

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

21 FEBRUARY 2019

DAY 53

20

PROCEEDINGS HELD ON 21 FEBRUARY 2019

CHAIRPERSON: Good morning Ms Norman. Good morning everybody.

ADV THANDI NORMAN SC: Morning Mr Chairperson. Thank you.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Thank you. Mr Chairperson this morning we continue from where Mr Maleka left off but not on the gap analysis factor but simply placing before you the statements and all the documents that we received from the Portfolio Committee. Just to authenticate the documents I beg leave to hand up a letter which the Secretariat had advanced to the Chairperson of the House of Committees Mr
10 Cedric Frolick where these documents that I am going to present to you this morning were requested.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: May I ask the Registrar to uplift?

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Thank you. Thank you.

ADV THANDI NORMAN SC: Thank you Mr Chairman. Mr Chairman unlike the exercise that was done yesterday the approach that we adopted in so far as the statements and documents are concerned is that it is not possible to take the
20 Chairperson through each and every statement for the following reasons. Some of the person mentioned in the statements implicated before the Portfolio Committee are also implicated in the proceedings before this commission and notices have gone out to most of those persons and it was then suggested in fact amongst the legal team it was decided that with the permission of the Chairperson that what we do today is to simply place the statements before the Chairperson without dealing with the contents thereof.

That exercise is going to happen when we lead the witnesses of Eskom we will link the evidence to the statements that we are presenting before you. If that approach is acceptable to the Chairperson may I then begin to place those?

CHAIRPERSON: Ja. Okay.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Ja let us do that.

ADV THANDI NORMAN SC: Thank you very much. Mr Chairman you will find that before you you have now what is termed Portfolio Committee statements and documents that will constitute nine volumes. And on the spine of each volume ...

10 **CHAIRPERSON**: Yes I have got nine yes.

ADV THANDI NORMAN SC: Yes you have got nine volumes yes. If I may just refer you to Volume 1 for example. Volume 1 will tell the Chairperson what is contained in Volume 1 which is the way that the Chairperson had suggested that these be marked.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: The Chairperson will see whose evidence was in there. You will have the evidence of Ms Bianca Goodson, Erica Johnson, Ms Suzanne Daniels, Doctor Robert Fine, Mr Venete Klein, Ms Verushna Naidoo and Mr Brian Molefe.

CHAIRPERSON: Yes, ja that is very helpful.

20 **ADV THANDI NORMAN SC**: Thank you Mr Chairman. That is Volume 1 and the Chairperson – if the Chairperson turns to the very first page of that volume the Chairperson will find the index in there.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Which will show how many pages that is and it also tablets on which days did these witnesses testify.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: This column Mr Chairman becomes very relevant when you deal with the transcripts because the transcripts have to be linked to the days that the persons testified on.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: And then it also depicts the number of pages that are contained in each volume.

CHAIRPERSON: Yes.

10 **ADV THANDI NORMAN SC:** With your leave then I will hand up Volume 1 into evidence yes.

CHAIRPERSON: Thank you very much.

ADV THANDI NORMAN SC: Thank you. Then may we then move to Volume 2 Mr Chairman? Oh sorry.

CHAIRPERSON: Ja okay that is Volume 1 of the Portfolio Committee on Public Enterprises enquiry.

ADV THANDI NORMAN SC: Yes Chairperson.

CHAIRPERSON: Ja okay alright.

20 **ADV THANDI NORMAN SC:** Thank you. It is a similar exercise Mr Chairperson but just to mention the names of the persons so that we – any person who had perhaps submitted documents would know that.

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: They are being mentioned and therefore their evidence has been placed before you. The – Volume 2 also on the index to statements and documents.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: That one – oh the description there it contains the statements and evidence submitted by Mr Zolo Tsotsi, Minister Lynne Brown and Mr Anoj Singh.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: And I also if the Chairperson is satisfied it also depicts the days that they testify – they submitted those and the days they testified and the number of pages of the documents.

CHAIRPERSON: Like Volume 1?

ADV THANDI NORMAN SC: That is – like Volume 1.

10 **CHAIRPERSON:** Yes okay.

ADV THANDI NORMAN SC: Thank you Mr Chairman. I beg leave to then hand it into evidence. Thank you. We move on to Volume 3 Mr Chairperson same under index to statements and documents on the spine of that bundle. The evidence of – the statements of Mr Tshepo Lucky Montana, Mr Deputy Minister Ben Martins, GNI Consulting Services, Doctor Zweli Mkhize, Mr Abram Masango, Doctor [indistinct] Ben Gomane and Minister Gigaba. Those are also contained and that runs into – from page 916 to page 1323. And the days that they testified also depicted on the column in the index.

CHAIRPERSON: Yes.

20 **ADV THANDI NORMAN SC:** If the Chairperson is satisfied I hand that one up.

CHAIRPERSON: Ja that is fine.

ADV THANDI NORMAN SC: Similarly Mr Chairperson Volume 4 the Minister of Public Enterprises Mr Koko, Mr Linnell, Mr [indistinct], Mr Dumiyeni also made submissions which are contained in this volume and this volume has – it runs from page 1324 up to page 1707.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Yes thank you.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: And then the next volume Mr Chairman Volume 5. This volume is the – Mr Chairman would recall that yesterday you were advised by my learned friend Mr Maleka of a whistle blower witness.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: And this is that witness and I will not mention the name.

CHAIRPERSON: Ja.

10 **ADV THANDI NORMAN SC:** But her evidence is contained in Volume 5.

CHAIRPERSON: Ja thank you.

ADV THANDI NORMAN SC: Thank you Mr Chairman. We move on to Volume 6.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: This is a submission from Eskom – I am sorry – Provident and Pension Fund.

CHAIRPERSON: Yes.

20 **ADV THANDI NORMAN SC:** This related to one issue and the – which is the issue that relates to Mr Brian Molefe but there is a lot of documentation in this volume because court applications and counter applications some of those documents were also submitted to the Portfolio Committee and this information and these statements they run into three volumes. That will be Volume 6, Volume 7 and Volume 8.

CHAIRPERSON: Do they include the high court judgment?

ADV THANDI NORMAN SC: They do not include judgments but they include some of the papers from the high court, some answering affidavits but not the full set.

CHAIRPERSON: Ja I think there was a judgement, was it not?

ADV THANDI NORMAN SC: There was a judgment.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: It is not included in the bundle.

CHAIRPERSON: I think – I think it – for the sake of completeness it should be included.

ADV THANDI NORMAN SC: That we should place it in.

CHAIRPERSON: Ja the judgment.

ADV THANDI NORMAN SC: As you please.

CHAIRPERSON: Then one knows that one can get everything in one place.

10 **ADV THANDI NORMAN SC:** Yes I believe that it is a full bench judgment which is now before the SCA.

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: Yes but we will make a copy available to the Chair.

CHAIRPERSON: Oh okay ja let us have – so there would be judgment by a single judge or did it go to three judges from the beginning?

ADV THANDI NORMAN SC: It went to the full bench.

CHAIRPERSON: Oh from the beginning?

ADV THANDI NORMAN SC: Yes from the – full – yes, yes.

CHAIRPERSON: Oh okay ja no let us have that.

20 **ADV THANDI NORMAN SC:** We will make that available to you.

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: Thank you Mr Chairperson. Thank you.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: And then the last volume in respect of the statements and documents is Volume 9.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Which are the submissions from the Eskom board at the time and EXARRO and Eskom Enquiry Reference Book and those run from page 3169 to page 3378.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: That then completes the bundles received from the Portfolio Committee insofar as the statements and documents that were submitted to it.

CHAIRPERSON: Okay, okay.

ADV THANDI NORMAN SC: With your leave then Mr Chairman I would like to move to
10 the next bundle that we have.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: That relates to the transcripts. People that actually gave oral evidence before the Portfolio Committee.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: And in line with the rules.

CHAIRPERSON: And it does not look like I have that here.

ADV THANDI NORMAN SC: You do Mr Chairman but if I may just ask the Registrar to move.

CHAIRPERSON: Is it behind?

20 **ADV THANDI NORMAN SC:** The Registrar.

CHAIRPERSON: Registrar.

ADV THANDI NORMAN SC: Okay sorry. If I may just ask you to submit to the Chairperson the next – no not that box the next one. Yes thank you.

CHAIRPERSON: Okay yes. It is four volumes, is that correct?

ADV THANDI NORMAN SC: It is four volumes Mr Chairman.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: And it shows the days on the column in the very first Volume 1. It will show day 1 and what date was day 1.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: 17 October 2017 who was the first person to testify and we have got there Professor Anton Eberhard and on the second day

CHAIRPERSON: I think that the..

ADV THANDI NORMAN SC: It is better to take them out.

CHAIRPERSON: Appropriate box should be found where they are. They are not
10 packed properly.

ADV THANDI NORMAN SC: We will do that.

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: Yes thank you.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Thank you. And then Professor Anton Eberhard followed on the following day by Mr Brian Dames, Ms Mantuka Maisela and the fourth person I will not mention her name.

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: And Mr Pierce Marsden, Ms Bianca Goodson, Mr
20 Tshediso Matona.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Thank you. And these are the transcripts of their evidence received from Parliament. I beg leave to hand the transcripts in the same manner?

CHAIRPERSON: Yes thank you. Are we not supposed to do the transcripts as exhibits

as well?

ADV THANDI NORMAN SC: No not yet Mr Chair.

CHAIRPERSON: Later?

ADV THANDI NORMAN SC: Later we will do them when we do the...

CHAIRPERSON: Oh the...

ADV THANDI NORMAN SC: Yes we will advise you of the plan after I have submitted all of them Mr Chairman.

CHAIRPERSON: Ja okay.

ADV THANDI NORMAN SC: As to how we are going to present them.

10 **CHAIRPERSON:** Okay.

ADV THANDI NORMAN SC: Yes thank you.

CHAIRPERSON: Okay and the reports or not the reports?

ADV THANDI NORMAN SC: The reports are also – my understanding is that they were not given as exhibits that is the Eskom reports.

CHAIRPERSON: Ja we did not do them yesterday but I am just starting to think now that I wish we would.

ADV THANDI NORMAN SC: Yes to think that we should give them exhibits.

CHAIRPERSON: But you can all reflect and we can...

ADV THANDI NORMAN SC: And come back to you.

20 **CHAIRPERSON:** Ja.

ADV THANDI NORMAN SC: Yes thank you Mr Chairman. Thank you.

CHAIRPERSON: Ja okay.

ADV THANDI NORMAN SC: But so far the Eskom evidence and statements those that will be presented starting from tomorrow.

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: They will be Exhibit U.

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: Then we will perhaps fit in all of these looking at that exhibit number. Thank you.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you. And then in Volume 2 we have the evidence it shows day 8 and the date of Ms Tsholofelo Molefe, Ms Suzanne Daniels, Mr David Fine, Ms Venete Klein, Ms Verushna Naidoo, Mr Brian Molefe.

CHAIRPERSON: Yes.

10 **ADV THANDI NORMAN SC:** I beg leave to offer to hand this one up.

CHAIRPERSON: Thank you.

ADV THANDI NORMAN SC: And then Volume 3 Mr Chairman also shows the witnesses and also on the spine their names depicted Mr Zolo Tsotsi, Ms Lynne Brown, Mr Anton Minnaar, Mr Zethemba Khoza is also – they are also reflected on the spine.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: I beg leave to hand that up.

CHAIRPERSON: Yes. Okay.

ADV THANDI NORMAN SC: Thank you. And then the fourth one Volume 4 Mr Anoj Singh, Ms Lynne Brown, Mr Mogari Segleke, Mr Lucky Montana, Mr Ben Martins, Mr

20 Rageh Moragan and Mr Matshela Koko.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Yes thank you.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you. I beg leave to hand up those Mr Chairman. Mr Chairman then to contextualise all these statements the Chairperson will be

[indistinct] in respect of the witnesses that will called to the various portions of the statements.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: The statements unlike the reports that we submitted to you yesterday by my learned friend Mr Maleka do not relate only to Eskom. They relate to other entities. Our public enterprise entities. Therefore the selection is going to made as and when a witness is being led and then that witnesses' evidence will be tied to a particular statement and to the particular transcript so as to contextualise their evidence and in line with what the Portfolio Committee had received.

10 **CHAIRPERSON**: Okay.

ADV THANDI NORMAN SC: The second thing that the legal team is going to do is to make sure that in order for the Chairperson at the end of the enquiries we will have themes. For instance if I may take.

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: One witness who talks about – if you take for instance the case where a witness talks about Mr Brian Molefe.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: All of those statements and all of those transcripts will be linked together.

20 **CHAIRPERSON**: Yes.

ADV THANDI NORMAN SC: So that the one issue that you deal with you have reference to all of that.

CHAIRPERSON: Ja, ja.

ADV THANDI NORMAN SC: That is an exercise Mr Chairperson unfortunately that cannot be started and completed now.

CHAIRPERSON: Ys.

ADV THANDI NORMAN SC: It can only be done after the last witness on Eskom has testified.

CHAIRPERSON: Yes okay.

ADV THANDI NORMAN SC: And that will be presented to him.

CHAIRPERSON: Okay no that is fine.

ADV THANDI NORMAN SC: Having said that then Mr Chairman we believe that – that then is all that we need to present to you for today and with your leave then that would be conclusions of today's proceedings.

10 **CHAIRPERSON**: Yes. Do you have a document maybe or plan I need something that gives me an indication of the sequence of the reports and transcripts the various volumes?

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: The sequence of when and how they are going to come up to be used?

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: For example tomorrow?

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: I just need to know these are the ones that will be...

20 **ADV THANDI NORMAN SC**: That must be brought up.

CHAIRPERSON: That will be relevant for tomorrow and then same thing about Monday so if I have that in advance.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: That would help with preparation.

ADV THANDI NORMAN SC: We will do that. Every evidence leader will be advised to

do that.

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: Every – a day before a witness is led that the Chairperson is advised if...

CHAIRPERSON: Ja not the day before.

ADV THANDI NORMAN SC: Even earlier.

CHAIRPERSON: Because we talking about – I am talking more about the existing volumes that you already have.

ADV THANDI NORMAN SC: Oh that we already have as it is yes.

10 **CHAIRPERSON**: Ja to say you already know which witness will come when.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: And then you know which volumes are relevant to which witness.

ADV THANDI NORMAN SC: Yes I hear you.

CHAIRPERSON: So that is what I need.

ADV THANDI NORMAN SC: You are suggesting yes.

CHAIRPERSON: So if it is indicated for that witness those days, these are the volumes that will be relevant that will help with the advance preparation.

ADV THANDI NORMAN SC: Thank you Mr Chairman we will definitely do that.

CHAIRPERSON: Ja, ja. So if it is possible to get sometime in the next few hours.

20 **ADV THANDI NORMAN SC**: We will attend to it right away.

CHAIRPERSON: Something relating to tomorrow and Monday.

ADV THANDI NORMAN SC: That is correct.

CHAIRPERSON: That would be helpful and then for the rest if it is also immediate I think that is fine but if not maybe if I could have that by tomorrow that is fine.

ADV THANDI NORMAN SC: We will definitely send something to you today. Thank

you Mr Chair.

CHAIRPERSON: Okay, okay no that is fine.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: And of course if it might need to be amended if later on.

ADV THANDI NORMAN SC: Later on.

CHAIRPERSON: Some other volume that you might not have thought would be important.

ADV THANDI NORMAN SC: Relevant yes.

10 **CHAIRPERSON**: Or relevant to that witness if later on it is realised that it will be important.

ADV THANDI NORMAN SC: Yes we will do that.

CHAIRPERSON: Ja, ja.

ADV THANDI NORMAN SC: Thank you Mr Chair. Thank you.

CHAIRPERSON: Okay no that is fine. Mr Pretorius is not here maybe you could mention to him that we – it is going to be necessary that we place on record the fact that he did convey to Mr Helens for Mr Ajay Gupta.

ADV THANDI NORMAN SC: Yes.

20 **CHAIRPERSON**: He did convey to him what I had asked to be conveyed to him with regard to the request he had made when he last appeared here namely the request that the video footage or recording that they had in regard to the inspection in loco that I had said that if he sought to pursue that request certain things would need to happen.

ADV THANDI NORMAN SC: Need to be done.

CHAIRPERSON: So it is going to be important that that be placed on record otherwise in due course we all forget what happened.

ADV THANDI NORMAN SC: Thank you I – we will convey that to him. Thank you Mr

Chair.

CHAIRPERSON: Ja and then there is – there is the – I think there is an application for leave to cross-examine. I think Minister Gordhan I think by Mr Moyane.

ADV THANDI NORMAN SC: Yes there is that outstanding – yes.

CHAIRPERSON: That was filed. That needs to be ripened and a date be fixed if it has not already been fixed as to when it will be heard. I am not aware that there is any other application.

ADV THANDI NORMAN SC: There is another application by Ms Siyabulela Shishuba.

CHAIRPERSON: Yes.

- 10 **ADV THANDI NORMAN SC**: Which I believe must have been forwarded – if it has not been forwarded [indistinct] it would – I would urge the secretary to do so which was received also this week but because we had hearings.

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: Yes also applying to cross-examine Mr Agrizzi.

CHAIRPERSON: Ja okay so I think we need to try and fix dates for those.

ADV THANDI NORMAN SC: For those applications.

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Okay alright.

- 20 **ADV THANDI NORMAN SC**: Thank you Mr Chair.

CHAIRPERSON: Thank you very much. We are going to adjourn the proceedings and resume tomorrow at ten o'clock. I just want to say I mentioned that we might have to start early on some days and finish at some time in the afternoon some days in general but in particular I also mentioned that because one of the days I need to have – we need to have a meeting involving the legal team and the investigators. At this stage we

are looking at that happening on Monday. The meeting is starting at three o'clock so the idea is that on Monday we should stop the proceedings not later than two o'clock but then in order to recoup the two hours for that we will lose we have to start maybe early maybe on Monday at nine o'clock and maybe this Friday we could either finish later or start early.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: So – or maybe that maybe for tomorrow that is too late now to indicate that I am not sure. Because whatever the witness is he might just be knowing that he needs to be here at ten o'clock only. What is your thinking – do you think we

10 **CHAIRPERSON:** can stay – let us start tomorrow early nine o'clock or not?

ADV THANDI NORMAN SC: I am sorry Mr Maleka is just establishing.

CHAIRPERSON: Ja, ja.

ADV THANDI NORMAN SC: We was – Mr Maleka is just suggesting that maybe if we cannot start at nine o'clock then tomorrow we finish at five instead of four o'clock.

CHAIRPERSON: Ja that is certainly better to make...

ADV THANDI NORMAN SC: To make up for the one hour.

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: So we take add and finish at five.

20 **ADV THANDI NORMAN SC:** Yes.

CHAIRPERSON: And then on Monday start nine o'clock.

ADV THANDI NORMAN SC: At nine o'clock yes.

CHAIRPERSON: Then we have recouped those two hours.

ADV THANDI NORMAN SC: Those two hours. Thank you Mr Chair.

CHAIRPERSON: Okay let us work on that basis then.

ADV THANDI NORMAN SC: Thank you. Thank you Mr Chair.

CHAIRPERSON: Okay I think Mr Maleka wants to say something?

ADV THANDI NORMAN SC: You want to say something?

ADV VINCENT MALEKA SC: Chair I just want to confirm that you do have the statements and annexures of Mr Mabusa which is going to be dealt with tomorrow.

CHAIRPERSON: Yes I do have, I do have. Ja I think I received it sometime back.

ADV VINCENT MALEKA SC: I think it was given to you already last week.

CHAIRPERSON: Yes ja no I think I have got it ja.

10 **ADV VINCENT MALEKA SC:** We would also suggest that the reports which were dealt with yesterday.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Should be before you because Mr Mabusa is going to be taken through some of it.

CHAIRPERSON: Ja okay if an indication could be – if I could get an indication whether he will relay – his evidence will relate to all of them that we dealt with yesterday or only some. If I get that indication that will be helpful. Okay no that is fine. Alright we will then adjourn until tomorrow at ten o'clock. The commission adjourns.

ADV THANDI NORMAN SC: Thank you Mr Chair.

INQUIRY ADJOURNS

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