieces of evidence that may call for cross-examination or evidence from our clients. So the notices state the witnesses will give evidence at the hearing commencing on the 20 August but we know that this is the commencement and not necessarily the date on which all these witnesses will give evidence.

It appears to us that the whatever the plans are of the commission, it need not be interfered with by our temporary and justified lack of readiness because the witnesses in our respectful view can still give evidence in terms of the planning of the commission.

10 Because transcription will be available and no doubt even video facilities might still be available. So we would not interfere with the program of the commission in relation to when the evidence is led. But we would ask that we make practical arrangements not aimed at delay but merely to get ready. In terms of the rules to present cross-examination and to present such affidavits or evidence as we are required by the rules to file in order for you to exercise your decision making powers in relation to the range of cross-examination, the nature of evidence and the differences between what the commission is leading and what we might want to put forward. But for that we do need a little time, and we have discussed that broadly already in chambers and I am sure my learned friends and I my team, will reach accommodation with each other.

20 Just a slight correction without starting the war we have not been given due notice as Mr Maleka said under the rule it is actually quite short notice but we make no complaint about that. And in a nut shell we would ask for time to make appropriate arrangements for us to represent our client at this stage Mr Ajay Gupta, in relation to the two raised issues but at the same time we indicate publicly and to my learned friends if there are other issues please give us timeous notice so that we do not delay the proceedings of

this inquiry. Our suggestion just to think about is given the demands on our time in relation to our own practices and prioritising being ready we believe we would be ready to cross-examine by the 1<sup>st</sup> week of September at the latest but the actual detail will be with the evidence leaders, subject to your decision sir. Thank you.

**CHAIRPERSON**: Thank you very much Mr Hellens. Thank you.

**ADV DAWIE JOUBERT SC**: Thank you Mr Chairman, my name is Dawie Joubert and I am a member of the Johannesburg bar and I confirm that I appeared together with Mr Hellens as he set out and we obviously echo the same sentiments.

**CHAIRPERSON**: Will you please just raise your voice a little bit it is rather soft.

10 **ADV DAWIE JOUBERT SC**: I also am instructed by Pieter van der Merwe Attorney, to appear on behalf of Mr Ajay Gupta, in relation to the evidence which Mr Jonas might give. We are awaiting instructions on behalf of Mr Duduzane Zuma, and Mr Rajesh Gupta with regard also in relation to the evidence of Mr Jonas. Hopefully by early next week we will get clarity on that. Similarly the section 3 or rather the rule 3.3 notices were only served in respect of Mr Ajay Gupta and Mr Rajesh on the 13<sup>th</sup> of August incomplete and that in respect of Duduzane Zuma was only served on the 14<sup>th</sup> according to instructions. Thank you Mr Chairman.

**CHAIRPERSON**: Thank you in terms of what should happen you are align yourself with the attitude taken by Mr Hellens in terms of what should happen going forward from now?

20 **ADV DAWIE JOUBERT SC**: Indeed so.

**CHAIRPERSON**: Thank you.

**ADV DAWIE JOUBERT SC**: Thank you.

**ADV JAAP CILLIERS SC:** Thank you Mr Chair I am Jaap Cilliers I am senior council on the Pretoria bar I am instructed to by Mr Soffenstroom Fouche to act on behalf of Mr Fana Hlongwane in this matter. We have received the 3.3 notices but only on the 10<sup>th</sup> of August. And also in our instance the statement provided as an annexure to the notice of Mr Jonas was completely incomplete in the sense that I gather from the statement that at least 6/7 pages were missing and not sent through to us. But also we don't want to complain we also align ourselves with the sentiments expressed by Mr Hellens in this regard. If we can have the opportunity to discuss the matter with the legal team, and arrange times in order to be provided the opportunity then to prepare for cross-  
10 examination of Mr Jonas. Because at this stage I can indicate to you Mr Chair that my instructions are that Mr Hlongwane, indeed want to participate in these proceedings. At least at this stage to cross-examine Mr Jonas and thereafter to take a decision as to whether he deems it necessary to testify and recall that this as you indicated the he may be entitled to. So but for purposes of the procedures to be followed we align ourselves with the views expressed by Mr Hellens. As you please.

**CHAIRPERSON:** Thank you Mr Cilliers.

**ADV MUZI SIKAKHANE SC:** Thank you Mr Chairperson. My name is Muzi Sikakhane I am a senior council from the Johannesburg bar the [indistinct] Group. I am with Mr Masuku SC and me, Mr David Sikakhane we both representing we all representing Mr  
20 President Jacob Gedleyihlekisa Zuma. Chairperson we wise, our position is slightly different as we discussed in the in your temporally chambers in that while we seek an opportunity to respond to the commission in terms of 3.4. The application we wish to make today is in terms of 3.5 which of course requires that we be given sufficient opportunity in that I am starting at the end that is the opportunity we seek and that it is in terms of that rule that we make this application. But having said that because I started at

the end we wish to make the following point. Is that we have received three notices, and I appear on behalf of Mr Zuma in relation to that notice which is the notice from which relates to Mr Maseko, the second one relates to Ms Mentor, the last one which we got at 21:25 on Friday in the evening, relates to Ms Williams. I mention the time because we want to make it clear that we do not want to delay this process and to the extent that our learned friends have suggested the way forward, depending on the election we make we have no intention of stalling that process. It doesn't matter what we elect to do. But the point that I wanted to put onto record Chairperson is that we received the notices on the 3<sup>rd</sup> of August and those are notices in relation to Ms Mentor and Mr Maseko. And as I

10 said we have received the other one on Friday. But the issue really that has made this difficult for us is that we have raised questions. And those questions are not just for the particulars, is to obtain certain documents because we want to make a meaningful participation in this process this very important process. And so what we asked are documents that we believe will make it easy for us to know what case we have to meet if we make the election that the implications that the commission will make on the statements are the elements about which we think we should or the client thinks he should come here. And therefore what we request Chairperson is that we be given time starting from today because as I said, we got a 103 page document only on Friday when we requested further documents. And therefore we want to place it on record that we will

20 make no delays, we will course no delays but we want to be given time to make that election to whether to exercise rule 3.4 which says we must make a statement. But we unlike my other learned friends we've not made that election because we require to know exactly what case to make. I do not have repeat the documents that we've ask for. they self-evident because this process is truly about getting the evidence and it is not a

process about any flimsy discussion at coffee shop with a friend it requires evidence and we want to place on record the proper case.

**CHAIRPERSON**: Thank you very much Mr Sikakhane.

**ADV WELCOME LUSENGA SC**: Thank you Chair. My name is Welcome Lusenga I come from the Pretoria bar. I will be led by Similbale SC in this matter. I approach on a different footing, in that I act for the Minister, the former Minister of Public Enterprises subject to confirmation of instruction, director General and possibly the Chief Director. Unlike other speakers we've reason our –

**CHAIRPERSON**: we want to immediate former Minister of Enterprises Ms Brown.

10 **ADV WELCOME LUSENGA SC**: Indeed. Unlike other persons who have reasoned before you our client did not receive any notice nor are we soliciting for any notice. Given the nature of the terms of reference, given the institutions that have been covered, which were in her portfolio. Given the developments in other commissions outside of this one. It is likely that she may be implicated by the evidence that would be led different witnesses on different aspects. To be able to exercise her rights fully to make the elections that she needs to make and possible refute any evidence that have been placed implicating her. We request that we hopefully from today be included in all correspondence relating to notices that have been issued or that are going to be issued. The summaries of the witness statements that are given or other participants in this  
20 matter. As far as the participation is concerned we like the other legal teams stand on that footing we do not want to delay this matter. We will align ourselves in terms of the arrangements that let the evidence be led our cross-examination if any will be deferred to an appropriate time so that the commission's times does get wasted. Thank you very much Chair.

**CHAIRPERSON:** I don't suspect that Mr Maleka or there still want more council.

**ADV HENRY COWLEY SC:** Thank you Mr Chairman. Henry Cowley council from Johannesburg I am instructed by M van Huysteen and Botes on behalf of Ms Lakhela Kuanda the former PA to the former President. She is been implicated in the Mentoor matter and although we've received short notice we also do not intend to hold any of the proceedings. And we are considering a position in terms of rule 3.4. Thank you Chair.

**CHAIRPERSON:** Thank you very much. I don't suspect that Mr Maleka you have anything to say in response to what the various council have said. Basically in terms of what should happen from now on in regard to them.

10 **ADV VINCENT MALEKA SC:** No Chair I don't have much to say except to ask you to note the following. As far as we understand the rules and the regulations no person has the right to cross-examination. And that whoever wants to cross-examine a witness who gives oral testimony before you, they must make an application to you. One requirement of that application is that they must file with the secretary of the commission. A sworn statement indicating the extent to which they dispute the written testimony of the witness concerned. To the extent that it is now common course between us and our learned friends who represents the implicated persons now on record. They have now made an application that they would like to cross-examine those witnesses. And we grateful to them that they not going to interrupt the oral presentation.

20 **CHAIRPERSON:** Well I don't think anybody has made the application as yet but I have no doubt that they or at least some of them maybe intending to do so in due course. What I understand to be the position is that they are saying in terms of the rules once their clients have received a witness statement that is alleged to implicate their clients. There is a certain period within which they must respond to that statement, and yes I

think most of them are saying they received the notices. The notices they received didn't give them enough time to deal with that. Because that is the first step after getting or receiving the notice of witness statement which implicates your client. And I think what they are saying in effect is we need to consult and be able to respond to these allegations. We are not asking that proceedings be adjourned until we've have done that. We think that it can it will suffice if the witnesses implicating our clients continue to give evidence as long as we will be given an opportunity to read the transcript and then have an opportunity to cross-examine. Obviously they will have to they will have to apply for leave to cross-examine and technically they would only know whether they want or their

10 clients want to cross-examine once they have dealt with the issues that are on which their clients are implicated in the affidavit. So my understanding is they are not making the application now, but I think we can expect that they may well make that application after they have dealt with the first hurdle namely response to the witness statements that they clients have received.

**ADV VINCENT MALEKA SC:** I understand Chair, so I will not raise that issue any further for the present purposes. All I wanted to put on record is that we have returns of services indicating when the statements were served on the implicated persons. I am not going to raise the debate at the moment it might become important but just to indicate to you that the first set of notices was served on the implicated persons including Mr Ajay Gupta in

20 the 1<sup>st</sup> of August this year the 6<sup>th</sup> of August this year and we may have a debate in due course about whether or not that is reasonable within the meaning of the rules. So I leave that issue for later debate.

**CHAIRPERSON:** As I indicated I would be inclined to give persons or who are legal representative who need time to comply with the rules in terms of responding to statements that implicates their clients. Particularly when we are able to proceed while

they do that. They have asked to be given a chance to consult with the commission's legal team to see what maybe agreed which will be subject to my approval in terms of what time they should furnish those responses. I think that the best way to deal with this is that since it is now 12:45 we should adjourn now for lunch earlier than would normally be the case. And the time can be used to discuss for discussion between the... or part of the time can be used for a discussion between the legal representatives of the various parties with the commission's legal team. And when we resume after lunch then I can be informed of how far those discussions went. So I think that is what we are going to do, we would I would say we will need to come back at 14:00 but I don't know whether the 15  
10 minutes before lunch which we have now and the lunch hour are part of it, counsel too must eat. Whether that would be enough for the discussions whether we should start a little later than 14:00. I don't know whether anybody is able to indicate whether 14:00 will give you enough time.

**ADV VINCENT MALEKA SC:** Chair can I suggest that we resume at 14:00 unless we inform you otherwise.

**CHAIRPERSON:** Very well we will then adjourn until 14:00.

All rise!

**SESSION 4**

**CHAIRPERSON:** Mr Maleka, are you ready to update me on the discussions?

**ADV VINCENT MALEKA SC:** Yes Chair, we have had a fruitful discussion with colleagues and we have reached some sort of accommodation. First Chair, we would like to place on record, that all of them, or their clients, have received statements which implicate or may implicate them. Secondly, we have furnished a bundle of evidence documents which will be canvassed by Mr Maseko, in the course of his oral testimony to all of those who would be implicated or may be implicated by his evidence.

We have undertaken to furnish similar bundles to those who may well be implicated by  
10 the evidence of Ms Mentor and also Mr Jonas by latest Wednesday morning. We have confirmed with our learned friends, that they will be entitled to attend, be, present and listen to the oral testimony as and when those witnesses testify.

They will apply at a moment convenient to them, to you regarding the privilege of cross-examining any or all of those witnesses. It is not clear to us when that application or those applications will be made, but that is a matter which will engage them rather than us. Chair, we have also indicated to them, that we have a timetable setting out the dates when each of those witnesses will testify. To the extent possible, we will re-arrange the timetable concerned, to accommodate the presence of our learned friends to listen to the evidence of those witnesses.

20 If we can't and it is impossible to re-arrange, having regard to the prior arrangements that we have made with those witnesses, then we will immediately make available the transcript of the evidence of those witnesses so that they are aware and know what was said about and concerning their clients.

That is as far as matters are at the moment and I hope that I have correctly reflected the arrangements we have made with our learned colleagues.

**CHAIRPERSON**: The part that I may be concerned about, is re-arrangement of the programme in circumstances where they accept that even if the witnesses testify in their absence, they will have access to the transcript and we would therefore, if granted, leave to cross-examine, not really be prejudice in way by not having been there, so that is the part that concerns me, because I would like us to stick as far as possible, to the existing plans and programme.

10 Maybe either they or one of them may just confirm that that is the arrangement, but also maybe might wish to say something in regard to what I have just said. Maybe before he does, I say he because I think it is all he's, maybe before he does, Mr Maleka do you want to say anything about this remark I have just made?

**ADV VINCENT MALEKA SC**: No Chair we will be guided by the directions you have made. After all, you are in charge of the proceedings. I accept that there will not be any prejudice if they have access to the transcript or the evidence immediately but evidence being what it is, people want to see the witnesses and test their demeanour, but that is a matter that they should address you on rather than me.

20 **CHAIRPERSON**: No I accept that, but as you will recall, my discussion with them in chambers, they immediately accepted that they did not want to cause any delays and provided they could have access to a transcript, they would not be prejudiced. Mr Hellens I am sure will confirm?

**ADV MICHAEL HELLENS SC**: Thank you Chair, I confirm everything that Mr Maleka had to say. With regard to being present when the witnesses gave evidence, we do not go back on either what I said from this podium or to you in chambers, the thought was

though, that it would be hugely beneficial for us to see the witness giving evidence, because you don't see demeanour, you don't see pause, you don't see a look of worry, or a look of joy, on the face of a witness, so not standing on that principle, but suggesting that if it were no major disruption to the programme and we did hear that maybe one witness would not be available on one day and they might have to change the programme for one day on reasons not bearing on our needs, if we could be accommodated, that would be nice. But if we can't be, because it is a disruption, then so be it, but if it can be, because it is something that partly was happening anyway, then we would gratefully accept being present, that is our arrangement. For the rest, Mr Maleka is

10 entirely accurate.

**CHAIRPERSON:** Thank you very much. That arrangement is approved subject to the remark that I made. If in the process, there might – if the legal team or the commission, thinks that in a particular case, it might just be a slight adjustment, that wouldn't cause much disruption, they can talk to me and if I am satisfied, I can approve, but I would really like to keep the programme as is, but as I say, where it is just a slight adjustment and then there would be an accommodation, we would look at that, but I wouldn't like any serious disruption of the programme.

Okay thank you, I have therefore approved that arrangement in respect of the parties whose counsel placed, themselves, on record here earlier on, thank you.

20 **ADV VINCENT MALEKA SC:** Thank you Chair for your direction.

**CHAIRPERSON:** I don't know whether I should say Mr Maleka, or Mr Pretorius or Ms Norman, is it Ms Norman thank you.

**ADV THANDI NORMAN SC:** Thank you Mr Chairperson. As my learned friend Mr Pretorius has indicated, mine is to really place some documents before you. I start off by

just confirming what the Chairperson has already alluded to, that in terms of the terms of reference, this Commission in doing its work, it has to be guided by amongst other things, the Public Protector's Report and also the case that the Chairperson has already referred to.

In its judgement and in particular Paragraphs 132 to 140, the court in that judgement, which is the Gauteng Division in the President of South Africa versus the Public Protector case, in Paragraphs 132 to 140, the court dealt with the truth finding nature of the commission of inquiry as pronounced by the Constitutional Court in the various decisions mentioned in those paragraphs. The court also confirmed in Paragraph 140 of its  
10 judgement, that a judicial commission of inquiry, is by its nature, pre-eminently suited to carry out the task of investigating the allegations of state capture contained in the Public Protector's report.

The Public Protector herself had recommended that there be further investigations through this body. That therefore means that this commission is at liberty to find the facts wherever they may in order to fulfil its mandate as provided for in terms of reference.

Before you Mr Chairperson, I will be placing documents which I regard as compulsory documents, compulsory foundational documents and those documents would be as mandated by Paragraph 1 of the terms of reference, would be the Public Protector's State of Capture Report and the judgement that has been referred to, which are referred to as  
20 the guideline documents.

It is therefore in our view, imperative that those two documents be placed before the Chairperson formally to fulfil that. I will do so shortly, but before I do so, I need to bring to the attention of the Chairperson, that there are other reports which have been brought to the attention of the commission. However, they cannot at this stage, be placed before

the Chairperson due to the fact that the commission is attending to matters relating to inter-alia authenticity of those documents, the claims of confidentiality and other matters.

We are mindful of the fact that where the authors of the reports and those commissioned them, have placed them out there for the public to be able to access them online even though they are marked private and confidential. The commission may argue that those persons have waived their rights to privilege and we refer in this regard, to the decision of the Supreme Court of Appeal in Competition Commission of South Africa versus Arcelor Mittal SAL Ltd 680122013ZASCA8431MAY2013 at Paragraph 33, where the court when dealing with the issue of this related to litigation privilege, waiver may be expressed, 10 implied or imputed. It is implied if the person, who claims the privilege, discloses the contents of a document, or relies upon it in its pleadings, or during court proceedings. It would be implied to if only part of the document is disclosed or relied upon.

For a waiver to be implied, the test is objective, meaning that it must be judged by its outward manifestations. In other words, from the perspective of how a reasonable person would view it. It follows that privilege may be lost as the English courts have held, even if the disclosure was inadvertent or made an error. Imputed waiver occurs when fairness requires the court to conclude that privilege was abandoned.

We quote these remarks because we are going to say those remarks they apply equally to the reports that are available online, but marked privileged private and confidential. 20 Where the commission is not getting cooperation in relation to those reports, it will use them on the basis that privilege was abandoned when they were published online.

Those reports will be mentioned in my presentation, but the findings thereof, will not be dealt with. The contents thereof will be referred to only to a very limited extent to

demonstrate the need to call for them from those who commissioned those investigations and to show the need to further investigate as this commission.

There will be reports that are relevant to the work of the commission, they are in the public domain and are readily accessible. Those reports will be mentioned herein, but their status will be regularised in due course. There are also research reports Mr Chairperson that are in the public domain which shall be mentioned but not dealt with herein, simply because they do not fit within the provisions of Rule 65 of the rules of this commission.

10 There might be an exception in this regard, namely a report compiled by the People's Tribunal because it appears that the tribunal viva voce evidence, but also relied on research. The tribunal will be engaged with a view of obtaining the evidence in terms of Rule 65 of the rules of this commission. Rule 61 of the rules of the commission provides that the commission may receive any evidence that is relevant to its mandate, including evidence that might otherwise be inadmissible in a court of law. It further provides that the rules of evidence applicable in a court of law need not be strictly applied to the determination of the admissibility of evidence before the commission.

20 Although the rule is permissive, the commission is doing its best to ensure that constitutional rights of those that may be affected, are observed in dealing with the documents and the reports submitted. There are several institutions that have investigated, these would include National Treasury, they have investigated these issues relating to state capture and they have produced reports that have direct relevance to the work of the commission, but those reports are not available at this point. They will be placed before the Chairperson when they have been submitted to the commission by the entities that had commissioned them.

All the reports, including those of the Public Protector and the Parliamentary committees, will be submitted for the following reasons (1) to report their existence, (2) to request the Chairperson to admit them provisionally and (3) to request that it be recorded that those reports and documents submitted, they are what they purport to be.

I will accordingly apply the end of the presentation, for their provisional admission and the recordal that they are indeed what they purport to be.

Thank you Mr Chairperson, now I move on to do the presentation that will highlight what reports are in our possession and what the nature of the reports are. Then we start off by outlining a presentation on the reports submitted to the commission, that is what we have  
10 in the first slide and then in the second slide, we have the Public Protector in the centre and we have the institutions that are referred to in the report which is South African Broadcasting Corporation, we have Denel, we have Eskom, we have South African Airways and Transnet.

In the next slide, we deal with the overview of the reports. I think it is important to mention that these reports of the Public Protector, is available online and it consists of 355 pages. This was received from the Public Protector on the 13<sup>th</sup> of April 2018. The record, that is the record that would go with the report, was also received from the Public Protector in sealed boxes containing documentation, transcripts and voice recordings, interviews and 2 DVD's sealed in a bag under the affidavit of Mr T. [Nwako] an IT Support  
20 Manager, those were also delivered to the commission.

The Public Protector reported on an investigation into alleged improper and unethical conduct by the former President and other State functionaries relating to alleged improper relationships and involvement of the Gupta family in the removal and appointment of

ministers and directors of State owned enterprises, resulting in improper and possibly corrupt award of State contracts and benefits to the Gupta family businesses.

We are still dealing with the overview of these reports and then the next reports that we put up, these are the reports that are marked confidential and private. The Chairperson would observe that the first one would be from Workman's Report on the 1064 locomotives, acquisition of the 1064 locomotives for Transnet general freight business inquiry report. It has 117 pages and the investigators are in the process of regularising this report before it can be utilised fully by the commission in its work.

10 Then the next one is that of Mncedisi Ndlovu and Sedumedi Attorneys which is referred to as the MNS Report. It also relates to the 1064 locomotive transaction and it is dated the 5<sup>th</sup> of June 2018, it is 144 pages. Similarly, this report is marked private and confidential and the investigators are also attending to regularise its status.

Then the next slide is the overview of the report still, where we make mention of the ENS forensics report on Vrede Farm, which is what my learned friend Mr Pretorius, referred to as commonly known as the Estina Project. The final report on the investigation on the Vrede Farm Project by ENS is dated 11 February 2014 and it is 60 pages.

We have the reports from the Portfolio Committee on Public Enterprises and Department of Home Affairs. These documents are committee minutes, transcripts of the proceedings on State capture that took place before the Portfolio Committee on Public Enterprises, Department of Home Affairs, enquiry into Eskom Transnet and Denel. The 20 enquiry into Home Affairs related to inter alia, granting of citizenship to non-South Africans. These reports were received by the commission from the House Chairperson, Parliament's Oversight Committee Mr C.T. Frohlich on 17 May 2018.

Then the next slide is an overview of research projects. Mr Chairperson would be aware that there is quite a number of documents out there where individuals, NGO's, interested parties, civil society, have done their own investigations on this whole concept of State capture and they have produced reports and we mention them here and we have the reports from the Public Affairs Research Institute that is commonly known as PARI. There are 3 reports, the first one being betrayal of the promise, how South Africa is being stolen, State capacity research project dated May 2017, 72 pages. It looked into Transnet, into Eskom Denel and South African Airways.

10 Then the next one is also from PARI, entitled evidence for the People's Tribunal on economic crime, State capture, the case of Denel and VP Laser dated January 2018 and it is 33 pages. It also looked into Transnet, Eskom, Denel and South African Airways.

The next one, Eskom inquiry reference book version 3, it is 26 pages, that looked into Eskom and then we have Transnet inquiry reference book version 1, 36 pages, it is also related to Transnet and all of these reports are available online.

We have also still under research projects, a report from Bishop Mpumlwana, South African Council of Churches which is entitled Unburdening Panel and the SACC conducted some research into State capture and its findings showed at least 7 ways the scheme to loot State resources, has been executed in South Africa. This report too, is available to the public online.

20 Then the next report which already we have intimated to this one where we are dealing with PIRA reports, from the People's Tribunal on economic crime, dated 7 February 2018, they investigated inter alia, allegations of State capture involving Denel and its associated companies in the acquisition distribution and manufacture of arms and ammunition. The members of the panel, are retired Justice Zak Jaco, retired Judge Navi Pillay, Ms

Mandisa Jantjie, Mrs Allison Meynard Gibson QC and Mr Dingwa Sekwebu. The Tribunal in its preliminary findings, recommended among others, a full investigation into corruption and State capture.

Then we deal now with the Public Protector's report and what had prompted that report, because that is necessary as to form the basis for all the documents that are going to be placed before the Chairperson. The Public Protector had received 3 complaints. One from Father Esmaybo on behalf of the Dominican Order and from Mr Mmusi Maimane, the leader of the Democratic Alliance and a member of the public whose name was withheld.

- 10 In analysing the complaints, the Public Protector grouped the investigation into one, alleged breach of the executive member of Ethics Act 1998, awarding of contracts by certain organs of State to entities linked to the Gupta family and the Public Protector has made adverse findings against certain individuals, persons and entities as reflected in her report.

The two-phased inquisitorial investigation process to accommodate the time and resource of limitations, by addressing the person in question threatening to erode public trust in the executive and also SOE's, that is what the Public Protector phrased the nature of the inquiry that she adopted.

- 20 In Phase 1, she did not touch on the award of licences to the Gupta family. She superficially touched on the State financing of the Gupta/Zuma business while only selecting a few State contracts. The process for Phase 2, which is the final phase of the investigation, was mapped but not undertaken. In Paragraph 4.21, the Public Protector indicated that the investigation into Denel will form part of the next phase.

At Page 337, Paragraph CCC, the Public Protector stated that the investigation into the conduct of the Bank of Baroda in relation to the purchase of oil shares in Optimum Coal Holdings by Tageta and the rehabilitation fund had not been evaluated by her and would form part of the next phase of the investigation.

Then Mr Chairperson, we would also like to refer you to Page 351 of the Public Protector's Report where she indicated that she intended to investigate in the next phase, whether any State functionary in any organ of State or other person, acted unlawfully, improperly or corruptly in connection with exchange of gifts in relation to Gupta linked companies or persons.

- 10 As part of the remedial action listed at Pages 353 to 354, the Public Protector recommended that the President appoint a commission of inquiry headed by a judge solely selected by the Chief Justice who shall provide one name to the President. This commission was then established in compliance with her remedial action.

That State capture report has attached to it, supporting documents. These are not all the documents, because of the nature in which they were submitted to the commission, we still need to paginate and index all of the documents before we can submit the copies of the originals, but we mention some of the exhibits that have been attached. From exhibits 1 to 27, exhibit 27 has 3 annexures, the transcripts of the reports, hearings between the Public Protector and the former President Mr Jacob Zuma dated the 6<sup>th</sup> of  
20 October 2016, which is, 89 pages.

We also have transcribed interviews of Mr Rob Davis and Mr Fikile Mbalula. We have a voice recording of the conversation between the Public Protector and Mr Pravin Gordhan and we have transcripts which are dated 9 September 2016 of the following persons, Mr

Mcebisi Jonas, Mr Nhlanhla Nene, Mr [Hglana], Mr Themba Maseko, Ms B. Hogan, Ms Vytjie Mentor, Mr Jacob Zuma, Mr Julius Malema.

Then we move on Mr Chairperson to the Portfolio Committee on Public Enterprises. We have already mentioned this inquiry into Eskom Transnet and Denel between the, period, 17 October 2017 to 27 February 2018. The Portfolio Committee on Public Enterprises also provided information, the transcripts from day 1 of their proceedings on 17 October 2017, but there were just 2 transcripts for 2 days that were not attached to the bundles and those have been requested by the commission from Parliament and those days is Day 16 and Day 19. We also list in the previous slide, the number of pages each transcript consists of.

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Then following that Mr Chairperson, is information provided also still from Parliament from the Portfolio Committee on Public Enterprises, they have statements that were made to that committee and those statements have also been made available. The statement from Ms Dudu Myeni, statement from Ms Masilo Matepo, statement from Mr Abraham Masango, statements from the Deputy Minister Ben Martins, statement from Dr Baldwin Ngubane and statement from Dr Zweli Mkhize.

We also received other statements from DTI. I will simply mention the names of the persons that had given the statements from DTI, Eskom, Exxaro, G9 Consulting Services, Minister Lynn Brown, Mr Gigaba, Minister of Public Enterprises, Mr Anoj Singh, Mr Brian Molefe, Mr Koko, Mr Linel, Mr Tsepo Lucky Montana, Mr Koma, Ms Suzanne Daniels, Mr Zola Tsotsi, Ms Bianca Goodson, Ms Erica Johnson, Ms Vanela Klein, Ms Veroshni Naidoo, Mr David Robert Fine.

20

We also have submissions from the EPPF, from Eskom Inquiry Reference Book, from Webber Wentzel, representing Ms Bianca Goodson we have Section 34 report from Piers Marston we have ABSA statements on Tageta dated 17 November 2017.

Then we have the inquiry by the Portfolio Committee on Home Affairs into the naturalisation of the Gupta family. Those transcripts, we have listed them on the 27<sup>th</sup> of June 2017, another transcript of the 22<sup>nd</sup> of August 2017, another one 27<sup>th</sup> February 2018 and 6<sup>th</sup> of March 2018.

The report on granting of naturalisation to the Gupta family, Mr Rajesh Kumar Gupta, R.T. Gupta, Mr Atul Kumar Gupta, Jeetali Gupta, Shashunk Singala and Srikanth  
10 Singala, there were reports on granting of naturalisation to the Gupta family, the relevant acts like the South African Citizenship Act, were also attached to those reports and the Aliens Control Act of 1991 was attached.

The Department of Home Affairs standard operating procedures on citizenship dated August 2016, a list of names of persons granted early naturalisation applications for 2013, 2014 and 2016 in terms of Section 5 sub-section 9 (b) of the South African Citizenship Act of 1995 were also attached. Agreement between the, government of the Republic of South Africa and the government of the Republic of Indonesia, on visa exemption for holders of diplomatic official and service passports, tabled in terms of Section 231.3 of the constitution. There were also documents submitted by the Gupta  
20 family and/or related entities on investments and charitable contributions.

Then we tried to, according to the record and the information received, tried to create ticks of what documents related to each individual within that family and we have done that in accordance with what the evidence of the Portfolio Committee was, which shows who had details of the travel particulars, application for temporary residence permits,

application for work permits, applications for an extension of validity or renewal of an existing permit, permanent residence applications, immigration permits, application for certificates for naturalisation.

The Portfolio Committee had listed and tabled the names of the persons that were granted early naturalisation in terms of Section 5 and those that related to the Gupta family and they are listed there as Mr Gupta Angori Gupta, Shivani Singali, Kamal Kant, Singali Suraya Kant.

Then we move on then to the final report on investigation into the Vrede farm project, which was compiled by ENS. In August 2013, National Treasury's specialised audit  
10 services co-sourced ENS to assist with the investigation allegations of procurement irregularities allegedly committed by the Free State Department of Agriculture and Rural Development in procuring the services of Estina Dairy. ENS obtained information regarding the project and interviewed witnesses from various departments.

They also highlighted limitations in their investigations, being that they encountered lack of cooperation from some of the State employees and the fact that they were not placed in possession of some of the documents they requested, so that will then necessitate an investigation into that project.

Then the final report in the next slide, we deal with what they say in the final report, where we outline as to who had commissioned the report being the National Treasury Chief  
20 Procurement Officer and that we deal briefly with what the investigations related to and the structure of the report that they have put up and in Paragraph 4 of that, in relation to the structure, ENS explained that the purpose of the report was for National Treasury to obtain clarity on the principal role players who participated in the conduct under investigation, to be furnished with an indication of the total funds allocated to the project,

understand what funds had already been expended on the project, appreciate whether or not it was likely to receive value for money in the project. Their preliminary observations were that they had constraints relating to the information that the investigators were able to access due to lack of cooperation from the department.

Then we also in the next slide, we deal with the key findings of the final report onto the Vrede Farm project. They have highlighted non-compliance with procurement procedures, the deviation from the department's supply chain management policy, was contrary to the PFMA according to them, it remained unclear to the investigators whether [Paras] was actually involved in the project. They say at the time that the HOD signed a  
10 contract with [Paras] on about June 2012, the agri-BEEE entity named Mohama Mabung Dairy Project under whose auspices the Vrede Dairy Farm was to be established. It had not been formed yet.

The Mohama Mabung Dairy Project was only established on the 11<sup>th</sup> of October 2013. They deal with the existence of a 99 year rent-free lease hold agreement which was purportedly concluded but remained unsigned between the department and Estina. The investigation team was not able to establish whether Estina made any financial contribution towards this project or if they objectively ascertaining that Estina actually invested any funds in the project.

Then in the next slide, they make their recommendations that disciplinary steps be taken  
20 against certain officials, advising the National Treasury to obtain a legal opinion on the consequences of the cancelling of the contract with Estina and of setting aside the 99 year rent lease agreement, conducting a detailed financial analysis into the finances of certain officials, that no further funds be invested in the Vrede Farm project.

It is not clear whether any of these recommendations had been acted on. In addition, the sub-text of these recommendations is that a full investigation should be conducted into the project. Other than the National Treasury that commissioned the report and the Office of the Public Protector, we are not aware of any other commission or tribunal or court or bodies before which this report was placed.

The National Prosecuting team has made the commission aware of the charges that it wishes to prefer against 11 individuals and entities who were involved in the Vrede Farm project. As indicated above, the Public Prosecutor has investigated the Vrede Dairy Farm and that report has not been formally made available to the commission at this  
10 stage.

Then the next report is a report compiled by Geoff Budlender SC who was appointed by Mr T.M. G.Segwale, an independent non-executive chairperson of Trillion Capital Partners (Pty) Ltd, towards the end of November 2016, to conduct an investigation into certain specific matters. Mr Segwale acted on the authority of a resolution of the board of directors, allegations in the Sunday Times of 23 October 2016 with regard to Trillion and related persons and entities and issues raised in the report of the Public Protector in the State of Capture report in relation to the conduct of Trillion and related entities.

In conclusion, Budlender SC, stated at Paragraph 172, that this investigation is still  
20 incomplete, it is necessary for these matters to be investigated by an entity which has the power to compel all concerned to give evidence and provide documentation. In my opinion, the most appropriate entity would be a commission of inquiry established under the Commission's Act and undertaken by a person or persons of independence and integrity. So that report too, indicates that the parties would want those matters investigated by this commission.

Then the allegations with regard to the Trillion group of companies as annexures that form part of the Budlender report, then those are listed as annexures and we will simply just read out what was there. The Trillion group organogram, the letter of the Department of Public Enterprises, Trillion invoices between Trillion and Eskom, McKenzie and Company, letters to Eskom, McKenzie and Company letters to Trillion, Trillion invoices, outsourcing engineering consultancy service agreements between Trillion Management Consulting and E-Gateway Global Consultants dated 26 January 2016 and we list the invoices and we list the amounts that were involved in those invoices.

Then the next report is the Workman's Report which we have mentioned earlier when we  
 10 were dealing with the overview of the reports, which deals with the acquisition of 1064 locomotives for Transnet's general freight business. We mention how that report came into being, that the report itself is dated the 24<sup>th</sup> of November 2017 and is entitled Acquisition of 1064 Locomotives for Transnet general freight business. It is usually referred to as the 1064 locomotive acquisition. This report was commissioned after the directors of the board of Transnet mandated Workman's Incorporated to prepare and advise a report on among others, the allegations of impropriety levelled by the Economic Freedom Fighters against it in relation to the acquisition of the 1064 locomotives. Workman's was mandated to look into the procurement processes, to identify all persons, companies and timelines involved in the procurement process, their role and  
 20 relationships, to review, verify and validate the submissions made to the Acquisitions and Disposal Committee and the board, to ascertain the reason for the price if there was any, in the estimated total cost and whether it was reasonable or justified to conduct interviews to investigate the existence of a certain contract between Questa and CSR Concon and investigate whether prices were inflated after hedging and determine whether contingencies and escalations were added, establishing what governance processes

were employed in implementing the transaction and appropriateness thereof. Thereafter, Workman was mandated to make findings, recommendations and possible actions to be taken and recommendations also on preventative measures.

In its report, Workman's released as a sequel, in fact, we just highlight what are the issues that the Economic Freedom Fighters had raised in their proforma charge against the board of Transnet, that there was allegedly, an amount of R17.4 Billion of taxpayer's money that was lost in inflated prices on the purchase of 1064 locomotives that they allege that the money was lost to corruption during the procurement of the locomotives. They also allege that the EFF had pointed fingers at the various people as having  
10 influenced the process and that the accelerated delivery schedule and the increase of prices and benefits to certain persons and then the dossier also implicated certain companies in corruption.

Attached to the Workman's report, there is another report which is referred to as the Forensic Audit Report and Workman in its main report, suggested that those reports should be read together. They indicated that there were certain challenges that they encountered in their investigations because they could not consult with key witnesses which they listed in their report. They had also requested some documentation which could not be furnished to them and in Paragraph 13.7 of the report, Workman stated that  
20 based on the facts, raised, by its investigators, a judicial inquiry with prosecutorial and inquisitorial powers with powers to compel witnesses to provide relevant documentation and oral evidence, would be the best body to do the investigations.

It is accordingly necessary for this commission to conduct further investigations into the transaction for the acquisition of the 1064 locomotives and other matters related thereto. The relevancy of the investigation and evidence obtained therefrom and the witnesses,

who testified, will make submission to the commission, would be relevant to Paragraphs 1.4, 1.5, 1.6 and 1.9 of the terms of reference.

Due to the fact that the commission is in the process of first obtaining permission to use the report, establishing its authenticity and conducting its own investigations on these matters and to follow due process in identifying implicated persons and/or witnesses. The Chairperson is simply being alerted to the report at this stage in accordance with Rule 65 of the rules of the commission and to enable the commission to secure relevant transcripts if any.

10 The next slide deals with the MNS Report, acquisition of 1064 locomotives for Transnet general freight business. This report was commissioned after the Workman's report was submitted to the board of Transnet. The board resolved that the Workman's report was inconclusive. On 20 February 2018, the board appointed MNS to conduct further investigations into the alleged irregularities relating to the procurement and award of the 1064 locomotives tender. MNS was given the scope of its work, it made, several, findings and MNS engaged the services of Fundutzi Forensic Services.

20 The report is marked confidential and we do not wish to deal with the findings at this stage. However, it is important to highlight that there is a need to conduct further investigations into the 1064 locomotives transactions because upon the reading of the MNS report, it is apparent that (1) that this commission must investigate the circumstances under which the board approved the transaction as negotiated, (2) that the commission will be able to use its powers to demand access to the file that is allegedly hard-coded which MNS could not access. They say so at Page 108 of their report, paragraph 5.4.2.

That file may enlighten the commission on the purchase costs which will have a bearing on the calculations and the projections made by MNS. If the external audit was conducted as recommended by MNS, the commission will have regard thereto when conducting its investigations. The commission will also be able to interview all relevant and key officials before making its findings. By so doing, the commission will be fulfilling its mandate in terms of Paragraphs 1.1, 1.4, 1.5, 1.6 and 1.9 of the terms of reference.

The next report, this deals with the research projects, I have already mentioned these, the PARI research documents and we have highlighted what they are, the number of pages and that of Bishop Mpumlwana we have already dealt with that and the People's  
10 Tribunal on economic crimes and lastly, the article by Professor Peter Labuschagne on patronage, state capture and [indistinct] holistic monopoly in South Africa which was published in 2017.

That is the end of the presentation Mr Chairman, but now I wish then to as promised, hand up the document, the first being the Public Protector's report. I beg leave that these, be marked A, so that all the documents that will be in the reports that we will be handing in to the commission, if it pleases the Chairperson, to reserve alphabet A for all the reports. I beg leave to hand up the 355 pages report of the Public Protector as Exhibit A1.

**CHAIRPERSON:** You can already mark it from there before you hand it in if there is a next one.

20 **ADV THANDI NORMAN SC:** Thank you that will be A1. I have here a copy of all the documents, there is about I think over 122 boxes of documentation which we are currently paginating, but those documents are contained in this disc. We have received an original and we made a copy for the Chairperson, but once all the pagination has been done, the original will also be presented to the commission. I beg leave to hand up this

disc and that it be marked Exhibit A2. Then if it pleases the Chairperson, I will simply – I am not sure, it is not particularly necessary, because the case is available-

**CHAIRPERSON**: I wonder whether it might not be more convenient if you were to mark all of them and then send it up with a notice that says these are the reports that are attached and then we just read into the record what they are. That might be faster which could be done if it is convenient even tomorrow morning if you need the time to mark them.

**ADV THANDI NORMAN SC**: There are not too many Mr Chairman.

**CHAIRPERSON**: Okay then you may proceed then if it is convenient to do them now,  
10 because there are not many, that is fine.

**ADV THANDI NORMAN SC**: As the Chairperson pleases and then the next one, although it is not really necessary to make it an exhibit, but because I had mentioned that as one of the foundational documents which is the case from the Gauteng Division, that would be Exhibit A3, that is the judgement.

**CHAIRPERSON**: Well you said A would be reserved for reports. Why don't we keep the judgement as something else?

**ADV THANDI NORMAN SC**: Yes we can just send it up as a judgement without giving an exhibit number.

**CHAIRPERSON**: Yes just say judgement. Whenever anyone refers to it, we will always  
20 know that that is the judgement that we are talking about.

**ADV THANDI NORMAN SC**: Then I would beg leave to hand up the inquiry into Eskom by the Portfolio Committee, it is dated, it is Day 8, these are all the proceedings, but what I will do, we will simply give them one number because they emanate from the

proceedings that relate into the Public Enterprises and Home Affairs, but the one for Home Affairs, we will mark it Exhibit A3.

**CHAIRPERSON**: Are they all one report comprising different volumes?

**ADV THANDI NORMAN SC**: They differ.

**CHAIRPERSON**: If they emanate from one body, a particular Portfolio Committee for example, but they deal with different issues, entities, it is better that you should give them different numbers.

**ADV THANDI NORMAN SC**: Thank you Mr Chair, shall we then mark them, these will be Exhibit A4 because there are 3 volumes, it will be A4(a) if that is not going to be  
10 confusing and then A4 (b), A4(b) will be the one that deals with Public Enterprises. A4(a) deals with Home Affairs. A3 I beg your pardon, this will be A3, so A3(a) A3(b) and A3(c). I beg leave to hand up A3(a) A3(b) and A3(c). These are all from the Portfolio Committee on Public Enterprise investigations and Home Affairs.

**CHAIRPERSON**: Thank you.

**ADV THANDI NORMAN SC**: Mr Chairman as indicated earlier, these reports are handed up and they are what they purport to be and they handed up for your attention, thank you.

**CHAIRPERSON**: These reports are provisionally admitted and their status is that they are what they purport to be, thank you. Mr Pretorius?

**ADV PAUL PRETORIUS**: The efforts of Advocate Norman are appreciated, but it has  
20 been pointed out to me that this is just the first of a large number of documents that will over time, be presented before the commission and we should perhaps at this stage, devise a system for index pagination and keeping a proper and comprehensive record together with an index, not only in regard to reports handed up, but separately in regard

to all the presentations made orally before you and if you would leave that to us, we will come back to you Mr Chair with a comprehensive system of index pagination and index of proceedings as well.

**CHAIRPERSON**: That is in order thank you. Where does that put us in terms of today?

**ADV PAUL PRETORIUS**: By your leave Mr Chair, Mr Matebule has been arranged to be present tomorrow and so if we may adjourn until 10:00 tomorrow morning.

**CHAIRPERSON**: Okay, thank you very much, we will then adjourn today's proceedings and resume tomorrow at 10:00 to hear the evidence of the first witness, proceedings are adjourned.