

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

28 FEBRUARY 2019

DAY 58

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PROCEEDINGS HELD ON 28 FEBRUARY 2019

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

ADV PAUL PRETORIUS: Good morning Chair.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS: Chair for today the Eskom course of evidence is suspended temporarily it will resume tomorrow and evidence will be led by Ms Gcabashe in relation to the evidence of Mr Trevor Manuel and then that will be followed by the evidence of General Sipiwe Nyanda who will be led by Ms Sello.

10 **CHAIRPERSON:** Thank you. Thank you.

MS LEAH GCABASHE: Morning Chair.

CHAIRPERSON: Good morning Ms Gcabashe.

MS LEAH GCABASHE: Morning Mr Manuel. Chairman the commission will this morning hear the evidence of Mr Trevor Manuel and retired General Sipiwe Nyanda. With your leave it might be convenient and appropriate for Mr Trengove who represents Mr Manuel to place himself on record and to introduce his team. Thank you Chair.

CHAIRPERSON: Yes.

MR WIM TRENGOVE: May it please you Chair. My learned friend Mr Mbekewe and I instructed by Ms Van Leefer appear for the witness.

20 **CHAIRPERSON:** Thank you Mr Trengove.

MS LEAH GCABASHE: Thank you Chairman. For your ease of reference Chairman and also for the ease of reference of the witness the bundle today consists of two volumes which are marked V1 and V2 but they are in one file Chairman. We ask you to admit them as Exhibits V1 and V2. If you open the file Chairman.

CHAIRPERSON: Before that so this will be...

MS LEAH GCABASHE: So it is Exhibit V for Valerie.

CHAIRPERSON: Exhibit V.

MS LEAH GCABASHE: And inside we have divided the file Chairman between the evidence of Mr Manuel which comes under V1.

CHAIRPERSON: Yes.

MS LEAH GCABASHE: And the evidence of General Nyanda which is – has been placed under the ...

CHAIRPERSON: Ja okay thank you.

MS LEAH GCABASHE: Section marked V2.

10 **CHAIRPERSON:** Thank you.

MS LEAH GCABASHE: The structure of today's evidence Chairman will be as follows: First we are going to just address you very briefly on the relevance of Mr Manuel's evidence to the commissions terms of reference followed by Chairman just the – a housekeeping issue I would like to call it which is the furnishing of the Rule 33 Notices to Mr Mbalula just to give you a sense of what has transpired in that regard and to give you a level of comfort around that issue.

CHAIRPERSON: Yes.

MS LEAH GCABASHE: And then after that we will really go into what I call the merits.

CHAIRPERSON: Okay.

20 **MS LEAH GCABASHE:** If I might start with the relevance.

CHAIRPERSON: Yes.

MS LEAH GCABASHE: Of Mr Manuel's evidence Chairman. Both terms of reference 1.1 and 1.3 are relevant to what Mr Manuel has to tell us today. The more specific one really is term of reference 1.3 which reads as follows just for the record Chairman: It asks us to investigate in the context of state capture, fraud and corruption. 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.

CHAIRPERSON: Yes.

MS LEAH GCABASHE: Chairman in context therefore various issues will be explored with Mr Manuel. He is a South African who has been South Africa's longest serving Minister of Finance but he also has insights Chairman into aspects of the efficacy of laws such as the PFMA by way of example and policies of government that informed
10 the terms of reference of this commission. In this regard his views will be sought on the concept of state capture as defined among others by the two American experts who gave evidence before this commission in August and September last year. Mr Manuel will primarily deal with the specific topic of the statement of Mr Mbalula at the August 2011 ANC NEC meeting regarding the appointment or how Mr Mbalula got to know that he was to be appointed as Minister of Sport and Recreation. In this regard of course the affidavit that has been deposed to my Mr Manuel on the 11 October 2018 is relevant.

CHAIRPERSON: Yes.

MR TREVOR MANUEL: The commission did Chairman after reading that particular
20 affidavit asked Mr Manuel to share his insights on appointments and dismissals of cabinet members simply to dig into his institutional knowledge of those matters Chairman. He has deposed to an affidavit which is the supplementary affidavit that is annexed to the papers and in that he deals with those aspects. We believe Chairman that that particular part of his evidence will inform or may inform some of the recommendations that you may wish to consider as you – as you finalise this process.

CHAIRPERSON: Yes.

MS LEAH GCABASHE: For the sake of completeness Chairman it is important to point out that Mr Mbalula and Mr Atul Gupta are implicated parties with regards to Mr Manuel's evidence. Both were furnished with Rule 33 Notices Chairman notifying them that they are implicated parties. Mr Mbalula's was emailed to him on the 31 October 2018. As you will appreciate Chairman the full statement of Mr Manuel was annexed to that notice. In fact in the case of Mr Mbalula the – a copy of rules and a copy of the terms of reference was also annexed just for his ease of reference. The – Mr Atul Gupta has not responded to that notice. Rather his brother Ajay Gupta sought to respond by way of a Rule 34 Application as the Chairman is aware. This application was opposed by Mr Manuel and in the ruling you gave on the 13 September you dealt with the subject matter of why the Gupta's are at this point in time not entitled to an audience before you until such time as they essentially submit to the jurisdiction of this commission. I really just paraphrasing but you made a ruling Chairman and for that reason you – the Rule 3.4 Application was unsuccessful. With your leave however Chairman and also in terms of our rules the allegations made by Mr Ajay Gupta in that Rule 3.4 Application will be put to Mr Manuel for the record. Much as Mr Manuel did respond to them when he opposed the Rule 3.4 Application he is aware that we will put them because we have explained that in terms of rules when we do have a version we place that version before the witness who is currently taking the stand.

CHAIRPERSON: You have Ms to whether Mr Mbalula did acknowledge receipt of the Rule 33 Notice and whether he has reacted in any way to that notice.

MS LEAH GCABASHE: That is the next area that I touch on right now Chairman.

CHAIRPERSON: Okay.

MS LEAH GCABASHE: I – to structure my thoughts I made notes for myself.

CHAIRPERSON: Okay.

MS LEAH GCABASHE: Because it raises a little bit of a dispute and I believe we must give him the benefit of the doubt because of the issue he raises. Mr Mbalula was furnished with that by email, Rule 33 Notice. He has also been given notice of today's proceedings. As recently as the 14 February Chairman Mr Mbalula was reminded that he had not responded to the Rule 33 Notice and he was requested to present a version to the commission on or before Friday the 22 February. On the 22 February Chairman the commission had received correspondence from Mr Mbalula in which he stated that he had not been furnished with the October 2018 statement of Mr Manuel right
10 [indistinct] had been furnished with the supplementary statement of February this year. What the commission then did was we immediately wrote back to him and indicated when we had sent the original 33 Notice to him and we asked him to please within the shortest period of time furnish us with a version. We have yet to receive that version from Mr Mbalula. So essentially Chairman what we have on file and I have a small file but we have prepared should you wish to look at it at your leisure is a file that indicates that email was sent by our attorney of record to Mr Mbalula in service – in serving the Rule 33 Notice. The email was delivered Chairman however no acknowledgment of the email or the Rule 33 Notice was received from Mr Mbalula. The email address that was used is the same email address we have used consistently Chairman. So by way of
20 example when he responded to the commission's letter of the 14 February this year the email that had been sent to him about giving the commission a version was exactly the same email address that was used when the Rule 33 Notice was sent to him on the 31 October last year. However Chairman I think he ought to be given the benefit of the doubt regarding when he received the Rule 33 Notice. What we can be sure of is that he knows of today's proceedings. He has made public statements in which he has said

he is only too happy to assist this commission and he will appear before this commission when called upon to do so. So in that regard Chairman I do not think there will be any particular difficulty in obtaining a version from Mr Mbalula and in him appearing before this commission as and when it is appropriate for him to do so.

CHAIRPERSON: Well if the Rule 33 Notice was sent by email somebody should have made sure that if no acknowledgment came – was received from him by a certain time further steps were taken to make sure we have got proof the commission has got proof that he was served with the Rule 33 Notice. If he was served – if the Rule 33 Notice was sent to him in September last year that is a long time ago and it should not be that

10 we only hear in February that he never – he says he never received I think measures must be put in place to make sure that within a certain period of time after a Rule 33 Notice has been sent to an implicated person by email that if no acknowledgement is received other steps must be taken to make sure that the Rule 33 Notice is served in a manner that will give us proof of service. You know technology is good and it is very helpful but sometimes it creates problems when people deny having received something when there is a dispute. So I think urgent measures must be taken either that the Rule 33 Notice be served afresh in circumstances where there will proof furnished to the commission that he has been served or if it is emailed again it must be on the understanding that he agrees to immediately send confirmation that he has

20 received it. And I think this should apply to everyone else so the legal team should look at everyone else who has been served or sent by email the Rule 33 Notice who has not responded or acknowledged receipt and try and take measures to make sure that they have got – you have got proof that they have received it because we do not want disputes about whether people have received these notices or not. Okay no that is alright. We will proceed. Those measures must just be taken.

MS LEAH GCABASHE: Thank you Chairman we will do so.

CHAIRPERSON: Ja.

MS LEAH GCABASHE: Chairman for what it is worth of course in the media Mr Manuel's evidence has been all over the papers since at least October last year. So I would like to think that Mr Mbalula is aware of the essence of what Mr Manuel will be saying today. But I think that he also.

CHAIRPERSON: Yes.

MS LEAH GCABASHE: Will be prepared.

CHAIRPERSON: Ja.

10 **MS LEAH GCABASHE:** To come to the commission. He has indicated as much.

CHAIRPERSON: Ja.

MS LEAH GCABASHE: And assist the commission. It is really just the timing issue Chairman.

CHAIRPERSON: Ja.

MS LEAH GCABASHE: But I think he will – I would like to think he will be here.

20 **CHAIRPERSON:** Well I must just say in line with what I have been saying to the legal team of late steps must be taken to make sure that all the people who are implicated in matters relating to dismissals and appointments and in regard to most of the witnesses who have given evidence they must now be brought to the commission to give their version. So one we must get their versions in writing first. Two they have got to appear and if they are not volunteering to appear then we must use the processes that are at our disposal to compel them to appear. We do not have a lot of time to do this work we have got to move with speed. So – but I know that at least in terms of the media there are a number who keep on saying they are waiting for the commission to invite them. But people should not wait for the commission to invite them. If they want to make a

contribution they should make communication with the commission and say I would like to come and deal with this. This is what I know. I would like to come in and deal with this or make a statement. But from our side the commission must not delay anymore now. We need to make sure that we wrap up all the evidence particularly relating to dismissals and appointments and evidence of witnesses that we have had so far.

MS LEAH GCABASHE: Thank you Chairman. I must say we do struggle a little with some witnesses.

CHAIRPERSON: Yes.

MS LEAH GCABASHE: But we will follow the...

10 **CHAIRPERSON**: Ja.

MS LEAH GCABASHE: You are giving and I trust the public out there is also understanding you very clearly.

CHAIRPERSON: Yes, yes.

MS LEAH GCABASHE: As to how we are going to deal with...

CHAIRPERSON: Ja.

MS LEAH GCABASHE: Witnesses who are reluctant.

CHAIRPERSON: Ja.

MS LEAH GCABASHE: To work within our time frames.

CHAIRPERSON: Yes, ja.

20 **MS LEAH GCABASHE**: And prefer to tell us about their time frames.

CHAIRPERSON: Ja no we – we have been trying to accommodate witnesses where we can but we have got to draw a line. We do not have a lot of time to do this work. This commission is not going to finish its work within time if we are going to all the time wait for dates that suit witnesses. We just – we will have to be quite firm. I hope everyone will give priority to the work of the commission because there is a time within

which we must finish this work. Okay. Alright.

MS LEAH GCABASHE: Chairman we have asked Mr Mbalula to respond to our letter of the 21 February last week within five days and give us a version. I think that the enforcement tools that you refer to may have to kick in.

CHAIRPERSON: Ja.

MS LEAH GCABASHE: If we do not have a version from him latest tomorrow evening first thing Monday morning.

CHAIRPERSON: Yes they may have to kick in and not only in regard to him there are others too – there are others also who are supposed to have responded to either
10 requests that have been made to them or to correspondence that has been sent to them who have not done so. So we will have to use those powers. We cannot be delayed for too long because of people who might not really be giving the work of the commission priority. I accept that in some cases people have got legitimate schedule challenges and they would sit definitely like to help the commission and they would like to give it priority but we will look at those. But one cannot avoid the impression that there are some who are not giving the work of the commission the priority that it deserves.

MS LEAH GCABASHE: Thank you Chairman. Chairman I believe it is appropriate now for witness to be sworn in. He prefers to take an affirmation.

20 **CHAIRPERSON:** Okay. Just administer the affirmation.

REGISTRAR: Please place your full names for the record?

MR TREVOR MANUEL: Trevor Andrew Manuel.

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

MR TREVOR MANUEL: I have no objection.

REGISTRAR: Do you truly affirm that evidence you will give shall be the truth; the

whole truth and nothing but the truth; if so please raise your right hand and say, I truly affirm?

MR TREVOR MANUEL: I so affirm.

CHAIRPERSON: Thank you very much. Before you start Ms Gcabashe Mr Manuel I just want to say thank you for coming to assist this commission and to give evidence. You were in government for many years and you were in the structures of the governing party for many years. I have no doubt that you could assist this commission maybe not just about the issue relating to Mr Mbalula but also in regard to other issues that we might wish to ask you about. So I really want to say thank you for coming. As you may
10 have – as you may be aware I have been appealing to past and present ministers and directors general who may have information that could help the commission in terms of its terms of reference to come forward and assist the commission. I am very grateful that there is a number of ministers who have come forward who had some the former DG's also coming forward but we wish that they should be more because it is difficult to think that only those who have made contact with the commission know things. One thinks that there are many and there are many present and past ministers who have a lot of information that they know and government officials but they simply have not come forward including members of the governing party who should know quite a lot of things. So I really thank you that you have made yourself available.

20 **MR TREVOR MANUEL**: Thank you very much Chair.

CHAIRPERSON: Thank you.

MR TREVOR MANUEL: I think we all vested as South Africans all vested in the success of your mission so we wish you every strength and success as we proceed. Thank you.

CHAIRPERSON: Thank you very much. Yes Ms Gcabashe.

MS LEAH GCABASHE: Yes thank you Chairman. Mr Manuel you have before you just one volume, one bundle of documents that run from TAM02 to TAM41. You have that?

MR TREVOR MANUEL: I have that.

MS LEAH GCABASHE: If you look at page TAM02 I will actually if you do not mind cut out the TAM appellation part I will just call the numbers. So if you look at paginated page 02 to 016 of the paginated bundle could you tell the Chairman if you recognise this document?

MR TREVOR MANUEL: Indeed this is an affidavit I submitted in October last year.

10 **MS LEAH GCABASHE:** If you go to – if you turn to page 04 there is a signature on that page, do you confirm that this is your signature?

MR TREVOR MANUEL: I can confirm that that is my signature yes.

MS LEAH GCABASHE: When did you sign this document before a commissioner of oaths?

MR TREVOR MANUEL: In October the 11 October last year.

MS LEAH GCABASHE: Are there any corrections or amendments that you would at this point wish to make to the statement – this is the better time to do it rather than as we go along.

20 **MR TREVOR MANUEL:** Yes there is a bit of a contradiction that arises from the dates that I refer to when the NEC took place. But that matter is corrected in paragraph 12.

MS LEAH GCABASHE: Indeed so.

MR TREVOR MANUEL: Thank you.

MS LEAH GCABASHE: The documents that are on pages 6 through to 16 what are those documents?

MR TREVOR MANUEL: (Laughing) that is an exchange of unforgettable open letters

between Mr Fikile Mbalula and I.

MS LEAH GCABASHE: We will get to them in due course. Do you recognise the document that is on page 18 and runs all the way to page 25? What is that document?

MR TREVOR MANUEL: Yes Chair that is a supplementary affidavit that I deposed to in February of this year which deals primarily with the system of appointments and ministers. I can confirm that indeed I deposed that affidavit and that is my signature on page 25 of the bundle 8 of the affidavit. Thank you.

MS LEAH GCABASHE: Thank you. Are there any changes, amendments you might want to make to that particular document?

10 **MR TREVOR MANUEL:** You know there is one change and it relates to the circumstances that prevailed I think it is paragraph 23 on page 23 of the bundle and it relates to the fact that it says here that Cyril Ramaphosa succeeded Halima Motlanthe as deputy president in Polokwane that is in fact not correct.

CHAIRPERSON: Yes.

MS LEAH GCABASHE: What is the correction you wish to make?

MR TREVOR MANUEL: The correction there is that Kgalema Motlanthe became deputy president at the conference in December 2007.

CHAIRPERSON: That is in Polokwane?

MR TREVOR MANUEL: Sorry?

20 **CHAIRPERSON:** That is in Polokwane?

MR TREVOR MANUEL: In Polokwane Chair.

CHAIRPERSON: Yes. Yes.

MS LEAH GCABASHE: Thank you.

MR TREVOR MANUEL: Thank you.

MS LEAH GCABASHE: And no further changes?

MR TREVOR MANUEL: No further changes.

MS LEAH GCABASHE: Thank you. Rule 65 of our rules requires that I establish whether any of the evidence contained in the October 2018 and the February 2019 affidavits has previously been placed before any other commission or tribunal or court or body, has it?

MR TREVOR MANUEL: No I can affirm Chair that this evidence appears before this particular commission for the first time.

CHAIRPERSON: Thank you.

MS LEAH GCABASHE: And just in explanation of that if that were the case we would
10 then have had to find that transcription so that we could look at that evidence with you.

MR TREVOR MANUEL: Appreciate that.

MS LEAH GCABASHE: Then last but not least could you please turn to page TAM27 through to 29.

MR TREVOR MANUEL: Yes.

MS LEAH GCABASHE: And then if you keep your finger there if you could then look at TAM30 to 41.

MR TREVOR MANUEL: Yes.

MS LEAH GCABASHE: Have you seen these documents before today?

MR TREVOR MANUEL: I have seen it in the bundle. And it relates to a – an affidavit
20 from Mr Gupta.

MS LEAH GCABASHE: It is the application that you had opposed about a month ago?

MR TREVOR MANUEL: Yes.

MS LEAH GCABASHE: This is just to say that we will be placing some of those facts into evidence while we will asking you about some of those matters that are raised there. To go to matters of a little more significance Mr Manuel you are a person who

has had vast experience as the Chairman has pointed out in serving in a democratically elected government. Are you familiar with the report of the Public Protector dated 14 October 2016 and which is titled: “State of Capture”. Only familiar not that you have read it cover to cover Mr Manuel but are you familiar with it?

MR TREVOR MANUEL: I can confirm both thank you.

MS LEAH GCABASHE: In fact the cover page of that report explains that it is and I quote:

10 “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 family’s businesses.”

Mr Manuel as a result of that report this Commission of course has been tasked with investigating the matters that Advocate Madonsela investigated. You would agree that the untoward appointment and dismissals of Members of Cabinet falls squarely within the Commission’s remit?

20 **MR TREVOR ANDREW MANUEL:** I have no doubt it is centre, front and centre of the Commission’s work.

ADV LEAH GCABASHE: Various witnesses have given evidence on state capture in particular as well as fraud and corruption but the focus that I want to, to, to hone in on today is state capture, because the Commission is interested in what you may identify as key issues in state capture, but to give you a bit of context Mr Manuel I have come across an open source media report where the SACP has referred to state capture

amongst others as a term used and I quote:

“To describe private interests influencing the state’s decision making processes.”

Then in the May 2017 South African State Capacity Research Projects paper entitled “Betrayal of a Promise: How South Africa is being Stolen?” they refer to state capture as a concerted effort at repurposing the state and diverting rents away from development in ways that are extra-legal and anti-constitutional to the detriment of the South African Public. I really paraphrased what they have to say. Then finally Mr Manuel we have had two experts, American professors, Drs Hellman and Kaufmann
10 who appeared before the Commission. Dr Kaufmann actually appeared in person and they define state capture as and I quote again:

“The efforts of individuals or firms to shape the formation of laws, policies, rules and regulations of the state to their own advantage by providing illicit private benefits for public officials.”

Essentially they say to us that state capture is a form of corruption and one that is distinct from the, distinct and more invasive than administrative corruption which is the more common form of corruption. Having given you that background Mr Manuel can you share your views on this subject matter of state capture and in particular as I [indistinct] earlier? Are you able to identify key issues in state capture that really should
20 be preeminent in the mind of the Chairman as he wades through the evidence that will be placed before him whenever all of that evidence has been placed before him? Are, are there pointers that you can share with the Commission?

MR TREVOR ANDREW MANUEL: Thank you. Mr Chairman my understanding of our Constitution is that it vests responsibility executive authority in the President acting with Cabinet. There is no higher authority and in the context of *trias politica* I think even the

courts have been reticent to try and determine how the President should conduct himself. Now in respect of the appointment of Ministers for instance the, the Constitution does not give anybody else the authority to do so and in, in the context also the oath of office of the President which is a very public oath there is a commitment to act within the interests, to do everything in the interests, to advance the Republic and to oppose that which may weaken and to also ask for the [intervenes].

CHAIRPERSON: And to be faithful to the Republic, and to be faithful to the Republic I think if I am not mistaken.

MR TREVOR ANDREW MANUEL: And to be faithful to the Republic and in this
10 context I mean I, I think that the judgment by the Constitutional Court on 31 March 2016 found that the President had violated his oath of office. Now if we take oaths and we are cavalier in the implementation I think it is the beginning of issues relating to state capture and, and you know it is, it is something that I think all [coughing] South African should be deeply concerned about because if those words lose meaning then the conduct cannot follow and, and when I go back to a number of judgments for instance my, it is very clear that that, that the court would not enter into the terrain that is occupied by the legislature either and so there is no higher authority and we must look to the dictates of conscious, conscience as the oath requires to ensure that you will have the proper execution of what is required of, of people who occupy high public
20 office. Now in this regard I think the, the issues that arise Chair about the appointment of Ministers is exceedingly material. Who knows who has consulted, who breaks the news and how, how is information shared I think is signal to a range of other issues about the conduct that is that is before this Commission, thank you.

ADV LEAH GCABASHE: In fact Mr Manuel if I might just contextualise what you have said in particular with respect to, to the President and what the Constitution requires of

a President. I, I would like to just go through Section 86 of the, of the Constitution, I beg your pardon. 83 of the Constitution which reads as follows:

“The President a, is the Head of State and Head of the National Executive. B, must uphold, defend and respect the Constitution as the supreme law of the Republic and c, promotes the unity of the nation and that which will advance the Republic.”

So there really is a duty on the President to ensure that what he and the National Executive that is appointed under his direction and at his will, because he, he believes
10 there are people who can progress the mandate that he has been charged with. The President must ensure that in what he does and in what the National Executive does the interests of the Republic must be advanced and that really is what you, you have talked to us about, but can I go a little beyond that Mr Manuel because this Commission has of course heard evidence from various witnesses. Some of it which will still be challenged I believe at some point, but if I might just point you to the PFMA which I believe is one of our most significant pieces of legislation and one that you had just about everything to do with. You drove it through the whole legislative process. Can you just very briefly speak to the critical issues that that piece of legislation sought to ensure this democracy would take account of? That this democracy would embed and
20 these all the types of checks and balances that the drafters and the legislatures at the time, the legislator at the time sought to ensure would, would advance the interests of the Republic of South Africa. Just very briefly speak to us about that piece of legislation and of course all the Treasury notes and regulations that go with it.

MR TREVOR ANDREW MANUEL: Thank you very much Ms Gcabashe. Mr Chairman the; when we drafted the, the Public Finance Management Act which is Act 1 of 1999

there was a fundamental shift from the old norms that applied in the Exchequer and what we sought to do in the PFMA was to recognise the parity of decision making across systems. The three spheres of Government and, and the systems that that apply and the focus was on outputs and responsibilities. What the Exchequer Act did was to construct a Treasury that kind of gave individual permissions and so you had a, a kind of rules based bureaucracy and the big shift and I think it is, it is in line with what we raised earlier about the interpretation of the responsibilities of, of the Head of State, the Head of the Executive. It requires people to act in the best interest and the words used in the PFMA at various points would be utmost care and so that shift is

10 fundamentally important. It is, it is drawn the, the essence of, of the PFMA is drawn from Chapter 13 of our Constitution which sets out norms for budgets, for budget control, for the management of finances, for the issuing of guarantees and the range of similar kinds of issues that would be normal in fiscal arrangements in democracy and so it is for that reason that the Public Finance Management Act was greeted in the way that it was. I, I should, I should point out that as, as it matured probably a few years later there was some resistance from people who argued that it holds up but if you, if you go, if you look at the link again between the PFMA and the Constitution the Constitution asks that one of the tests be that there is value for money. I make the point now. I can, I can expand it. That when there is reckless spending almost

20 inevitably people who are dependent on public services, the poor, are denied access to services because the controls are not in place and in the context of state capture it is actually an endeavour to remove those kinds of controls and, and I think it is, it is that that we must take a very serious view of because the, the measure of what happens is actually seen in the light of very poor people. Children who still do not have school buildings, children who die in pit latrines. It is that kind of issue that happens when the

controls are loose because there is not due care and attention as required by the PFMA. One of the other issues in the PFMA relates to certain schedules that apply in respect of State Owned Enterprises. Schedule 2 for instance takes account of large significant State Owned Enterprises. Eskom, Transnet, SAA, Denel those kinds of enterprises would, would all, they all listed in that schedule and part of the difference between that schedule and the next schedule is that the [indistinct] provision to bring these bodies into Schedule 2 is that they would be well managed that corporate governance norms would be adhered to; that they have strong balance sheets and can manage their affairs and be accountable for the management of their affairs in the public space and, and I think that the collapse that we have seen with a number of State Owned Enterprises in the last decade or so reflects a fact that that the, the powers given to these, to these State Owned Enterprises were, were exercised without the necessary care and attention to detail and so it is, it is that. I am saying the PFMA is distinguished from its predecessors by the fact that it recognises, understood its responsibility to groups of equals.

ADV LEAH GCABASHE: I, I am glad that you mentioned SOEs in particular Mr Manuel because I have, I have always grappled with the distinction between an SOE and what was converted to an SOC and the underlying rationale for doing that. I know you are a part of that policy making that sought to convert what might be, and correct me if I am wrong, the predominantly developmental role of an SOE to a more commercial role for SOCs but I might have this completely wrong. Can you just take us through that?

MR TREVOR ANDREW MANUEL: Chair, Chair I, this is not an area that I am that I am that I am an expert in, but my, my sense of it is that the [indistinct] referred to State Owned Enterprises for a long period and when the Companies Act was amended they

were termed State Owned Corporations.

ADV LEAH GCABASHE: Hm.

MR TREVOR ANDREW MANUEL: In essence they are the same. The big, the big distinction in, in the PFMA are the schedule. The first, Schedule 1 applies to all manner of bodies including the Chapter 9 Institutions for instance. Schedule 2 has a long list of entities and I referred to some of them before. Schedule 3 refers to some smaller State Owned Enterprises and Schedule 4 has a very diverse list including supported entities such as universities and so on, but it is Schedule 2 that we look at because I think the bulk of issues Chair that relate to state capture actually can be found in Schedule 2.

- 10 **ADV LEAH GCABASHE:** Yes, thank you. Maybe as just a last question in this part of the evidence you are giving, are you able to identify a, one or two institutions that are particularly vulnerable to state capture and really this is an open ended question. If you are not able to so be it, but if you it would, it would just help to illustrate the point that you have been making this morning.

- MR TREVOR ANDREW MANUEL:** Chairperson it is a, it is a, it is a fundamental important question and, and from the many state owned corporations let me, let me, let me highlight what I see as a position of Eskom and I think it is a, it is a situation that is well canvassed. Eskom in its history was an exceedingly strong institution. One of the top utilities in the world. Eskom had a stronger credit rating than we had as a
- 20 Sovereign and we would look to Eskom with a, with a, with a sense of jealousy about the fact that they could borrow more cheaply than what we could. Eskom also of course had surplus generating capacity and six power stations were mothballed and then changes happened and I think that if you looked at the situation in the last decade all of that has come apart. Now I am sure that this Commission has and will continue to receive detailed explanations of how things go wrong but when I, when I try and

understand the, the role of Eskom in the public domain. Firstly South Africa's industries were built on available cheap source of power. That is no longer there. We have moved up the ranks of, of the cost of, of energy. We were also able to use surplus power to extend electricity to the homes of many millions of very poor South Africans who previously because of apartheid had been excluded. Thirdly, having available electricity with predictable prices meant that that we could, we could build further an industry and invite investment into our country and then of course Eskom managing off the strength of its balance sheet did not impose a burden on the fisc not for cash injections or neither for cash injections nor for guarantees. All of that is gone and if you

10 look at the position of Eskom now and when I, when I refer to the, the budget tabled in Parliament by Minister Mboweni last week it is clear that that Eskom sits as an albatross around the neck of the fiscus and so Eskom has to be supported. I think none of us as South Africa can ever entertain the idea of allowing Eskom to go down but having it means that we, we increase our, our, our, the burden of debt in the general economy. Also if one looks at the applications of Eskom to NERSA the, the cost of energy into the future are not as predictable as they ought to be, but moreover I think that that as the state takes on more and more debt the credit rating suffers and when the credit rating of a country suffers and if we run the risk of losing our investment grade rating it means that as a country we have to borrow at much higher costs. Now

20 the, the budget last week proposes a deficit of 4.5 percent to GDP. That money must be borrowed and if the cost of those borrowings increase the ability of the state to provide services to people is, is, is diminished. It has seen the interconnectedness of this. When, when I look at the events which are, which are very well canvassed in the state of capture report by Advocate Madonsela it is clear Chairperson that there was a cavalier attitude in the management of this. I think there are a serious of other issues

as well. In the last few years, in the last decade in fact Eskom had 12 CEOs, six Chairman, 60 Directors and 30 Executives and between them they cost R514 million. So if decisions are taken with the focus on short term for the benefit of private individuals then I think the costs are borne by all of society, but those most vulnerable bear a greater proportion of the costs and I think it is that that we must understand about, about Eskom and similarly if you looked, if you looked at Transnet and you look at the way in which the, the supply chain management was managed on, on the acquisition of locomotives and, and wagon systems then you begin to understand that the costs, because part of what Transnet has to do through Freight Rail is to, is to

10 manage major exports, coal line and the iron ore line and when you place the costs of that prohibitively outside what is, what is competitive in the global system I think we weaken the economy progressively, but similarly given the fact that we have Gauteng as the industrial heart line far from, far from the, the, the seaports. Managing that in the system of freight rail is also something that needs to be taken with a lot of care and, and, and the, the essence of that, those words in the PFMA of “due care” needs to be felt in the management of these kinds of systems. So I think that that, that the examples of, of, of the impact of state capture are legion in this country right now.

ADV LEAH GCABASHE: So, so when the SACP speaks to the taking of decisions that deprives South Africans of the resources of this country that really is the essence of

20 what state capture can be considered to be?

MR TREVOR ANDREW MANUEL: I, I, I concur entirely. Chairperson it is felt immediately and I say you can look at education of social services at one level. You can look at the deteriorating state of our infrastructure at another and then you can look at the poor spending that we can do as a country on, on, on economic infrastructure. The kinds of things like special economic zones and so on. If, if our abilities are

diminished then we are not going to create the employment and we also then impose a burden on future generations and of course state debt is always a price for future generations to pay. So it is a very serious matter.

ADV LEAH GCABASHE: Thank you. Thank you Mr Manuel for those insights. It might be best at this point to, to move on to the primary reason really that the Commission wrote to you and asked you to come through to assist it and that is your recollection of what transpired at the NEC meeting, an ANC NEC meeting of August 2011, but it might be more convenient Chairman to, to preface that discussion of the NEC by just looking at the broad area of appointments and dismissals. So in this regard I will ask you to, to turn to your February affidavit Mr Manuel and recount or to summarise your experience of the practices or conventions that were followed when you were appointed to Cabinet. At paragraph 2 you, you state that:

“You have always understood that the power of the President to appoint Cabinet Ministers is a constitutionally protected prerogative and that Cabinet Ministers serve at the pleasure of a Sitting President.”

Please just expound on this proposition.

MR TREVOR ANDREW MANUEL: Thank you Ms Gcabashe. Mr Chair the; I mean it is, it is one of the powers given to the President that has no fetters and I think that in the experience of, of those of us who, who served under different Presidents we would have seen the exercise of that power. The first President I served under was the late Nelson Mandela and the first Government we were part of was a Government of National Unity. So that reality I suppose fettered the freedom that the President had, but it was clear that that there had been consultation between, he was then just President of the ANC, Nelson Mandela, and some of the senior leaders who were about

including the late Walter Sisulu and others and so after the announcement of the election results but before he was even inaugurated there were a number of positions that he indicated he had secured.

ADV LEAH GCABASHE: Can you pause just there? He indicated he had secured, indicated to whom?

MR TREVOR ANDREW MANUEL: Okay.

ADV LEAH GCABASHE: When and why were those particular persons selected?

MR TREVOR ANDREW MANUEL: The, the saying that it was on about 9 May 1994 and historians can check the date of the election results and the date of the inauguration of the President and we had convened in the National Working Committee of the ANC and there were a number of positions including the fact that that the position of, of Deputy President would be shared between Thabo Mbeki and, and F W De Klerk. That the position of Foreign Minister would go to Alfred Nzo. That the position of Defence Minister would go to Joe Modise etcetera and I was also on that as Minister of Trade and Industry. It seemed that that in the discussions also between the three parties would constitute the Government of National Unity. These positions had been settled and after the inauguration of, of, of President Mandela on 11 May there was still some negotiation about some positions, but that is what happened then.

ADV LEAH GCABASHE: And at the time of course we had the Interim Constitution that was in place at the time.

MR TREVOR ANDREW MANUEL: We had the Interim Constitution that applied until we adopted the Constitution in May 1996. Would you like me to continue?

ADV LEAH GCABASHE: Please do, please do.

MR TREVOR ANDREW MANUEL: Then after, after, some weeks after, after President Mandela he called me as was his, his, his style at four in the morning asking

me to see him as soon as I could in the morning. I happened to be in Cape Town and had to get an early flight, but that was you know. That is just by the by and when I got there then Deputy President Thabo Mbeki was there along with fellow Minister Tito Mboweni and Deputy Minister Alec Erwin and the President told us that Derek Keys, being our first Minister of Finance had asked to be relieved of his responsibilities and that he needed to find a new Minister of Finance. He felt that the country wasn't ready for an ANC Minister of Finance yet, and then put the proposal that he wanted to bring in his banker, Chris Liebenberg, as Minister of Finance. He wanted to test this with this grouping of people who in his view were in government and understood matters economic, and he then proceeded to invite Chris Liebenberg. And 10 Chris served I think for about a year before he indicated to Madiba that his time was limited, and so in August of 1995 I was invited to the office of the President where he and I met then Deputy President Thabo Mbeki, the President said to me that Chris Liebenberg would be leaving after he tabled his budget and would I be ready to serve as Minister of Finance and asked for the views of the Deputy President and we agreed and on that basis President Mandela asked me not to disclose this to anybody.

Now I mention that because the oath of office has been consistent that Ministers in taking the oath commit not to disclose information in their possession to anybody not entitled to do so and there was no disclosure. It was in – on the 28th of 20 March 1996 that President Mandela, well shortly before that, about a week or so before that the President called me again and told me that I would get a new Deputy Minister in the person of Gill Marcus and ja, and that the position of – that I had occupied as Trade & Industry would go to Alec Erwin and he gave me permission to have a conversation with Gill Marcus, and on 28th of March of that year in Parliament President Mandela made the announcement that Gill Marcus would be the Deputy Minister of

Finance, I would move across, Alec Erwin would become Minister of Trade & Industry and Phumzile Mlambo Ngcuka would become his Deputy.

Those were some of the changes that he announced and there were others relating to the closing down of the RDP office, the dropping of Paulo Jordan from cabinet and the move of Jay Naidoo from the RDP office into Communications, that happened on that day and we took, we were sworn in so that I became Minister of Finance from the 4th of April 1996. That's what happened then and there were no changes. 1999 the ...(intervention)

ADV LEAH GCABASHE: Can I before you get to 1999 Mr Manuel, sorry to interrupt
10 the narrative, which is important, can I just interrogate one or two issues, the one point you make, and I think it's in paragraph 3 of your affidavit is you speak about the norm, I'm just getting the term out of context, either at this point or maybe you would want to deal with this later, my question really is was there – is there such a thing as a norm in the appointment of members of the National Executive, and really I'm looking at the manner in which President Mandela in light of the Government of National Unit had to handle the appointment of members of the National Executive, but can you say that anything in the manner in which he dealt with appointments would have constituted a norm that other Presidents may have wanted to have regard to?

MR TREVOR ANDREW MANUEL: It's a complex question Chair becomes norms and
20 conventions require much longer period, but I think what President Mandela did was to put emotion a trend that is true to the spirit of the Constitution that vests the responsibility with the President.

ADV LEAH GCABASHE: The responsibility for what Mr Manuel, just to be very clear.

MR TREVOR ANDREW MANUEL: Sorry, responsibility for the appointment of members of the Executive, bear in mind that the Executive exists in the Constitution

and in life in two parts, on the one part there are Cabinet Ministers and then as the constitution says the President may draw from members of Parliament and appoint them as Deputy Ministers to support the system of governance. That too is a responsibility and of course the Deputy President is appointed by the President in quite the same way, but those are presidential prerogatives articulated in our Constitution.

ADV LEAH GCABASHE: The second aspect you touched on with respect to the appointment procedure followed by President Mandela, was the issue of confidentiality, both in relation to the manner in which he spoke to the persons he had selected as members of his cabinet but also in relation to how those members who had been
 10 selected needed to treat this information that had been imparted to them, so my understanding of your evidence is that that confidentiality not publicising discussions either by the President, with the President that way of doing things, that manner of doing things was critical to upholding the gravitas of the office to securing the interest if I might just default to that phrase, the interest of the Republic of South Africa. It's really the confidentiality of those discussions that I'm drilling down into.

MR TREVOR ANDREW MANUEL: Chairperson that is fundamental. I think it's also important to see that in the context of ensuring that releases of information are symmetrical to anybody who is interested. A symmetry of information especially in respect of matters of government, will actually be used by certain players I would
 20 imagine to hedge and take positions on all (indistinct) issues. So it's not just confidentiality for its own sake, it's also recognising the importance of the exercise of power by the Head of State because you can't – I think it would be completely cavalier to allow for arbitrage opportunity and I think that if you look a situation that applies later, in December of 2015 it seems very clear that there were people who knew that a particular individual, quote out of the blue was going to be appointed as Minister of

Finance and somehow became advisors even before the individual was sworn in.

That demonstrates a break with that norm, with that tradition that is so fundamentally important in ensuring that confidentiality is actually uppermost in the exercise of that power.

ADV LEAH GCABASHE: Maybe I should allow you then to deal with the next period which starts in 1999, just before we get to the tea break and that's the appointment process, new experience under President Thabo Mbeki.

MR TREVOR ANDREW MANUEL: Thank you, Chairperson the elections in 1999 were held I think perhaps end of May early June, the President was inaugurated on the 16th
10 of June that year, President Mbeki, a number of us received requests to be at the State guesthouse late that evening after a cultural event, have sensed what it was about, and there was a large gathering of many people who had been Ministers, were Ministers because ja, Ministers remain in position until a new cabinet is appointed as per our Constitution, and there were some new individuals in this large room.

It had never, I mean there had been no process like that before and so we all kind of sensed what it was about but didn't know how this would be exercised, and individuals were then called into a study. I was I think perhaps the second person to be called that night, and President Mbeki was sitting there with Kgalema Motlante who was then Secretary General of the ANC. Very briefly I was asked whether I would
20 continue, I'd be prepared to continue serving as Minister of Finance. When I agreed they would thank me and I was asked to leave the study for the outside and to go home, not to have any contact with the rest of them and I went home. It so happened that I shared a house with the late Kader Asmal who then changed from Minister of Water Affairs to Minister of Forestry. He came in many hours later, and I had no inkling of the change until he woke me, very rowdily I would say, to tell me that he was very

happy with the new assignment that he had, but that's how that happened.

We were sworn in on the following day, it should probably reflect on about the 17th or 18th of June and that's how the position remained, essentially there would have been some minor reshuffles I would imagine, between then, that's June 1999 and 2004 when there is yet again an election.

ADV LEAH GCABASHE: Can I ask you just to pause there for one minute.

MR TREVOR ANDREW MANUEL: Happily.

ADV LEAH GCABASHE: And explain to me what your interpretation of the presence of Mr Kgalema Motlante, who was the Secretary General of the ANC at the time, what
10 our interpretation of his presence in that study with President Mbeki was, how did you view that?

MR TREVOR ANDREW MANUEL: Thank you. Chairperson my understanding of it is that the President would never arrive in the position purely on the strength of his own or her own jacket. Ours is a party-based system and if you look at the proportional representation system I think the President in party is actually the Genesis of taking responsibility. As we know the President arrives in Parliament to be sworn in as a member at the convening of the first Parliament after an election, and if there's then an election by Parliament for the President who is then relieved of his or her responsibilities as a member of Parliament. So the President is very much also of the
20 party that wins an election.

So with the Secretary General present my understanding has been that there would have been some consultation. Now when I say some consultation I'd indicated that when President Mandela announced to us it was in the National Working Committee, but subsequently it was never at so large a forum. Clearly it could not be in the National Executive Committee which is exceedingly large, it's about 80+ people and

I would hazard Chairperson that each of the members of the National Executive Committee would see themselves as a prospective Minister and so you couldn't negotiate this thing. There needed to be some consultation so without knowing for sure I would guess that it may have been with the top six, President's preferences given to the top six and then the Secretary General representing those interests when an individual is invited to serve as a Minister.

ADV LEAH GCABASHE: Thank you and I have been reminded that it is almost tea, but if I can just wrap this up with one last question Chairman. What I understand you to be saying is that you would essentially subscribe to the view that in selecting members
10 of the National Executive a President makes political judgment on how best to deliver on the mandate of the majority party, hence that however informal consultation with senior members of the party.

MR TREVOR ANDREW MANUEL: That is certainly my interpretation. I think just for the record Chair there were also people brought into cabinet during that period who were not of the ANC. Nkosi Mangosuthu Buthelezi was brought in as a minister from the IFP. Mosibudi Mangena was brought as a minister but was president of Izapo so those things happened as well, but I'm sure there would have been consultation because almost inevitably there may be some people who in the ANC would think that those individuals occupy their positions so the political pre-eminence of the Head of
20 State being able to explain how they weigh the balances, I think is a fundamentally important part of that. Thank you.

ADV LEAH GCABASHE: And what that person considers best serves the interests of the Republic obviously would inform this process.

MR TREVOR ANDREW MANUEL: Yes Chairperson I read it in the context of the oath of office to do that which advances the interests of the Republic.

ADV LEAH GCABASHE: Thank you Mr Manuel, Chairman maybe this is an appropriate time to take the tea break.

CHAIRPERSON: Okay, we will take the tea adjournment and we will resume at half past eleven. We will adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes you may proceed Ms Gcabashe.

MS LEAH GCABASHE: Thank you Chairman. Mr Manuel we were essentially at page 23 of your affidavit and this portion deals with the process as you experienced it under
10 President Kgalema Motlanthe if you could just give a short narrative on that thank you?

MR TREVOR MANUEL: Thank you very much Ms Gcabashe. Mr Chairman the – just before the process with President Motlanthe I had said that there were significant changes introduced at the ANC conference in Polokwane in 2007. One of the consequences of that was a very intense discussion at an NEC meeting in September 2008 at which a resolution was adopted to recall President Mbeki and one of the first actions I took very early in the morning – it was a Saturday morning perhaps the 20
20 September I went to my office in Pretoria to have a letterhead and I tendered my letter of resignation to President Mbeki and I delivered it at about 7:30 in the morning. I went off there was the NEC meeting continued and I gave a copy of that letter to both
20 President Zuma who was then president of the ANC and President Kgalema Motlanthe because it was clear that the ANC would support his candidacy to become president of the Republic. They tried to persuade me to withdraw my letter but I was very clear that my reading of the constitution is that Ministers serve at the pleasure of the President. The assumption of course being that the pleasure is properly and carefully utilised. I – as it happens I – well I indicated to then Minister Motlanthe that if he required my

services I would be available but it had to be his call. It could not be the call of a predecessor. As it happened I had to fly off to New York and Washington for international responsibilities I had and whilst travelling from New York to Washington as it happens my phone rang off the hook because my letter of resignation had been leaked to the press in South Africa and the Rand was – appeared to be in free fall. But I returned on the public holiday 24 September that evening Kgalema Motlanthe called me and asked if I would continue to serve as Minister of Finance and he would invite me after he is elected the following day. It seemed to be procedural formality that he would be elected. And so that was a different set of circumstances. There were some

10 ministers who resigned and replacements had to be found. Some rather hurriedly and a new cabinet was formed and sworn in as the president – the cabinet of the President Motlanthe on about the 25th or 26 September of 2008. And that cabinet remained in position until elections the following year and the same routine was followed. When President Zuma then had been inaugurated an invitation to the state guest house then a much larger grouping of people invited and perhaps I was lucky to be first or second again invited to serve and in the room – in the study were President Zuma with Gwede

20 Mantashe who was then the Secretary General of the ANC. So I am saying that in my mind the response – no the initiative to confer with some of the top leaders of the political party seemed to be entrenched by that practise. We were sworn in and sorry, sorry I need to interrupt this. There was something that happened. You see Chairperson when you are invited to become a member of Parliament to have your name placed on the list of candidates for a party you are required to sign an acceptance. A nomination acceptance and to the best of my knowledge it still exists in all political parties. So I was not sure that I wanted to go back after the 2009 elections. So I delayed and then I was called to Luthuli House by – and had a meeting with

President Zuma and who was not then president of the Republic and Gwede Mantashe. And I indicated that that event I referred to was a signal that my persona had become too intertwined with the Portfolio Minister Of Finance and it was not good for democracy or me. And President – well Jacob Zuma then indicated to me that he was mindful of it and said that he would ask me to do something else in cabinet not Minister of Finance but it would be inappropriate to discuss it because there would asymmetry. I accepted that, signed the acceptance form, went through the motions, sworn in and then I was invited to serve as Minister in the Presidency responsible for the national planning commission. And that was a position I occupied until the end of that term which was in

10 2014. But I think Chairperson it is appropriate to mention that there were – there were significant changes in the way in which these things were exercised. For instance at the end of October of 2010 there was very large reshuffling. There were ten ministerial changes in all and seven ministers were dropped from cabinet. And when one looks at it well try to understand it then but when one looks at it in retrospect that word that was used by Advocate Gcabashe quoting a report earlier the repurposing seemed to be at least one of the factors considered. When one looks for instance and I am going to use an example Chair Barbara Hogan who testified before this commission had been Minister for Public Enterprises. Now on that day the 31 October she was summarily

20 Enterprises. It is a – and you can run through the entire list that reflects a series of choices that were exercised along those lines and you know for instance Minister Molewa was removed as Minister of Social Development. Minister Bathabile Dlamini was brought into cabinet for the first time. So those changes were there and those changes I think have had a profound impact on the norms of governance since then. There is a person I see in the room and I am not supposed to see him but I know that

he was also summarily dismissed on that occasion as part of the repurposing.

MS LEAH GCABASHE: In fact that new cabinet and I should actually rephrase that the persons who were appointed both to cabinet and the deputy ministers who were appointed ended up constituting the largest cabinet/appointment of deputy ministers we have ever had in South Africa in terms of just numbers?

MR TREVOR MANUEL: Numerically I mean this thing exploded. A cabinet that – the executive exploded because apart from – well from 2009 there were new positions created. What used to exist is Minerals and Energy were separated what used to exist is Trade and Industry. Two new portfolios were created. Economic Development and
10 small business. There was a new alignment of agriculture forestry and fisheries etcetera, etcetera so there were significant changes in 2009 and I think that the cabinet was not rapidly expanded even at that occasion in 2010 I referred to but virtually for every position there was – there was a deputy minister and in some instances two deputy ministers. So I am saying repurposing but of course there is always an opportunity for patronage when you expand a function in the way that it happened over that period.

MS LEAH GCABASHE: The...

CHAIRPERSON: Well may I interrupt you Ms Gcabashe?

MS LEAH GCABASHE: Of course Chair.

20 **CHAIRPERSON:** Just to say will the legal team make arrangements that we obtain that full list of how the cabinet was constituted before that reshuffle in 2012 that Mr Manuel is talking about and obviously the le – how it looked like after the reshuffling. I think it may be quite important we should just have that list and then obviously the legal team and the investigators must apply their minds to what evidence if any may be necessary around that. Okay.

MS LEAH GCABASHE: We will do that Chair.

CHAIRPERSON: Thank you.

MS LEAH GCABASHE: Mr Manuel the point you really touch on now is that the constitution provides for a rational application of its provisions and that includes the appointment of Ministers and the appointment of Deputy Ministers, you would agree with that?

MR TREVOR MANUEL: I agree with it in time.

MS LEAH GCABASHE: So one of the key factors that the Chairman can certainly look at as he ultimately at the end of this – of all these hearings looks at appointments and dismissals is use that rationality standard to interrogate whether a particular national executive...

CHAIRPERSON: Well before Mr Manuel might answer that and he is free to answer it I just want to advise him that this may be a legal question so that if he chooses to answer he can answer but if he thinks it might be difficulties for him to do that. Ja okay alright.

MS LEAH GCABASHE: Then I will just rephrase it as you say rational standards are what is expected in terms of the constitution and leave it at that.

MR TREVOR MANUEL: Yes and Chair you are absolutely correct I think there has to be the test – the objective test for rationality in the exercise of power.

20 **MS LEAH GCABASHE:** Can I ask...

CHAIRPERSON: Yes.

MS LEAH GCABASHE: Can I ask you just very briefly to then just explain the significance of a ministerial portfolio as opposed to that of a deputy minister because we are ultimately going to come to a position where we are discussing the change in status of Mr Mbalula from being a Deputy Minister of Police to being a full Minister of

Sports and Recreation. There are people who still confuse the concept of Deputy Minister and assume that Deputy Ministers are members of cabinet. Maybe coming from you people will understand this differentiation a little better.

MR TREVOR MANUEL: Chair the – my experience and my reading of the constitution is that Section 85 of the Constitution vests the executive authority in the present and its exercise with other members of cabinet. So presumably you have to be a full minister – you may be assisted but in the main ministers cannot devolve their responsibility to deputy ministers. So it has always been well before '94 there was a clear distinction because there were some deputy ministers and ministers had loos in their toilets and
 10 deputy ministers did not ever. They had to continue to try and get there. They were referred to Afrikaans [indistinct] is Kort Broek Ministers. That was the distinction before 1994. And so I am saying Section 85 vests the executive authority in the present acting with cabinet and it was always a bug bear for deputy ministers because when ministers are – were away there was always requirement that an acting minister be appointed and this must actually be in a presidential minute. And the acting minister has to be a member of cabinet. So deputy ministers never become acting ministers. I think the distinction made in the constitution is held in practise. And I think it is quite an important distinction. In fact in the case of the Minister of Finance because of the extraordinary work load one of the functions that the Minister of Finance has to deal
 20 with would be variations to import tariffs. Now these things come in at the rate of about sometimes 30 a week and it was just an unbelievable work load and I approached President Mandela sorry President Mbeki then asking him whether we could separate this out and the deputy minister could be assigned this so there had to be a formal assignment, right? By special presidential minute and the publication of that power in the gazette. So it was not just the Minister of Finance sort of shovelling work to the

deputy minister to keep them out of trouble. There was actually a formal assignment of that responsibility. And I think that is how the constitution provides for the distinction.

MS LEAH GCABASHE: Yes indeed you are correct because the constitution does provide in Section 98 and 99 for any temporary assignment or functions to go from a cabinet member to another cabinet member. So if it were to go to a deputy minister indeed a special proclamation some legal document.

MR TREVOR MANUEL: Yes.

MS LEAH GCABASHE: In terms of Section 101 again of the Constitution would have to be put in place. Can I wrap up this part of your evidence with the following question?

10 Is there anything fundamentally wrong in a president taking advise in circumstances where he or she does not applicate his or her authority to take a particular decision? I ask this because part of the area we are going to move into now is the 1.3 Term of Reference 1.3 area where we are talking about whether anybody in an unauthorised manner was able to get information on an appointment process that the then president was busy with. So the question is: Is there anything wrong really with consulting never mind who but just the process of consulting a third party if that president does not abdicate his or her authority to take that final decision?

MR TREVOR MANUEL: Thank you Ms Gcabashe. Chairperson I do not think that there – there can be an objection to consultation. What I have tried to indicate from my
20 experience was when I was appointed the Secretary General of the African National Congress was not a Member of Parliament even was in the room indicating that there had been consultation. I had never known any – which is why I would have to guess if the top 6 were consulted as a unit. Because there was never = I mean I did not see the Treasury General of the ANC having a press conference and saying well you know this president wants to appoint Trevor Manuel I disagree with that. It was always kept in the

strictest confidence and I think that the issue of consultation would require that. It would require I think also un-interpretation of the oath of office of the head of state. What advances the interest of the Republic and they look to you Chair and say that when I read the judgment of the constitutional court 31 March 2016 and at paragraph 83 where it deals with the violation of the oath of office. It is about those kinds of things. It is about whether – these matters are – where the powers are consciously exercised. And the limitations understood by those who exercise that kind of power.

MS LEAH GCABASHE: Yes. Thank you. This really takes us to the meeting of August 2011 and it brings us to the October 2018 affidavit that you deposed to.

10 **MR TREVOR MANUEL:** Yes.

MS LEAH GCABASHE: Maybe I should start at the beginning. What triggered Mr Mbalula's outburst at the NEC meeting of the 20 – of August 2011?

MR TREVOR MANUEL: Chair I may be slightly wrong about this because – just because of lapse of time.

CHAIRPERSON: Yes.

MR TREVOR MANUEL: But I will try and put my recollection and I think the next witness may be in a position to confirm or vary that.

CHAIRPERSON: Yes.

20 **MR TREVOR MANUEL:** But my recollection of that NEC was that there was a tense discussion about the influence of the Gupta's.

MS LEAH GCABASHE: Can I ask you to pause there because I know you are going to go further. When you say the influence of the Gupta's a tense discussion about the influence of the Gupta's was this not the discussion introduced by Mr Mbalula or did that tense discussion ensue after Mr Mbalula had made his contribution?

MR TREVOR MANUEL: Chairperson the African National Congress is a political

movement and politics is very wide and wide ranging discussions take place in the National Executive Committee and so in response to what started out as a political overview provided frequently by the President of the ANC that then is wide ranging discussion and amongst the issues not covered – not canvassed in the introductory paper but that emerges from the floor is but why are the Gupta's as influential as they are? And then there would be various comments on that. There is no resolution on it at the conclusion of the discussion Chair but it is quite important that these matters were raised as freely and as strongly as they were in that National Executive Committee Meeting. And my recollection of it is Chairperson that when it came to the opportunity

10 for Mr Mbalula to speak in that meeting he became very emotional in the exchange of open letters between ourselves – I refer to his weeping and he said he cried but he did not – I did not understand why he cried and it was – I am saying it was a very emotional thing. I am not saying this to in any way try and humiliate him or anything it was an exceedingly difficult emotional issue for Mr Mbalula my interpretation. And it was about the fact that he had served before this reshuffle I refer to 31 October 2010 he was serving as Deputy Minister of Police. Maybe it was called Safety and Security maybe Police but he was Deputy Minister there and on the 31 October he was announced at the Minister for Sport and Recreation. And thus moving from a Deputy Minister into a cabinet position. Now what he articulated in the NEC was that he was – he was very

20 excited. No, he said that he was called to Saxonwold to be told by the Gupta's now I know that there may be a difference of names maybe Atul maybe Ajay maybe he knew them maybe he did not know them I would not be able to distinguish between one and the other brother because I do not know them.

MS LEAH GCABASHE: If I might just clarify. Mr Ajay Gupta who is the older brother says he had the discussion with Mr Mbalula. It was not Mr Atol Gupta who you

reference in the statement but that is really just...

MR TREVOR MANUEL: That may be so but...

MS LEAH GCABASHE: Information.

MR TREVOR MANUEL: If I read his affidavit Chair he also says that it was in Midrand at the offices of Sahara whereas my recollection of what Mr Mbalula said in the NEC was that he was called to Saxonwold. And I would assume that he knows the geography of greater Johannesburg well enough to know the difference between Midrand and Saxonwold.

MS LEAH GCABASHE: Can I add one more area of dispute as you continue with your
10 narrative. The third one is that Mr Ajay Gupta says he simply said to – congratulated Mr Mbalula and said he understands Mr Mbalula is going to become a full minister.

CHAIRPERSON: Well Ms Gcabashe I wonder whether you should not allow Mr Manuel to finish his recollection of what happened in what Mr Mbalula said and what happened at the NEC meeting that is relevant to what we are dealing with before then maybe you – you put that to him.

MS LEAH GCABASHE: As you please Chairman.

CHAIRPERSON: Yes. Just so that the evidence is continuous.

MR TREVOR MANUEL: Okay.

CHAIRPERSON: Ja.

20 **MR TREVOR MANUEL**: Thank you Chair. What Mr Mbalula said was that when he was called to Saxonwold he went there and there he was told that he was going to be appointed as Minister of Sport and Recreation. And he was at first very excited about making it into cabinet I mean there is a sense of a big promotion. Very excited at being told this but in retrospect and this was the emotional part of it. It should never have been the Gupta's or anybody else told him that. It was the prerogative of the president

and that prerogative had been violated by the way in which the information had been shared with him. Now I think Chairperson that if and when Mr Mbalula does appear in this commission as a witness he is likely to confirm what I am saying. That it was the sense of the violation of the constitutional prescripts in the exercise of authority by the president that had been violated by somebody who knew before he was entitled to. And seemed to suggest that he had sufficient power to confer the status of cabinet minister on an individual. That is the big issue and I think it goes to the heart of what I earlier described as repurposing and extraneous influences which also seem to align with the terms of reference of your commission Chairperson.

10 **MS LEAH GCABASHE:** Thank you Mr Manuel. If I might just ask one or two questions relating to this particular narrative. First my understanding from your evidence is that Mr Mbalula's contribution at that NEC meeting did not trigger the discussion on the influence of the Gupta family or the perceived influence of the Gupta family on the president. It was in response to a discussion that was already in place or that was unfolding that he then made his contribution. I do not know if you can recollect that kind of detail it would be useful if you could.

MR TREVOR ANDREW MANUEL: Chair with respect I do not recall it. It may have been something along the lines of a group of Members of the National Executive that is starting to argue that the President does not exercise control and then it sort of
20 developed into a particular discussion. It may have been something along those lines, but I, I, I could not confirm at this stage that it was Fikile Mbalula who, who sort of started who triggered the enter discussion. I think there was a discussion happening that arose from a concern about [indistinct] his influences on the exercise of power.

CHAIRPERSON: So is my understanding correct that while because of the lapse of time you might not recollect certain aspects correctly but you have no doubt that there

was at that meeting some discussion around concern, the concern that was being expressed or had been expressed about either the influence of the Gupta family in Government or that the then President was not controlling certain things properly? That part, is that part one that your recollection is clear about or not really?

MR TREVOR ANDREW MANUEL: No, I, I, Chair I think your, your, your reading of what I am saying is.

CHAIRPERSON: Hm.

MR TREVOR ANDREW MANUEL: Is correct.

CHAIRPERSON: Yes.

10 **MR TREVOR ANDREW MANUEL:** In fact at that time there was a climate where it seemed as though certain individuals were invited to Saxonwold not, not only Minister Mbalula, but he was the first to make that declaration, and it is almost a public declaration because the NEC comprised of more than 80 people, of how he had been appointed. There had been speculation about a number of others and a bit of banter even about whether somebody was a Gupta minister or whatever, but this was the first to the best of my knowledge a first confirmation which was in the form of, of, of I am saying a very emotional statement by then Minister Mbalula about how he had been appointed. So it broke, in many ways it broke, it broke, it broke the, the taboo had broken the myth that it confirmed that these things were actually happening.

20 **ADV LEAH GCABASHE:** It is, it is interesting that this is a discussion that took place in August 2011.

MR TREVOR ANDREW MANUEL: Huh-uh.

ADV LEAH GCABASHE: The appointment of Mr Mbalula was in October, effective 1 November 2010?

MR TREVOR ANDREW MANUEL: Yes.

ADV LEAH GCABASHE: Almost a year later as when you had this discussion at the NEC meeting. Are there events that may have unfolded between 1 November 2010 when he was appointed Minister of Sport and Recreation and the August 2011 date that sparked this discussion?

MR TREVOR ANDREW MANUEL: Chair I, I do not want to subject this, this Commission to my conjecture.

CHAIRPERSON: Yes, yes.

MR TREVOR ANDREW MANUEL: Because, because I mean in, in, in the form of, of these discussions in the NEC and I hope I am not breaking any confidences, but it
10 generally starts with a political overview provided by the President and then discussions. Discussions are generally free flowing and they would be supportive of the views and sometimes there would be, there would be opposing views. They never come together. They never resolve, result in, in formal resolutions, but I think it is an opportunity to clear the air. To try and persuade others of, of positions held and so I, I do not actually read in, anything into.

CHAIRPERSON: Yes.

MR TREVOR ANDREW MANUEL: The fact that there was not an immediate reaction in November 2010. Perhaps.

CHAIRPERSON: Hm.

20 **MR TREVOR ANDREW MANUEL:** It took, it took some time for.

CHAIRPERSON: Hm.

MR TREVOR ANDREW MANUEL: For the matter to actually just state just in the minds of, of some people there.

ADV LEAH GCABASHE: I, I would then go back to my term application of authority and say that the essence therefore of, of that discussion was about the President being

influenced by a family to the extent that he appeared to abdicate his authority to take critical decisions that the Constitution confers on him and him alone.

MR TREVOR ANDREW MANUEL: Chair I have not the slightest doubt that that application is, is in evidence in the example, but I would hazard that if you take many of the State Owned Corporations the Ministers, I, I used, I used the word repurposing. The Ministers who were appointed to particular portfolios part of the exercise of their powers to recommend frequently, recommend to Cabinet certain appointments at State Owned Corporations/Enterprises, same thing and I think that they, they, they acted frequently to advance certain positions. You could only Chairperson arrive at the
10 situation where Eskom lived through 12 CEOs and six Chairs in a decade. If the repurposing was the objective and so it is, I mean I have no doubt that if there were recalcitrant, not recalcitrant, reluctant Ministers there would be removed and replaced with, with people who were more pliable. I, I, I want to, to say that I, I do not have the slightest doubt that that is what transpired with removal of Minister Nhlanhla Nene on 9 December 2015 and his temporary replacement with Des Van Rooyen who arrived with advisors in tow and if my reading of Advocate Madonsela's report is correct had spent the previous week visiting a particular house in Saxonwold every single day. When I say repurposing it is my reading of those kinds of circumstances that shape it for me. Somebody who is reluctant in, in, in performing certain functions then being
20 replaced with somebody who might act quite differently and receive instructions from strange places.

ADV LEAH GCABASHE: One, one small, little matter just to confirm. At the NEC meeting of August 2011 you confirm that the President of the Republic was present?

MR TREVOR ANDREW MANUEL: The President of the?

ADV LEAH GCABASHE: The President of the ANC, he was there?

MR TREVOR ANDREW MANUEL: Yes indeed Chairperson.

ADV LEAH GCABASHE: Thank you.

MR TREVOR ANDREW MANUEL: He was there.

ADV LEAH GCABASHE: I just want to confirm [intervenues].

MR TREVOR ANDREW MANUEL: No, he was there. I mean it is, it is, you know perhaps it is just, it is just the way. If Advocate Gcabashe in this environment said something, she cast judgment on, on something I am doing I am going to actually say with respect Advocate Gcabashe I, I fundamentally disagree with your view on this matter. I would not leave it, but you know that is just how things are.

10 **ADV LEAH GCABASHE:** Was there a reaction from the President?

MR TREVOR ANDREW MANUEL: I certainly do not recall any reaction.

ADV LEAH GCABASHE: I would then like to take you to the issues that Mr Ajay Gupta raises in his Rule 3.4 application and the statement annexed to that and I will really just set them out, paraphrase them briefly.

CHAIRPERSON: Ms Gcabashe [indistinct].

ADV LEAH GCABASHE: My learned.

CHAIRPERSON: You are getting a lot of assistance.

ADV LEAH GCABASHE: My learned leader thought you were preparing to ask a question Chair.

20 **CHAIRPERSON:** Oh, no, no

ADV LEAH GCABASHE: And he knows that I.

CHAIRPERSON: No.

ADV LEAH GCABASHE: I do not spot talking until I am asked to stop.

[Laughing].

CHAIRPERSON:

ADV LEAH GCABASHE: He was, he was just.

CHAIRPERSON: Well.

ADV LEAH GCABASHE: Asking me to pause for a second.

CHAIRPERSON: Well I did not intend to, but certainly there was a question in my mind. So that part he, he read quite well. There was a question in my mind, but I am not going to interrupt you for now.

ADV LEAH GCABASHE: Thank you, thank you Chair.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE: The first issue really is that both Mr Mbalula and Mr,
10 Mr Ajay Gupta said that it was Mr Ajay Gupta who had the discussion and not
Mr Atul Gupta. My question really is does anything turn on which Gupta brother had
this discussion with Mr Mbalula?

MR TREVOR ANDREW MANUEL: Chairperson I do not think anything turns on it. I
think the admission that there was a discussion is sufficient to confirm what
Ms Gcabashe refers to as a sense of application. I know that in, in, in this open letter I,
I said it was Atul or did I say Ajay?

CHAIRPERSON: Yes, I think you said [intervenes].

ADV LEAH GCABASHE: You said Atul Mr Manuel.

MR TREVOR ANDREW MANUEL: Atul, yes but you know that that may have been
20 what I thought I heard but I, I, because I do not know the individuals I do not think that I
would ever attempt to distinguish between one and the other and, and I do not think it is
material. I think the fact that there is an acknowledgement that ahead of
Minister Mbalula's appointment that there was a discussion about the fact that he would
assume a particular position or, because there is also a sense argued by, by, by
Mr Ajay Gupta that he did not say it will be Minister of Sport but that you would go into

Cabinet. I think that is immaterial. How did he, how did he come by that knowledge I think is an important question.

ADV LEAH GCABASHE: I will get to that point in a minute, but can we just clear the issue of Sahara Computers in Midrand and Saxonwold. Your recollection, and really I am just placing this on record, your recollection is that Mr Mbalula said he had been summoned to Saxonwold?

MR TREVOR ANDREW MANUEL: Chair I, I do not think that I could assert the words summonsed or summoned, but certainly he was called to Saxonwold. That that, that is my recall of, of what he said.

10 **ADV LEAH GCABASHE:** The next area of dispute is whether Mr Ajay Gupta, this is his version, is correct when he says he simply read media articles and realised that Mr Mbalula was up for promotion and congratulate, congratulated. Wanted to congratulate and did in fact congratulate Mr Mbalula on his appointment to full Minister. He denies in his affidavit mentioning the portfolio of Sport and Recreation. Is that your recollection of what you heard?

MR TREVOR ANDREW MANUEL: Chair it is, it is, it is but my recollection over a long period that that Mr Mbalula said that he had been advised that he would assume the position, because it, it would not be, it would not be an unreasonable expectation for somebody who occupies a position of Deputy Minister say of International Relations to
20 aspire to occupy the Cabinet position. It would not be unreasonable, but where you have a kind of diagonal move where, where there is no, there is no evidence skill set. I think it is, it is, it is worth, it is worth recalling and that is certainly what Minister Mbalula or Mr Mbalula has seen to, to suggest about the engagement.

ADV LEAH GCABASHE: Of course if you look at page, paginated page 35 which is one of Ajay Gupta's annexures and you go down to three quarters down that page. It is

a Fin24 archive report. It reads as follows:

“The Weekend Argus reported that Deputy Police Minister Fikile Mbalula was set to take up a full Cabinet post as a reward for leading the campaign that saw Zuma elected ANC President in 2007.”

This is what Ajay Gupta’s version is. He says a full Cabinet post. He did not mention Sport and Recreation. Again if you look at page 37. Again it is an annexure relied on by Mr Ajay Gupta. The top paragraph again speaks to:

10 “Taking up a full Cabinet post as a reward for leading the campaign that saw Mr Zuma elected ANC President in 2007.”

CHAIRPERSON: Of course Ms Gcabashe we have to remember that Mr Manuel was not there when there was that conversation. He only knows what on his recollection Mr Mbalula said at the NEC. So he probably might not be able to say what Mr Ajay Gupta may or may not have said to Mr Mbalula that what he certainly did here is what Mr Mbalula said at the NEC meeting. So I just mention that, but you might be wanting to say something Mr Manuel.

MR TREVOR ANDREW MANUEL: Chair I mean you know press speculation will also obtain. I would imagine that ahead of the elections on 8 May and, and subsequent to the announcement of results and so on the press will speculate Ranjeni Munusamy
20 would put together a Cabinet. It is just, it is just a way this thing works but if, if Mr Egypt sees his name in Ranjeni’s list it would, it would be quite extraordinary for me to call Mr Egypt and say well congratulations on your appointment. Why would I do that? What authority would I have to do it and I would not just call him on the telephone I would invite him to my home to do it and I think that gives the entire exchange a, a particular meaning and, and you know my reading of it is if, if you have the authority to

call somebody to your home to break that news unless he was going there for, for general shebeen activities but, but if you were called to the house to be told this there, there must have been a sense of authority and perhaps expectation from one side about how this would pan out.

ADV LEAH GCABASHE: Even if you were called to Sahara Computers in Midrand.

MR TREVOR ANDREW MANUEL: I think.

ADV LEAH GCABASHE: The same would pertain?

MR TREVOR ANDREW MANUEL: The same issues would apply.

ADV LEAH GCABASHE: In any event I really am just putting Mr Ajay Gupta's version
10 to you and that version is contained in his statement which you find on pages 30 and 31
paragraphs 4, five and six speak to the issue that those newspaper reports speak to.
So really this is just the Commission's effort and, saying to you Mr Ajay Gupta may not
be here but he has given us a version and this is what his version records.

MR TREVOR ANDREW MANUEL: Chairperson I would like him to be here.

CHAIRPERSON: [Laughing].

MR TREVOR ANDREW MANUEL: I would like him to give up the hiding place in Dubai

CHAIRPERSON: [Laughing].

MR TREVOR ANDREW MANUEL: And be here and face consequences.

CHAIRPERSON: [Laughing], yes.

20 **ADV LEAH GCABASHE:** With respect to those media reports when Mr Mbalula
addressed the, the, the NEC meeting in August he certainly did not make, and this is a
question, did not make any reference to what he might have read in the October
additions of various newspapers which are the ones that Mr Ajay Gupta relies on. This
is a question.

MR TREVOR ANDREW MANUEL: Chairperson it is not my recall. My recall and, and,

and I mean the, the, the matter referred to as, as the emotional breakdown is about the fact that in retrospect he felt violated by being told. So it was not that I read in the New Age that I will be appointed Minister of Police and then I was not appointed Minister of Police. This was a different kind of exchange that then triggered the, the emotional response.

ADV LEAH GCABASHE: Yes. If you would then turn to, back to TAM page 4 just above paragraph 11. So we are looking at page 4 and these are the last few questions Mr Manuel. We are almost done.

MR TREVOR ANDREW MANUEL: Yes.

10 **ADV LEAH GCABASHE:** I, I, I really want to interrogate very briefly the annexures that you annexed to your statement. The paragraph I have a particular interest in is the second one. Well at the top really Mr Mbalula talks about newspapers that have all kinds of leaks and this is in his response to you. It is the very next paragraph that I have a particular interest in. If you would please read that into the record.

MR TREVOR ANDREW MANUEL: Thank you very much Ms Gcabashe and, and I quote from an open letter from Fikile Mbalula which is dated 11 June 2017 and I quote:

20 “Manuel did not understand what my tears were about. He did not get the point that I am on record as stating that I have fundamental problems with the way capitalists operate and the Gupta family show us how, just how ugly capitalism is. Indeed they abuse privately learned information to try to position themselves somehow. I was not about that which is why I was the first to report this to an open NEC. I am still not part of that. I do not stand for that. On the other hand Manuel was one of the people who at that NEC meeting did not agree with my

stance on the Gupta family.”

ADV LEAH GCABASHE: Thank you Mr Manuel so the first part of that paragraph speaks to Mr Mbalula’s what he calls his fundamental problems with the way capitalists operate. Was this the sense you got from his contribution at the NEC meeting?

MR TREVOR ANDREW MANUEL: Chairperson I, I would have to, I would really have to stretch the point to, to think that Mr Mbalula was taking an ideological point against capitalism. I do not think that that, that was articulated in any shape or form, because you know there is, there is a general capitalism and then there is the behaviour of the crudest kind of Rand seekers. Now I think in the minds of many the Guptas would be
10 categorised as crude Rand seekers and, and so, but you know to the best of my recollection Mr Mbalula was not articulating an ideological point. He was, he was upset about the exchange and, and as we, we referred to earlier the abdication of responsibility by the Head of State.

ADV LEAH GCABASHE: Thank you. The second part of that paragraph is, the very last sentence which reads:

“On the other hand Manuel was one of the people who at that
NEC meeting did not agree with my stance on the Gupta
family.”

Your comment?

20 **MR TREVOR ANDREW MANUEL:** It, it would be very strange. I mean I, I have never had any relationship or any brief for the Gupta family and I would not in any shape or form Chairperson countenance the idea that individuals should be the bearers of tidings to members who are about to be appointed into the Executive. It is in, it is in total violation of everything that I think the Constitution requires of the exercise of Executive Authority. Now when you have an NEC of 80 people and generally no time limit and

how long people can speak for the fact that another person does not speak on the same topic that does not mean that they disagree with the view articulated. You would only know that if you know I see, I saw Cheryl Carolus here earlier. She used to, we, we, oh she is still here. We served on the NEC together. I would never know what her views were on a particular matter unless she articulated those views, because this is not, this is not something that, I mean the NEC forums are not, are not arranged so that each of the individuals can articulate a view. So I mean this is, this is trying to; I think it is, it is, it is an attempt by Mr Mbalula to distinguish himself as a, as pure as driven snow but I, I mean you know.

- 10 **CHAIRPERSON:** Well in your letter to Mr Mbalula that we have here that, to which he responded in the Daily Maverick I think you raised the issue of what he said at that NEC meeting in a certain context and he responded in the manner in which he responded, but am I right so say part of what you are saying here about what he said at that meeting is that he was expressing an objection to being told by somebody outside of Government, being told by one of the Gupta brothers that he was actually going to be moved from being Deputy Minister to being a Minister. Am I correct to say you are saying he was objecting to that as, as you understood what he, what he said and what his crying was about?

- MR TREVOR ANDREW MANUEL:** Chairperson let me just, let me just try and couch it
20 in, in an understanding I have.

CHAIRPERSON: Yes.

MR TREVOR ANDREW MANUEL: In the circumstance.

CHAIRPERSON: Yes.

MR TREVOR ANDREW MANUEL: If Atul, Ajay what is the other brother's name, Tony?

ADV LEAH GCABASHE: Rajesh.

MR TREVOR ANDREW MANUEL: Rajesh, if any of them were to phone me and ask me to come and see them at home I do not think I would go. I have never been called so I, I, I do not have any, any, any grounds because it is not, it is not a resolve that has been tested in anyway, but if you do not have a relationship why would you go there? Whether it is Saxonwold or the Sahara Computers Offices in Midrand why would I go there and in the course of the exercise of, of Executive Authorities you have to meet business people and so on, but it is always very important to do certain things as I tried to do. If a business person wanted to see me I would ask them to indicate in writing
10 and almost inevitably I would ask that the meetings take place in my office and so I am saying for me the context is important. If you did not have any relationship my question would be why did you go? What was, what was said to you as part of the invitation to go to wherever that exchange took place and I think that it is fair to presume a pre-existing relationship and so Chairperson the, the, the open letter I write is kind of to say to Fikile Mbalula do not pretend that you had no relationship, because you were in tears about this issue and I am trying to signal that there was a pre-existing relationship of whatever, whatever form because I was not privy to it.

CHAIRPERSON: Well there may, there may or may not have been a pre-existing relationship, but he spoke at the end is a meeting and I am just trying to and, to try and
20 understand to check that my understanding of what you are saying is correct. Let us assume there was a pre-existing relationship. His crying and his raising this issue that he had been told for the first time by the Guptas that he was going to be made Minister before the President could tell him. From what you have said I understand that he was unhappy about that, about, about the fact that he was told by the Guptas before the President could tell him, is my understanding of what – of your understanding of is

attitude incorrect?

MR TREVOR ANDREW MANUEL: No Chairperson I concur with that, the question though is the one that Ms Gcabashe asked earlier, if those events took place in October of 2010 it was a very long gestation period before the remorse was felt, because the essence of it is he was at first elated at being told that he has now made it into cabinet and then in the cold light of day realises that there was something wrong with the way in which he was communicated with and by whom, so if there were signals of earlier remorse before that particular NEC meeting I wasn't privy to them.

CHAIRPERSON: Well part of what I am doing is because the approach would be
10 where he or anybody expresses a view that is a good view, or takes a position that's a good position, you know it may be that you give credit, credit for that, but where or anybody takes a wrong decision, a wrong procedural position you deal with that and say but that was wrong but that was right. Now so I'm trying to see whether from your evidence I can say that he expressed unhappiness in the NEC that a situation had arisen where the Guptas knew in advance that he was going to be made Minister and he was saying this is wrong, or at least part of what he was saying, whether part of what he was saying was this.

MR TREVOR ANDREW MANUEL: Chairperson you know we – as Mr Mbalula says in
20 his response to me that he was the first time to make such a declaration in the NEC and I would grant that point to him. The recognition of something that was fundamentally wrong, even though with the lapse of time I think it's an important point, because if the corridor speculation around the cabinet room and the NEC was correct at the time there were also a number of other individuals who had been called in the same kind of way and they have never made a similar declaration.

Yes Chairperson if the work had been done as the former public protector did

in her report of communication and presence because the GPS on our telephones would tell us who is in this room right now, if those things were done for a number of other individuals I would not be surprised if others were told at about the same time by the same individuals about the positions they'd occupy and you know it – because Chair for me it speaks to on the one hand the abdication of power and on the other hand a very public expression of power, supposing and you know it doesn't happen but supposing the President were to ask for my ear about a particular appointment I don't think that it would ever be my place to communicate to the individuals that we discussed. It's not my place. And unless we can conduct ourselves correctly with the confidences I mean I go back Chairperson and this is learnt behaviour when President

10 Mandela said to me alright so I am going to appoint you, but don't go and discuss this thing with anybody. It's what you accept. I mean you – I think if you accept that you will serve in the cabinet system you must abide by the rules, and if outsiders come and demonstrate in a boastful way that they have access to information that they're not entitled to then I think it speaks to the violation, which is at the centre of an enquiry into capture.

CHAIRPERSON: Well I will allow Ms Gcabashe to continue and finish but after that I just want us to have quite some conversation about some of these issues because, one, they are very important, two, you served for a long time in government and you

20 have a clear understanding of how government works and cabinet and so on, and you were in the NEC for a long time too, so I would like us to discuss that, but just to go back to the issue of what it is that you understood Mr Mbalula to be raising or to be crying about in the NEC. It's important and you have indicated that you would grant him that credit in terms of raising that issue, being the first one to raise that issue. It's important because in this Commission I have heard Mr Jonas who came here and gave

evidence and I know that there may be a challenge to his evidence, he might still be cross-examined and I will make a decision later at some stage but he gave evidence that was to the effect that he was offered a position of Minister of Finance by I say just the Guptas, it was one of the brothers, and he rejected it outright there and then so you might then have a situation where Mr Mbalula might not have raised any concern necessarily to the Guptas when they told him but maybe that it wasn't an offer, they were just telling him what they understood to be – what was going to happen as a matter of fact, you know that he was going to be made Minister, but then he on a certain understanding of his evidence he – of what he said he then raises it at an NEC
10 and he says this is what happened to me and therefore brings it to the attention of the leadership of the governing party for them to know what has happened and then take it from there, but I am just mentioned that, I think Ms Gcabashe is finished we will have a chance to talk more about these issues.

Thank you, Ms Gcabashe?

ADV LEAH GCABASHE: Thank you Chairman, just one or two more questions. Mr Manuel if you go to page 3 of the paginated bundle to your paragraph 9 which is part of this exchange this open letter that you wrote, that's what I want to focus on, the very last sentence of the extract reads:

“Perhaps there are still a few debts to be called in by Saxonwold.”

20 Could you explain what you were communicating in this sentence?

MR TREVOR ANDREW MANUEL: Chair the vituperative of open letters are the creative juices generally of about three am. I go back to the way in which I tried to answer the question put by you Chairperson. I'm saying that my reading of it was that there must have been a pre-existing relationship. That's the gist of this, and a pre-existing relationship, I mean relationships can be based on all kinds of things. Perhaps

they are just general friendships. Mr Nyanda over there and I are friends and we meet occasionally and we have a chat and we have been friends and that would be – he doesn't need anything from me and I don't need anything from him, it's just a friendship, but the sense that I have of the way in which the Guptas have interacted was never about the need for friendship, it was a need for favours, and it's in my reading of that word of repurposing.

Chair let's go back to the portfolio that Fikile Mbalula was promoted into, Sport and Recreation to replace a person, the Reverend Makhenkesi Stofile, and the late Reverend and I have been friends and comrades for many years, his involvement
10 in sport was lifelong. When as early as 1981 we tried to stop the Springbok Tour to New Zealand it was to the Reverend Makhenkesi Stofile that we turned to go and campaign because sport was his life.

So you take somebody who is a committed – well active sports person in his youth, active sports administrator as he grew a bit older, and you replace him with somebody in that portfolio who has no visible or no experience of participation in sport, apart from as we've seen flying to a Mayweather boxing match, you replace a person who has reached into the sporting fraternity because that's what's important about a portfolio like that than somebody who has no evident communication with the fraternity. These are actually important issues and so it's against that backdrop I ask if there are
20 still some outstanding favours to be called in.

ADV LEAH GCABASHE: In that context there's an open source report I came across that suggests that Mr Mbalula was actually supposed, or the intention had been to appoint him as full Minister of Police and that for some reason somebody put the spanners in the works, my words, not the article's words, and he was then moved to sport and recreation. My question is, is this an issue that arose at the NEC meeting of

August 2011, which is what you are dealing with today?

MR TREVOR ANDREW MANUEL: No Chairperson it didn't arise, but let me just infuse into the question, my understanding of what you said may be a legal matter, the rational exercise of power, if – and you know with cabinet positions because they are itinerant you don't necessarily have somebody who has all the schooling in a particular portfolio, but to Ms Gcabashe's question I don't know and you're not meant to know if that speculation in your open source is correct what the criteria would be to evaluate that he might be an appropriate candidate to occupy the position of Minister of Police. Perhaps it's that he fears nothing, perhaps there's some other gift that he has that we are
10 unaware of, but you know all I'm saying is that it's fundamentally important to look at how a power is exercised in a rational and objective manner.

ADV LEAH GCABASHE: Thank you Mr Manuel. Can I ask you to look at page 15 of your paginated bundle, at paragraph 2 thereof, page 15, this is what Mr Mbalula writes in response to our open letter and I really am only interested in the first sentence. He says I have asked before where were all these people when Trevor Manuel appointed or accept R J Gupta as cabinet advisor on economy and an ambassador of Brand South Africa during his tenure. I just want to focus on that and nothing else. What do you know about this particular allegation?

MR TREVOR ANDREW MANUEL: Chairperson in terms of cabinet advisor, cabinet
20 doesn't have advisors. Ministers have advisors but cabinet doesn't have advisors so the position of cabinet advisor from somebody who was a cabinet minister he should know that it's a non-existent position so why he dredges up something that doesn't exist or attempts to dredge up something that doesn't exist I don't know, it's a question that he might be in the best position to answer.

The second issue that he draws attention to is that he served as an

ambassador of Brand of South Africa, I think the term ambassador is used very liberally. Now to the best of my recollection when (indistinct) was Minister in the Presidency one of the responsibilities he had was for Brand SA and generally ministers have the license to approach cabinet to appoint people onto boards, and in this context I don't know if it's Ajay or Atul and I don't want to be on the wrong side of these brothers, one of the Gupta brothers certainly sat on the Board of Brand SA. I do want to make the point that I have a sense that when the Gupta brother was appointed very little was known of their activities and if there were nefarious activities they were certainly not in the open. Chairperson in my limited experience there are people who were public servants, whilst

10 I was a Minister, for whom I had regard for their conduct and integrity and diligence and who later emerged for instance in the Madonsela report, but I didn't know that in that way, that happened in the fullness of time. And my sense is though I had no personal relationship with the Guptas as I've said before having somebody who has arrived in South Africa, appears to have a network of contacts and can assist in brand building would have been the motivation by a minister but it's not an ambassadorial position, it's serving on the Board of Brand SA, so to try and inflate the position as something that cabinet would have dealt with and handing over diplomatic passports and that kind of thing could not be further from the truth.

ADV LEAH GCABASHE: Thank you, thank you Mr Manuel. The remainder of the

20 annexures that you have relied on I do not think are particularly relevant to term of reference 1.3 and unless you can point to some relevance in that discussion that will assist this commission beside the question of appointments and dismissal and the influence on the decision maker by a family or by unauthorised persons I will pass on the rest of the content of those two annexures. I don't know if you think there are particular issues you want to draw on in those two annexures that you believe are

relevant to the reason that you are here today.

MR TREVOR ANDREW MANUEL: No there is nothing else Chairperson, I mean you know I've mentioned in passing that the notion of repurpose, and I have made reference to the appointment of Des van Rooyen, which is common cause, and his arrival in the Treasury with advisors, which I think may have evinced here as evidence by amongst other people Mr Lungisa Fuzile because all of that speaks to the same kind of cavalier use of power I'm afraid, so you know because trends set in and it's quite important to understand that.

Thank you Chair.

10 **ADV LEAH GCABASHE:** My really last question Chairman, it is really an open-ended one to Mr Manuel, are there any other matters that you would like to bring to the attention of the Chairman even if they are matters that don't fall strictly within the preserve of term of reference 1.3 but there may be matters that you would want to come back to the Commission to explore because they are matters that are germane to the discharge of the mandate of this Commission.

MR TREVOR ANDREW MANUEL: Chairperson there is nothing at the moment, but you know I am willing to make a commitment under oath that I would do whatever I can to assist with the success of the mission to you to deal with State Capture, I think all of us as rational South Africans need to be invested in the work that you're doing, we must
20 try and ensure not only that the evidence becomes public but I think that it's very important that there be consequences for those who were involved in wrongdoing, those who have wittingly been instruments of corruption and state capture need to be brought to book and the role of this Commission I think would be paramount in ensuring that justice is seen to be done on that matter, so in whatever small way I can assist Chairperson I want to give you the assurance that I would, thank you.

ADV LEAH GCABASHE: Thank you Chair, thank you very much Mr Manuel.
Chairman I have no further questions for Mr Manuel.

CHAIRPERSON: Thank you. Thank you very much Mr Manuel, I did say that I still wanted to have an engagement with you in regard to a number of issues that are very important but before we look at how to handle that I am mindful of the fact that your statements, both statements, may have given the impression, they certainly gave me the impression that we might take a very short time with you, and we have taken much more and you may have made travelling plans that might be disturbed if we keep you for longer, so I just want to check how your situation is in terms of being around a little longer?

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MR TREVOR ANDREW MANUEL: Chairperson having just declared my commitment to avail myself to the Commission I will have to stay here, I couldn't otherwise. Thank you.

CHAIRPERSON: Okay so maybe we might have to go into the lunch hour just so that when we release you then we are done, is that fine with you?

MR TREVOR ANDREW MANUEL: I would appreciate that Chair.

CHAIRPERSON: Thank you.

ADV LEAH GCABASHE: Thank you Chairman, may I take my seat?

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CHAIRPERSON: Ja thank you. As I have said on a number of occasions before this Commission in terms of its terms of reference must among other things investigate allegations of State Capture, and whether or not those allegations are well-founded is something that I will decide much later, but should I decide that indeed those allegations are well-founded and that there was State Capture one of the things that I will have to look into is what recommendations I should make with regard to measures that may need to be taken to be adopted to try and make sure that State Capture never

happens again in our country, and in order to deal with that question I have to look at, in part I have to look at how did State Capture happen, how did it start, and how was it allowed to go on for X number of years and that question includes looking at the question of what organisation or what structure of Government or who could have had an opportunity to contribute to having State Capture stopped as quickly as possible, what could they have done and if they didn't do it what were the circumstances, so it seems to me one would have to look at all of those things in order to make very informed decisions, or recommendations.

Now I then want to hear what your views are in this regard, with regard to
10 well maybe I should start by saying as far as you know when did NEC of the government party become aware that there seemed to be what everyone now calls State Capture, and if you are able you can just talk about how you understand they might have come to be aware of that, and it may be that you are not able to say as to when they became aware but you are able to say generally your view is that by a certain time you know many people within either the NEC or the MC had become aware that there was something happening which should not be happening that we have come to call State Capture.

MR TREVOR ANDREW MANUEL: Thank you Chairperson. The question you posed is difficult, because the – my own reading of the situation, and a lot of this is with
20 benefit of hindsight of course.

CHAIRPERSON: Yes, yes.

MR TREVOR ANDREW MANUEL: Is that the period, I mean you know persons whom I was present for nine years, in the first five years it seemed as though at some point the institutions of government, because if one reads literature on State Capture then the role of the institutions is always fundamentally important, and those institutions

across government are very wide, and if you look at the institutions of the Criminal Justice System for instance there will be the judiciary because the judiciary has held up amazingly well and they've got a Judicial Services Commission etcetera, etcetera, that could in some way fetter the powers to appoint whomsoever the Head of State likes. But if one looks at the rest, if you look at – and there I know, I'm mindful of the fact that Makgoro Commission is sitting as we speak.

CHAIRPERSON: Yes, yes.

MR TREVOR MANUEL: But if you look at some of the events that transpired in relation to the National Director Of Public Prosecutions then there was clearly stuff that
10 happened there that is – that weakened the institution. Now you can track back – you can track it back perhaps even into the administration and then look at the particular appointment and look at the subsidiary appointments. You can look at the police service and you can look at some of the occupants of the position of National Commissioner and some of the heads of the particular branches and if the police is rendered ineffective and the prosecutorial authority is rendered ineffective then the fact that there would be consequences for wrongdoers diminishes rapidly so. I allude to that big cabinet reshuffle of the end of October 2010. Now you have asked the evidence leaders to find ..

CHAIRPERSON: The listing.

20 **MR TREVOR MANUEL:** The extent of the changes and so on and so on it would be useful to look at those kinds of [indistinct]. And ask whether there were particular kinds of actions because of – because of changes of ministers. And some of the changes I mean you know you lay the basis over a period of time and some of them may actually only have been triggered after the 2014 election. You could also in a not dissimilar way look at some of the state owned enterprises or corporations. I mentioned the number of

CEO's of Eskom for instance and you could look at the boards of the state and corporations could the boards exercise governance over the management appointed? In senior executives of the organisation at what point did they start changing their behaviour? At what point does somebody trained as an engineer who understands generation at what point do they start changing and what is the inducement for change? I do not know the answers to these questions Chairperson. You could similarly look at Transnet, you could look at SAA, you could ask why it is that particular individuals were preferred to occupy certain positions in boards or in executives? And it is – you probably going to find Chairperson that if you paid very careful attention if there were

10 research done on the timelines of behaviour no. At Eskom we had power outages perhaps as early as 2008 when there were certain challenges that arose if my memory serves me at the nuclear power station at Koeberg. They were remedied. Eskom seemed to be able to cope – to deal reasonably and effectively with the period of significant growth in the economy. The economy in that period was growing at about four a half to five percent and because of we live in an energy intensive industrial country the demand for electricity grew. And it – Eskom could accommodate the increased demand and then certain things happened. And when those certain things happened certain skills were lost. Even employment for particular kinds of experts appeared to become almost impossible. They were driven away. And I think that the

20 timelines across even just the state owned corporations are going to be very different. But I have no doubt that in the appointment of certain persons to perform functions be this is chief executives and chief financial officers, be it as technical officers I think PRASA for instance or be it the ministers that gave license to certain things if I were to try and map this that is certainly where I would look and the one thing I have learnt in the past while is that some of the footprints and fingerprints that are left by things like

emails and so on do not lie. And so it should be possible Chairperson with appropriate expertise to begin to synthesise some of those things. And then you could say well if I am looking at say PRASA I know that it is not the – it may not be the subject of the Madonsela inquiry at what point did certain changes happen? What I am aware of now is that the ability of PRASA to act as a reliable, safe, affordable commuter rail system for working people in this country is very seriously diminished. At what point did it happen and why? I mean I can – all I can offer you Chair is that that kind of analysis would be key to unlocking and if that were the case at what point did it happen and what may have been the chain of command that gave the licence to bad things happening?

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CHAIRPERSON: But in terms of when the NEC may have become aware that there were things happening that we now call state capture are you able to give an indication as to say well by a certain time surely you know most people were aware and therefore they should have been aware or are you not able to [indistinct].

MR TREVOR MANUEL: Chairperson I know that one of the ongoing discussions and debates in this country would be the role of party and state.

CHAIRPERSON: Yes, yes.

MR TREVOR MANUEL: The role of party in state.

CHAIRPERSON: Yes, yes. Actually that is where I am getting to – well let me – maybe let me finish before because you have raised it before you answer. I would like to know what your views are about whether the governing party once it became aware of what we now call state capture whether if you would expect that it ought to have taken some steps to try and make sure that no further damage was done by state capture to the country, to the state or whether you take the view that well there is a difference between the state and the party and the party had – it could not do anything and I

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would ask also the question so you could think about it, you could deal with it as well. Whether Parliament with its obligations of oversight of course which has got you know members of Parliament whether you think once they became aware whatever that time is they also should have or may have had to take some steps to try and make sure that state capture did not cause any more damage to the country as it may have done by that time? So and I know that some of these questions might not be easy questions. You might not have prepared to deal with them so just feel free to deal with what you are able to deal with and to answer what you can but your views might be very helpful because of the experience you have had both in – I mean in government.

- 10 **MR TREVOR MANUEL:** Thank you Chair. Let us start with your question about the National Executive Committee. I think the – the election to the National Executive Committee is always on the basis of seeming popularity and the choice of the four to five thousand delegates who assemble once every five years is quite material. There is a process of course that starts with branches and goes through regions and so on to produce lists of people but of course there are also slates within it. So you may well end up with the 80 members – the 60 members or so who were directly elected who merely happen to be popular or maybe one side of the slate and because these events are so fiercely contested it may overlook skilled people who happen to be on a different slate. It is just in the nature of how this happens and when the NEC is assembled I
- 20 think it is very important not to imbue it with an authority that it is not meant to have. Chair because you can look – you can look at the issues of state capture as described in the State Of Capture Report. And the kinds of information expressed in that report by former Public Protector is not information that the NEC would readily have. Because it is not – it is – I mean that deals with a particular set of state owned corporations but if you look at some other issues and let me just pluck out of the air some of the difficulties

in the distribution of grants and pensions and there are many people who would say when individuals in society are so vulnerable please do not take chances with their access to survival resources. But there is no voice – there is no place that this is articulated the NEC has committees but frequently the people who chair the committees and who are most active in the committees are also the ministers. So it does not – it does not – it is not very good at holding up a mirror to itself. So you need other mechanisms in society. I think if one looks at Parliament then as the second part of your question Chair the – the – I mean there are a number of issues where Parliament ought to have acted sooner. Not a secret because I have expressed it to

10 successive speakers of Parliament I think our Parliament actually spends very little time dealing with matters. If you look at how Parliaments across the world convene and how debates are managed and you look at the [indistinct] debate in our Parliaments I think we should be a bit concerned about it. Also as we prepare for the sixth Parliament from about May the question of the skill set that obtains there and whether there is sufficient independent mind on a range of issues. Now I think late in the day I was impressed by the way in which Parliament responded to certain challenges. The SABC the response to the State of Capture Report and the particular look at Eskom for instance. And one holds the hope that that could become the way in which Parliament functions however – however it is going to be important that there be consequences. I know that on both of

20 those reports there were very clear recommendations from the committees put to the prenerly of the National Assembly. That may have been signal to – to what the prosecutorial authority and police should have done. It has not happened yet. One looks at other institutions I pluck out of the air also the example of VBS. There is a report; the Mortal Report is there and public and perhaps it is not read by a prosecutors, perhaps the police are not interested in it but I get very concerned about

this because if we act in a way where individuals who seize power by whatever way can act with impunity then the vulnerable in society are always punished. And if we go into this matter Chair the question is how – how does our constitution protect the vulnerable and create the kind of society that is articulated in the preamble to that constitution? How do you say to South Africans that we take serious the living standards of all citizens and we want to free the potential of each person? How do you do that when we have an education system that does not reach people? It is that kind of enquiry that I think because our commitments made in the constitution that we adopted in May of 1996 ought to be durable. And you can only deal with them if there are measurements

10 – you know if you cannot measure it you cannot manage it as they say. How do you know – how do you look somebody in the eye and say your life today is better than what it was yesterday. Because that is what the constitution implies. But on other issues I mean I really and I have pondered the question Chair we have seen – we have seen the exercise of presidential power in the assembly of cabinets. There are not always automatic choices. I know that there were people who were unhappy with President Mandela when he appointed me as Minister of Finance because I was not a trained economist or anything. So it is not about ticking the boxes for academic success or otherwise. I mean I have said before as well when we appointed Pravin Gordhan as the Commissioner for the Revenue Service there was nothing self-evident

20 about appointing a pharmacist to head the Revenue Service but I think that if you look back at his record in SARS it is impeccable. So it is a difficult call and I do not know how – how you advise in that call. Even the other issue that is frequently debated about political representation Chair where some people argue as the late Van Zyl Slabbert did that we should have a blended system that also brings in constituency representation which is the system we have in local government. But even there the

system does not provide the answers we are looking for. But I – you know my own sense is that the state – the state capture issues should in fact trigger and hopefully it is the kind of stuff that you can do in your report trigger a wider discussion about how we exist as a nation? What matters and what does not matter from people purporting to be religious leaders to children who murder a man in the street to all kinds of issues. There is something wrong in society and it is because it appears as though there are no consequences. So the word consequences has to be – has to have a particular weight in this judicial enquiry that looks at what went wrong in the functioning of government.

CHAIRPERSON: You may or may not have been still serving in the MEC when
 10 according to Mr Ramathodi the NEC or maybe not the NEC or but some members
 within – of the NEC raised the issue according to him with the former president of his
 friendship with the Gupta family. Mr Ramathodi said some of the members of the NEC
 raised the issue and he said not once he said many times and said to the former
 president “Why do you not terminate this friendship with this family because I am
 paraphrasing now it is not good for the parties, it is not good for the country or for
 government and he says that the former president’s answer was something along the
 lines that the family – this family had helped I do not know whether his family or helped
 his children when nobody else could – was prepared to help them and as I understood
 Mr Ramathodi’s evidence the matter would end there. And my con – so my question is
 20 whether that was ever raised when you were still a member of the NEC and my
 question that arises from that also would be how the NEC would think that that was an
 issue to be left there if this friendship as far as they were concerned was doing a lot of
 damage to the country or to government and maybe to the party as well? So you might
 not have been there but there is this evidence that we heard and I do not know if you
 are able to say anything?

MR TREVOR MANUEL: Chair these kinds of issues were raised by members of various parties. I would hope that one of the results of this commission would be – would encourage deep introspection. I am saying that whilst the exchange of letters between Fikile Mbalula and I appear to suggest the state of war between us. Ultimately – ultimately as I said we are on the same page and I commend him for having been the first to publicly raise that. The influence of the Gupta's and – now the issue was raised but I am saying the introspection that is necessary is what do you do – what should the NEC do when it observes that there is wrongdoing? Is it just left to the personality of the individual who occupies or the individuals perhaps the top six, is it just left to their
10 personality? Or should there be approaches because part of politics is also persuading. It is not always about the formal disciplinary processes. The ANC has formal disciplinary processes. There is a national disciplinary committee and a national disciplinary committee of appeals and so on and so on that is very formal. But they key issue I think in a political movement has always been the value systems. And how do you work it that continuously because if somebody was good once how do you help them along the line if in the mind of General Nyanda I was politically okay when we first met and I veered off the path does he have the means to raise this matter and help me back? What is in the mind of an organisation like that? I had big fallouts about particular matters and I was declared a free agent but be that as it may I will not go
20 there now. The in membership based organisations I think there has to be an ethos and a platform of values that binds people together. In the exercise of power in government Chairperson there would in my mind be two areas where the capture has happened. The first would be supply chain management. The procurement system. And my own sense retrospect and Ms Gcabashe gave me accolades for having worked on the PFMA I am compelled to ask where the PFMA which is based on outcomes to try

and move away from this kind of rules based system. Did not – I mean was not designed for people who would always act together in common public could and we do not find ourselves – we do not find ourselves in a rather strange position where it has been grossly abused. Should the – should the PFMA be tightened up in certain areas? So that is the one side of what I see as risk. The other side is the employment of people. Now from 1994 there was a – there was a mammoth task to work to represent – to work for representivity and the development of skills in the public service. And so I think it would be understood that there may be certain shortcuts. But some of what has happened where people who have no competence and even less interest in the

10 positions they occupy have been appointed. You on an incredibly slippery slope and that might be an area where there might be an excursion into how you deal with these matters. And the last point I would raise in this regard Chair is black economic empowerment. I know that we need to retain BEE to ensure that we can have a more inclusive economy and greater participation. I know that – that the constitution requires of us in the Bill of Rights at Section 9 it allows us to tweak and to favour by discriminatory measures people have been historically disadvantaged and so that is the constitutional premise in my mind for having BEE but it has to be rules based. And so these are issues – and because we have started the journey and some of what should be told about what has gone wrong in state capture is that it was just BEE I think that

20 the measures are actually too precious for future generations to allow to be abused. And so you know if Mr [indistinct] and I set up a BEE partnership to sell airplanes to SAA neither of us I do not know about her but I do not know much about airplanes but we would add a premium onto what SAA can purchase airplanes at. Somebody has got to pay for it. The economy pays for it. That is very different Chair from encouraging individuals who have been historically disadvantaged from entering into industry and so

on and so on and then being able to pursue a growth path. So some of these things I think have lent themselves to abuse and I hope that we can have a discourse nationwide discourse about how to remedy some of these matters that have created the difficulties that we have. Thank you.

CHAIRPERSON: Maybe the last question would be this but before I put this question I go back to what you said about Eskom. You said that at one stage Eskom was one of the top entities in the world and I think you were not the first former Minister of Finance to say that. I think Minister Gordhan may have said the same thing either here or elsewhere and, and maybe one of the DGs or former DGs of, of National Treasury as
10 well and you were drawing attention to where Eskom is now if you look at where it once was and of course we have to examine the question of how did all that happen. How did we come from up there to be where Eskom is now and what needs to be done to make sure that whatever caused that insofar as it may have been part of state capture does not happen again. So, but I just mention that because Eskom I think represents quite an example in terms of an entity that on your evidence and on what I have heard elsewhere was an entity that was quite high up internationally, but has had all kinds of problems, but the one issue that I want to ask is with regard to what Parliament could have done or could do with special reference to members of Parliament. When
20 members of Parliament exercise oversight over the running of Government departments by Ministers and, and the President when they look at how they execute their Executive functions. There may be times when in the past they may have been called upon to stand up and say this is wrong and there should be certain consequences on a certain Minister or a certain President, but maybe they might have felt that their party did not want them to take that stand. Are you able to throw some light as to whether that is something that may have happened? You were a member of

a Parliament for a long time. That may have happened, because if it happened it might well have led to a situation where when certain decisions could have been taken were not taken because they simply were not enough Members of Parliament who stood for what many would have seen as the right decision to be made and, and, and to the extent that maybe it has been our constitutional arrangement in terms of how people become members of Parliament and so on that you have that tension. If you are able to indicate whether it is something that should be looked at for purposes of making sure if state capture reared its head again it was stopped immediately. Then you can indicate what you think.

- 10 **MR TREVOR ANDREW MANUEL:** Chairperson I think that that I would start from the premise that lives of our Members of Parliament is actually quite difficult, because they have to do so much without support. If one looks at, at Congress in the United States for instance I think every Congress person would have about 10 support staff. You can do the research. You can help them and so on and so on and that can happen without a caucus functioning. Just by the by I, I yesterday or the day before I heard a bit of a discussion on the radio where a member of an opposition party refers to what a member of the Government party said about a matter and he said ma'am there is just too much stuff to read. I did not read these documents. Now that would be that would be intolerable. So somehow we need to find something that recognises that our
- 20 Parliament represents I suppose what we are as a nation, skill set and so on and so on, but you cannot just leave that to chance and you do not just leave some officials with computers to write speeches for these MPs. We need to equip them to deal with issues differently. I am pretty sure that if we took Members of Parliament and taught some things, if we taught Members of Parliament for instance to read especially those who serve in particular Portfolio Committees like Public Enterprises or Finances and so on

what a balance sheet is, what it looks like, what the numbers there represent etcetera, what to look for and if, if you were to put out a call to accountants and you were to a ABASA, Association of Black Accountants of South Africa or you went to CICA and said can you put Members of Parliament through a course so that they can see what these papers are when [indistinct] report. You might actually get different lines of questioning. I mean I, I remain of the view Chairperson that you know as they say sunlight is the best disinfectant and if, if, if a delegation of any State Owned Enterprise arrives in Parliament and parliamentarians across the Board are asking questions along certain lines as you saw with the State Owned Enterprises Enquiry or with the SABC Enquiry in

10 about the end of 2016. Then it changes the colour of the horse. Then these Executives cannot just come there with some pretence at Parliament because you can call people comrade. You are going to get away with stuff. I think that we need to empower parliamentarians to deal with the issues differently and I think we need to do the same in, in provincial legislatures. Chair you; it is outside of your, your terms of reference to look at Local Government, but I get very scared when I read about a contract to deliver storm water drains in Nelson Mandela Bay Municipality where 12 people have been shot because of disputes over contracts. We cannot live, we cannot live according to the laws of the jungle. We must empower our public representatives to act appropriately and, and I think that is a responsibility that needs a big and

20 repeated call and, and I do not believe that we should, we should now try and change and, and ask for academic qualifications of people who go to Parliament, but I think we must ensure that there be an adequate investment in time and training to ensure that they are better equipped to do what they have to.

CHAIRPERSON: Well municipalities do fall within our terms of reference. They are.

MR TREVOR ANDREW MANUEL: Oh.

CHAIRPERSON: They are organs of State.

MR TREVOR ANDREW MANUEL: You may be here for a very long time Chair.

CHAIRPERSON: [Laughing]. No that is true, but your, your, your answer Mr Manuel relates to matters where somebody might just need some knowledge and in, in order to be able to make certain decisions, but there are very many issues where even if you do not have to read up any reports or do not have to be, to take less, lessons. You know what is right and you know what is wrong. If there is theft going on in a particular department you will, you will see that there is theft going on there and therefore as a Member of Parliament who must contribute to oversight you ought to be able to stand
10 up and say there is theft going on here. This Minister or this Member of the Executive needs to be dealt with in a certain way. So, but, so when you look at that are you, are you, what would you say in terms of the ability to, to do what is right and not to be conflicted maybe between what your party might tell you and what you might think is the right thing to do.

MR TREVOR ANDREW MANUEL: Chair let me make two points. The first is when I read the Auditor-General's reports and that is quite important as a, as a kind of flag raiser of issues. There are a number of municipalities and I, if I, if I said somewhere between 20 and 30 who for a number of years have not completed any audits. The Auditor-General cannot audit them because there are no records. Why are there no
20 records, because it is easier to destroy records than to have a negative opinion? We have tolerated this for a number of years. Surely we must embolden the Auditor-General. I know that there have been amendments to the Auditor-General Act or the Public Order Act that allow for actions, but we have tolerated these things for too long. That is one kind of example and I think similarly the Sections 85 and 86 of the PFMA that deals with, with financial wrongdoing in public enterprises. We need to

shore that up. We need to shore up the terms and conditions of the PFMA and you know it is, it is quite important I think to be seen to be taking action against people. The other thing that is necessary and I am not raising this begging to do things, when I look at any number of people Chair when occasionally when I turn on the TV and I see people who have appeared before this Commission whom I know whose skill sets I can vouch for. Almost without exception none of us are ever called to help out. Sitting over there is a retired General Nyanda. We know him from the work he did over many years in exile. We know of the risks that he placed himself and his family under. We know him as a, as a Minister. Why is it that his skills are not called upon as they would be in

10 any other society and the people we speak of are not people who think that is an opportunity to get rich, to get a tender. If one looks at, at, at former Presidents of our country who happen to be in the same party as the ruling party they cannot be *persona non grata*. Why did they govern in the way that they did? Why did they lead Government in the way that they did? What are the issues that go into consideration? I wish that that there could be consideration of how it was that Cabinets were put together that that operated successfully. Why is it that skills are not drawn upon? Is it because of insecurity? Is it because people think if I asked Trevor Manuel what did the, he, he might get my job. We can make declarations we do not want anybody's jobs, but skills that have been accumulated I say they are not my personal skills Chair. I do not

20 have proprietary, ownership of the skills I have. They should be put at the disposal of, of the country. I am not saying that that they are, they are faultless and flawless, but even if it is merely to facilitate discussion with people about what one is seeing and so on and so on. I think more people have been through the ranks need to be called upon to assist. We cannot be enemies. We cannot utilise our skills elsewhere. We, we are South African. We are, we have pledged allegiance to the Constitution and it was not

for purposes of getting a job as a Member of Parliament or as a Minister. It has to be a continuous pledge to the Constitution and that I hope is what we can look at to try and prevent what has happened over the past decade or so which I think imposes an enormous burden on successive generations.

CHAIRPERSON: No, thank you very much Mr Manuel. I, I really do hope that your appearance before this Commission will encourage many others who are former Ministers and current Ministers who can contribute and who know, who have knowledge of matters that fall within our terms of reference to come forward and take the attitude that the issues that this Commission is investigating are very important for the nation and that they would want to be part of those who make contributions to make sure that the work of this Commission is a success. Thank you very much. You are excused. We are going to take the lunch adjournment. I see that it is much, much later than I thought we would take, but these were important matters we needed to deal with. Mr Pretorius I see you are up. Do you?

ADV PAUL PRETORIUS SC: [Indistinct].

CHAIRPERSON: No, okay.

ADV PAUL PRETORIUS SC: [Indistinct].

CHAIRPERSON: Yes, yes as is normal. Yes. No thank you. I think we should take the lunch adjournment. It is now quarter to two and maybe resume at, resume at quarter to three. That that gives us the usual hour. Okay, we adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes Ms Sello.

ADV MAHLAPE SELLO: Thank you Chair, Chair with your leave we will present the

testimony of General Sipiwe Nyanda.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: Before he is sworn in Chair I would like to make a few preliminary remarks. The relevance of General Nyanda's testimony today concerns in particular Term 1.3 of the Terms of Reference and my learned colleague, Mr Bashu, referred to it previously, for the record I will state that it provides thus whether the appointment of any member of the National Executive functionary and/or officer 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
10 any member of the National Executive is responsible for such conduct.

General Nyanda's evidence will then to a large part be confined to the specific term. Having submitted a written statement to the Commissioner General Nyanda had opportunity to reflect on some issues he considered pertinent to his testimony today, and in particular these are issues relating to the period after what 1.3 relates to, which is the alleged declaration by Mr Mbalula of the offer made to him and in that regard he has made available this morning certain documentation which is not in your file Chair, which I will beg leave to hand up when we get to that part of the evidence.

Against that background Chair then I would request that General Nyanda be
20 sworn in.

CHAIRPERSON: Yes, registrar just swear him in now, administer the affirmation whichever the case may be.

REGISTRAR: Please state our full names for the record.

MR SIPHIWE NYANDA: Sipiwe Nyanda.

REGISTRAR: Do you have any objection with making the prescribed affirmation?

MR SIPHIWE NYANDA: I have no objection.

REGISTRAR: Do you swear then that the evidence you will give shall be the truth, the whole truth and nothing but the truth. If so please raise your right hand and say I truly affirm.

MR SIPHIWE NYANDA: I truly affirm

REGISTRAR: Thank you.

CHAIRPERSON: Good afternoon General Nyanda, I don't know I seem to understand that once a general always a general.

MR SIPHIWE NYANDA: Particularly in the Military.

10 **CHAIRPERSON:** Yes, so I just want to say before you start with your evidence thank you very much for coming forward, and I have called for past and present ministers to come forward and assist the Commission and DG's and past DG's, I thank you for coming forward to assist us.

MR SIPHIWE NYANDA: It is my pleasure.

CHAIRPERSON: Thank you.

ADV MAHLAPE SELLO: Thank you Chair. For the record Chair I will state that General Nyanda is unrepresented and he has dealt with the Commission directly and with the evidence leaders.

CHAIRPERSON: Yes, okay.

20 **ADV MAHLAPE SELLO:** General Nyanda you submitted a statement to the Commission have you?

MR SIPHIWE NYANDA: Yes I did.

ADV MAHLAPE SELLO: Chair Ms Gcabashe introduced Exhibit V to the Commission this morning and indicated that it is split in two parts, V1 and V2. The portion that relates to General Nyanda is under tab V2.

CHAIRPERSON: Ja, I've got that.

ADV MAHLAPE SELLO: General Nyanda you have next to you a file, on the spine it should be written Volume 2, by rights it should be Exhibit V instead of Volume V, please go to the second tab and turn over, you will find an index and that index indicates ...(intervention)

CHAIRPERSON: It looks like he is at the statement already.

ADV MAHLAPE SELLO: Okay.

CHAIRPERSON: Ja, I think he is ready for you.

ADV MAHLAPE SELLO: If you have located the statement it is the one that is
10 paginated SN01 at the top right hand corner.

MR SIPHIWE NYANDA: Yes.

ADV MAHLAPE SELLO: Okay, please consider that statement and confirm is that the statement you made to the Commission on the date reflected, which is the 2nd November 2018?

MR SIPHIWE NYANDA: Yes it is.

ADV MAHLAPE SELLO: Is that your Annexure appearing at the bottom of that statement?

MR SIPHIWE NYANDA: It is my signature yes.

ADV MAHLAPE SELLO: Do you stand ...(intervention)

20 **CHAIRPERSON:** I think you said Annexure

ADV MAHLAPE SELLO: Chair?

CHAIRPERSON: You said is that your Annexure.

ADV MAHLAPE SELLO: Your signature.

CHAIRPERSON: He corrected you.

ADV MAHLAPE SELLO: Oh, I am indebted to the General, I apologise, your

signature. Do you stand by the averments you have made in that statement?

MR SIPHIWE NYANDA: Yes, I do, I do.

ADV MAHLAPE SELLO: Now before you confirmed it under oath are there any corrections you would like to effect to that statements, any amendments, changes?

MR SIPHIWE NYANDA: In the statement I say that I swear under oath that I was a member of the African National Congress on the dates and that in a meeting of this committee the ANC following a cabinet reshuffle in which Mr Fikile Mbalula was appointed as Minister of Sport he said that the said Fikile Mbalula told the following meeting the things that I say there.

10 **ADV MAHLAPE SELLO:** Is there anything you would like to change in this statement currently?

MR SIPHIWE NYANDA: No, not in the statement except the dates I think in relation, I don't know whether they are here the dates that I state in the meeting about the meeting.

ADV MAHLAPE SELLO: No, we will get to that detail, it forms part of your statement, I just wanted to know if there are any corrections you would like to effect, before ... (intervention)

CHAIRPERSON: I think he is saying he is not sure about the dates, I think that's what he wants to say he is not sure whether he should correct. General is that what you
20 were trying to say or did I misunderstand you?

MR SIPHIWE NYANDA: It's just the date that I put I don't know whether it's in this affidavit about the exact meeting or the exact date of the meeting that took place.

CHAIRPERSON: Maybe do you want to – it's a short statement, do you want to just silently read it and see whether you will be in a position to say it's correct, there is nothing you want to correct?

MR SIPHIWE NYANDA: I said in the meeting of the abovementioned committee in early 2011 or thereabouts.

CHAIRPERSON: And that is correct, you stand by that?

MR SIPHIWE NYANDA: It may be that the date ...(intervention)

CHAIRPERSON: Ja, might not be accurate.

MR SIPHIWE NYANDA: It will not be early in 2011.

CHAIRPERSON: Yes, but do you want to leave it like that because you say thereabout, or do you want to change anything in that regard?

MR SIPHIWE NYANDA: I can leave it there, but having rummaged through
10 documentation I realise it may not be actually as early as 2011, but it was 2011.

CHAIRPERSON: Okay, no that's fine.

ADV MAHLAPE SELLO: Chair just to inform you, this is an aspect I intend to deal with General Nyanda further on during his testimony, I just wanted to make sure that there no corrections, there are no errors contained in his statement.

CHAIRPERSON: Yes but he was indicating that he wasn't sure whether he might have made an error with regard to the dates, so you asked him is the statement correct, so he was looking at the dates and wanting to make up his mind whether he would say let's correct something about the dates or not and I think the two of you might not have been on the same page.

20 **ADV MAHLAPE SELLO:** I think we are clarified now. On that basis then you accept that the Chair can accept this statement as your correct version of events?

MR SIPHIWE NYANDA: Yes.

ADV MAHLAPE SELLO: Chair as the Chair will note the statement itself is not numbered it's very short however, may I suggest for reference purposes that we number the main paragraph as paragraph one which would have the three sub-

paragraphs the next paragraph is two and then the last paragraph is three, just for ease of reference.

CHAIRPERSON: Well even if we don't number them it won't be a problem referring to, it's got only effectively four unnumbered paragraphs or maybe three if the one, two, three is part of the first one, it won't be a problem. It's a short statement.

ADV MAHLAPE SELLO: Thank you Chair. General Nyanda before we get into the detail of what's set out in your statement could you give the Chairperson a brief background to our service in Government, be it in Executive or legislature or any other form of employment you've held in Government, just very briefly.

10 **MR SIPHIWE NYANDA:** I was appointed in 1994 into the South African National Defence Force which was formed then, comprising of the various armed groups or armed formations which existed then from the homeland forces, from the old SADF, from (indistinct) Sizwe and Apla. I was appointed as part of the Command of the new SANTF. I was then Chief of Staff of the SANDF.

ADV MAHLAPE SELLO: Yes.

MR SIPHIWE NYANDA: Later on when General Meyering, who was the First Commander of the new SANDF was dismissed I became the Commander of the SANDF, it was 1996.

ADV MAHLAPE SELLO: Yes.

20 **MR SIPHIWE NYANDA:** Following I retired as the Chief of the SANDF in 1995 after serving seven years as the Commander of the South African National Defence Force, or the Chief of the SAND, and went into private business. In 2009 or in 2007 I became part of, I was reappointed to the - or re-elected to the MEC of ANC in Polokwane and in 2009 I became, I was appointed as Minister of Communications. 2010 I was dropped as Minister of Communications and became an ordinary member of Parliament and I

left Parliament in 2014, after the new elections, I did not elect to go back into Parliament and into Government service.

ADV MAHLAPE SELLO: Thank you.

CHAIRPERSON: I seem to have heard you to say you retired as Chief of the Defence Force in 1995, did I hear correctly.

MR SIPHIWE NYANDA: 2005.

CHAIRPERSON: Ja I think you meant because I thought it happened quite quickly but I think you said 1995, you must meant 2005.

MR SIPHIWE NYANDA: It was my mistake yes 2005.

10 **CHAIRPERSON:** Ja okay, thank you.

ADV MAHLAPE SELLO: Thank you Chair. Turning then to your statement you indicate, as you've just testified that you were appointed to the National Executive Committee of the ANC in December 2007 and you served until December 2012.

MR SIPHIWE NYANDA: No, in the National Executive Committee I served until 2014.

ADV MAHLAPE SELLO: 2014.

MR SIPHIWE NYANDA: The new Executive was elected in Bloemfontein.

ADV MAHLAPE SELLO: Please refer to your statement at SM1, SM01 to be precise, at the second line you state that I was a member of the African National Congress, National Executive Committee from December 2007 until December 2012. Would you

20 have a ...(intervention)

MR SIPHIWE NYANDA: No, this was in cabinet this 2012. 2012.

CHAIRPERSON: Well isn't the position that the ANC had its own elective conference in 2012 in Mangahong?

MR SIPHIWE NYANDA: No, it's 2014, so that is not correct.

CHAIRPERSON: Is it not the National elections in the country that were in 2014 and

the ANC National Elections, ANC Elections, not national, ANC Elections in Mangahong, 2012?

MR SIPHIWE NYANDA: Yes, it is, it is.

CHAIRPERSON: 2012 is ANC National Conference

MR SIPHIWE NYANDA: In December.

CHAIRPERSON: Ja, okay. And then the elections of the country in 2014.

MR SIPHIWE NYANDA: Yes.

CHAIRPERSON: Ja, okay.

ADV MAHLAPE SELLO: So you ceased to be a member of the NEC at that elective
10 conference in December 2012?

MR SIPHIWE NYANDA: Yes.

ADV MAHLAPE SELLO: According to your statement. You stayed now your statement to the Commission specifically refers to an announcement or declaration made by Mr Mbalula in a particular NEC meeting, is that correct?

MR SIPHIWE NYANDA: Correct.

ADV MAHLAPE SELLO: Now can you briefly state to the Chairperson which – at which NEC meeting was the declaration made?

MR SIPHIWE NYANDA: As I say in the statement Chair it was following the cabinet reshuffle of October 2010, I can't recall the exact meeting of the African National
20 Congress, NEC where this meeting took place where Mbalula made this declaration but it was certainly in 2011 following that cabinet reshuffle.

ADV MAHLAPE SELLO: Now you sat through Mr Manuel's evidence this morning.

MR SIPHIWE NYANDA: Yes I did.

ADV MAHLAPE SELLO: Mr Manuel stated that that meeting was in August 2011, does that assist in prompting your recollection in any way?

MR SIPHIWE NYANDA: No it does not, I was rummaging through documentation following consultation about trying to establish exactly when this meeting took place, and I take notes, I used to take notes at NEC meetings, and I could not find that meeting where Mr Mbalula said what he said at that meeting, except for the fact that I remember or through that documentation I established that there was a – there were elections in 2011 for the local government, there were local government elections and so it is unlikely that we could have sent through and discussed this matter so early in the year because normally meetings of the African National Congress Executive take place quarterly, but we do meet from time to time, we do meet either in December or in
10 January to prepare for the January 8 statement and then we will meet again to prepare for cabinet Magutla, which is again just before there is the State of the National by the President to prepare for their cabinet, Magutla, we meet as the ANC to prepare for that so it's an extended meeting which involves Directors General who might be called to that meeting and the premiers who are ANC premiers to that meeting to prepare for the Cabinet Lagodla, which then involves premiums whether they are ANC or not ANC. So it is possible that we might have had more meetings which dealt with specific issues and did not delve into the issue that Mbalula raised at a subsequent meeting.

ADV MAHLAPE SELLO: Thank you Chair. Now before we get into the detail of Mr Mbalula's declaration could you briefly state how traditionally these NEC meetings were
20 conducted?

MR SIPHIWE NYANDA: Well at the – I had been a member of the NEC before but that was before we went into government, I was elected into the NEC in Durban at our first conference of the African National Congress internally, so those meetings were different from the meetings which took place subsequently when I became a member of the NEC in 2007, December because then ANC was in government so these meetings, the

meetings in my recollection which took place when I became a member of the NEC again they were different from those that we had when Mandela was the President of the African National Congress. The meetings took place, there was a suggestion from some of the members of the NEC that the President opens the meeting and closes the meeting. There was some debate about it but some members of the ANC pushed for this that the President who was then Jacob Zuma opens the meetings and closes the meetings, it gives a political input and then we debate the political input, put our own inputs, discuss things that perhaps you may not have raised and then discuss them and then the President at the end of meeting then summarises for the salient points of that

10 meeting to the rest of the NEC.

ADV MAHLAPE SELLO: And that method pertained right through the five years you served in the NEC?

MR SIPHIWE NYANDA: Exactly Chair.

ADV MAHLAPE SELLO: Now let's turn the actual declaration made by Mr Mbalula at the NEC meeting of 2011, I'm accepting that you don't remember exactly which one it was in 2011, you deal with that in your statement but just state in your own words what actually transpired?

MR SIPHIWE NYANDA: Well what transpired is that Mbalula told the meeting, I can't remember the context, in which this matter was discussed by him, or this revelation was

20 made by him, except that he made such a revelation that he was approached by the Guptas and told that he would come Minister of Sport before he actually knew, before he was informed by the Executive Authority, by the President that he would become the Minister of Sport and indeed he was appointed to that position, and he was saying so because he was upset by such a revelation coming from people who had no business to know that he was going to become anything in cabinet because he had been Deputy

Minister of Police at the time that he was told that he was going to become Minister, the full cabinet Minister.

ADV MAHLAPE SELLO: Now we heard this morning the evidence of Mr Manuel that as he made that declaration Mr Mbalula cried and in an open letter, which is annexed to Mr Manuel's statement which was issued by Mr Mbalula he does not appear to deny that he cried at that meeting, do you have a recollection of that?

MR SIPHIWE NYANDA: No, I am not as sentimental as Mr Manuel and I have no recollection of tears there.

ADV MAHLAPE SELLO: Okay. Now is it your testimony that when Mr Mbalula made,
10 informed the meeting as such that what he was informed of by the Gupta brothers was his impending appointment to precisely the Minister of Sports and Recreation or was it just generally to become a Minister.

MR SIPHIWE NYANDA: My recollection that he knew exactly where he was going, that he was going to become a Minister of Sport.

ADV MAHLAPE SELLO: And it's common cause that he subsequently was.

MR SIPHIWE NYANDA: Yes, that's what he was saying, that's what he told the meeting. They told me I was going to become the Minister of Sport and indeed I was appointed as Minister of Sport.

ADV MAHLAPE SELLO: And he was appointed to that position during a reshuffle in
20 October 2010, on the 31st of October 2010 to be precise.

MR SIPHIWE NYANDA: Exactly Chair.

ADV MAHLAPE SELLO: At the time immediately prior to the reshuffle you were a serving Minister yourself?

MR SIPHIWE NYANDA: Yes I was a serving Minister.

ADV MAHLAPE SELLO: And for the record you were Minister of?

MR SIPHIWE NYANDA: I was a Minister of Communications.

ADV MAHLAPE SELLO: Could you tell the Chairperson what impact that reshuffle had on you?

MR SIPHIWE NYANDA: Well I was in Durban ...(intervention)

CHAIRPERSON: Maybe before we get to that one let's go back to Mr Mbalula speaking at the NEC. Are you able to remember how he came to talk about this issue at the NEC that he had been told by the Guptas that he was going to be made Minister of Sport, do you remember or are you not able to remember what gave rise to this – to him saying this or in terms of the issues that may be were before the NEC?

10 **MR SIPHIWE NYANDA:** I have no particular recollection of the context.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: As I said earlier on the President would open the meeting with a political input and then we would discuss as members of the NEC that point of input and also indicate things that the President perhaps would not have alluded to in his political input and perhaps it arose in that context. I have no recollection of the exact context, but what was remarkable to me was that Mbalula made this stunning revelation this what was actually a criticism of the way in which he had been informed about is impending appointment. He was in other words disturbed by it, that is why he perhaps cried although I don't remember the actual crying.

20 **CHAIRPERSON:** Well I can tell you that in his response to Mr Manuel's letter where Mr Manuel refers to this incident at the NEC and says he was crying in his response Mr Mbalula himself refers – seems to accept that he was crying because he says Mr Manuel didn't understand what is tears were about, or what he was crying about and then he goes on to say what he was crying about, so – but you simply say from your side you have n o recollection of the crying part but you remember what he said.

ADV MAHLAPE SELLO: I remember what he said, I remember, one of the reasons I remember is because I myself was affected by that cabinet reshuffle and I had my own suspicions about what the reasons were for our dismissal from Cabinet and I had actually tried to engage or I had engaged the officials of the African National Congress to find out why it is that we were removed in the manner in which we were, and got no answers and also spoke to the President himself, why, but I didn't get any satisfactory answer, so when Mbalula said this in the midst of the undercurrents that were afoot then about the influence of this family in the affairs of government it was for me a confirmation that in fact this was the case, it was the first confirmation that people had
10 been told before their appointment, and I believed that he was not the only one, and the general undercurrent then, was that people who had been called to the Guptas and told beforehand that they would become ministers, and we ourselves I had heard whispers about my possible removal from cabinet. So it was an important declaration that he made there.

CHAIRPERSON: So when Mr Mbalula made this disclosure it reminded you of what you had been concerned about yourself when you were removed, and subsequently that you were suspecting that maybe you were removed under circumstances that might involve people outside of Government, or not really.

MR SIPHIWE NYANDA: To me it was a confirmation that the talk that was going on
20 about the influence of some people or they say the Guptas in Government affairs was actually corrupt, because it was a categorical statement by him, and I heard Mr Manuel making a point here about whether Mbalula was upset or not or whether he had been previously involved ...(intervention)

CHAIRPERSON: He had had a pre-existing relationship, mmm.

ADV MAHLAPE SELLO: Had a relationship with them, I did not know that at the time

and at the time that he made this confession, if you like I did not have any suspicion of him having had such interactions with the Guptas before and for me it was just enough that he was making this, this disclosure.

CHAIRPERSON: Hm.

MR SIPHIWE NYANDA: To his comrades.

CHAIRPERSON: Hm.

MR SIPHIWE NYANDA: At the highest level of the African National Congress about.

CHAIRPERSON: Hm.

MR SIPHIWE NYANDA: What had happened.

10 **CHAIRPERSON:** Hm.

MR SIPHIWE NYANDA: And I thought it was, it was a genuine disclosure and I did not regard it as something that, of somebody who was just now showing remorse because of a relationship.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: That of course.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: Mr Manuel maybe correct in his.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: Own view, but my own view was that.

20 **CHAIRPERSON:** Yes.

MR SIPHIWE NYANDA: Mbalula was now at, at least.

CHAIRPERSON: Hm.

MR SIPHIWE NYANDA: Unlike other people who may have been approached before.

CHAIRPERSON: Hm.

MR SIPHIWE NYANDA: Making this declaration.

CHAIRPERSON: Hm.

MR SIPHIWE NYANDA: To the African National Congress leadership.

CHAIRPERSON: Hm.

MR SIPHIWE NYANDA: In order for them to deal with it.

CHAIRPERSON: Hm, hm. So your, your understanding was that in making this disclosure Mr Mbalula was genuinely concerned about the fact that he had been told by the Guptas that he was to be made Minister before the President could tell him?

MR SIPHIWE NYANDA: He was upset [intervenes].

CHAIRPERSON: He was upset about that?

10 **MR SIPHIWE NYANDA:** Yes.

CHAIRPERSON: Yes and, and, and then of course it confirmed to you as you have said that this family seemed to have quite some influence on Government matters?

MR SIPHIWE NYANDA: Yes, it did.

CHAIRPERSON: *Ja, ja.* Okay, thank you.

ADV MAHLAPE SELLO: Thank you Chair. In fact you have answered the question I had posed and just for the record that Cabinet reshuffle that saw Mr Mbalula appointed Minister of Sports and Recreation it is through that same reshuffle that you were dropped as Minister of Communications?

MR SIPHIWE NYANDA: That is correct.

20 **ADV MAHLAPE SELLO:** Now when Mr Mbalula makes this disclosure to the meeting did the President at the meeting give a response to this disclosure in any form?

MR SIPHIWE NYANDA: Not the President nor any of the officials were in that meeting and my recollection is that all the officials were in that meeting made any comment about that, but of course perhaps the *onus* would have been on the person at, at, at which, at whom these, these, these allegations were being made, because the person

who bore responsible for appointments to Cabinet is the President. So I expected that and also the, the President closes the meeting and summarises the salient points of the, talks to the salient points of the meeting and this was a very serious claim made by a member of his own Executive both in the African National Congress and in Government that in other words he was derelict. That he, he, he had given the role of informing if not deciding other people about pending appointments to his Cabinet to other people. So I expected that the President of the ANC when he closes the meeting, when he deals with that matter, when he comes to the closing of the meeting will deal with that matter at least respond to it, because it was a direct accusation to the

10 President of the ANC.

CHAIRPERSON: How, how did the meeting; well we have heard that the President of the ANC then did not react. How did other people in the meeting react to this disclosure? Was there any reaction even if it is not everybody, some, some people?

MR SIPHIWE NYANDA: I think there were people. The, the, the way Chairman the meetings of the ANC are conducted. If perhaps Mr Mbalula was number 62 in the contributions that were being made at that time. So you will have perhaps only 18 other people contributing and it depends who they are whether they will feel emboldened to engage the point that Mr Mbalula made. I cannot recall how many people spoke after that, but as I said I do not, I, I; the President what I am sure about is

20 that the President himself, because it is quite possible that that Mr Mbalula spoke right at the tail end of the discussion or it was just a shot from the sky that he spoke about this thing and it is quite possible that one or two people may have, but I cannot recall that. There were many people who spoke to that, because it was just a direct allegation against a President of the African National Congress who was sitting in that meeting and I do not, I do not know whether if Mbalula had spoken first or earlier other people

would have said no, Mr President we want you to address this question. We have just heard a serious allegation made against you. I think people expected the President himself to address the matter.

CHAIRPERSON: Well it is, it is, it is quite an important thing because I would have expected that it would have been regarded as a shocking allegation, you know. That is how I would have expected and maybe other people would have expected that. When some, a disclosure like that is made you know people would really find it quite something serious that needs to be dealt with, but you say certainly the President did not deal with it, did not react to, to it and you have no recollection of anybody reacting
10 to it at the meeting?

MR SIPHIWE NYANDA: Yes. I, I think people just took it as here is something serious that is being alleged by a member of this National Executive Committee and it is directed specifically at the President and perhaps it is, it is too big for me who comes after Mbalula to speak.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: To engage with.

CHAIRPERSON: Yes, yes.

MR SIPHIWE NYANDA: We will wait for the President to, to react to, to such a, a statement that is being, such a claim astounding claim that is being made here in these
20 halls.

CHAIRPERSON: You know Mr Ramathodi gave evidence here sometime last here and one of the things he said was that the NEC was quite concerned about the friendship between the former President and the Gupta family and was concerned that that friendship, I am putting it in my own words, was damaging the party as well as Government or the country and that some of the Members of the NEC at some stage, I

cannot remember which year he was talking about, but at some stage raised the issue with the former President at an NEC meeting. In fact he said not once, he said many times it was raised and he said those Members of the NEC who raised it were saying Mr President why do you not terminate this friendship with this family and, because it is not doing good to the party. It is not doing good to Government and he said his, his, the response of the former President was that well this family helped my children or helped my family. I cannot remember exactly which one, when nobody would help them or when they were, they needed help and he said that is where the issue would end each time. Do you recall anything like that during the time when you were a
10 Member of the NEC and it maybe that it was after you had left the NEC, because I cannot remember when Mr Ramatlhodi said that was?

MR SIPHIWE NYANDA: When I was in, in the NEC the issue may have arisen and perhaps that is the context in which Mr Mbalula then made that claim, but I think Mr Ramatlhodi refers to an, an, a, a period at which I was no longer in the African National Congress Executive.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: But when we were pursuing the matters outside.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: Of the ANC, because I think the general members of the ANC,
20 I think he, he refers to an, a later period.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: When we were also engaging with the ANC about what.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: We saw as.

CHAIRPERSON: Okay.

MR SIPHIWE NYANDA: The pernicious influence of this family.

CHAIRPERSON: Okay, okay, okay. No, thank you.

ADV MAHLAPE SELLO: Thank you Chair. Now at the time Mr Mbalula made this disclosure what was your understanding? Was it his attempt to place the matter officially before the highest body of the party to discuss the problem or what did you understand the purpose of this disclosure to be?

MR SIPHIWE NYANDA: For me it was just a disclosure, because I cannot recall the context.

ADV MAHLAPE SELLO: *Ja.*

10 **MR SIPHIWE NYANDA:** I just recall the, the actual statement that he made to the NEC. I, I cannot perhaps.

ADV MAHLAPE SELLO: Okay.

MR SIPHIWE NYANDA: Deal with that. For me the most important thing was that he made such a claim in front of and, and he made a claim about something that was being whispered in the corridors and everybody sat up when that happened to say at least here is somebody who is validating the things that are being said about the President and his relationship with the Gupta family.

ADV MAHLAPE SELLO: You, you indicated that in that meeting present were officials of the party. We, are we talking about the top six specifically? When you say officials
20 is that who you are referring to?

MR SIPHIWE NYANDA: Yes.

ADV MAHLAPE SELLO: And to your recollection who was present at the meeting of the top six when this disclosure was made?

MR SIPHIWE NYANDA: All the officials.

ADV MAHLAPE SELLO: Serving at the time?

MR SIPHIWE NYANDA: Serving at the time, yes.

ADV MAHLAPE SELLO: And is the Chairperson to understand that none of them took up the issue when Mr Mbalula made the disclosure?

MR SIPHIWE NYANDA: None of them. Nobody took up the, the discussion except from the; and it would have surprised me if they took, took up the issue because the, the President himself was going to close that meeting and, and there was no push even subsequent to that for this matter to be discussed. This, this matter was never put on the table of the, on the agenda of the ANC Executive even sub, in subsequent meetings.

- 10 **CHAIRPERSON:** Well you, you have answered another question that I was going to ask you about whether subsequent to that NEC meeting the matter was ever raised again and, and as I understand you, you say it was not while you were a member of the, a member of the NEC. You do not recall that it was dealt with by the NEC as an issue. Is that, is that right?

MR SIPHIWE NYANDA: The issue of?

CHAIRPERSON: The disclosure by.

MR SIPHIWE NYANDA: Oh.

CHAIRPERSON: Mbalula.

MR SIPHIWE NYANDA: It was never discussed.

- 20 **CHAIRPERSON:** Yes. I, I, I am concerned about whether people who were at the NEC meeting including the ones you refer to as the officials of the party whether they regarded or would have regarded what Mbalula, Mr Mbalula complained about at the meeting as something that was wrong if it had happened. In other words if he was speaking the truth that he was told by the Guptas that he was going to be made Minister of Sports, whether they would have regarded the issue or they regarded the

issue as serious that something that should not have been known outside of Government got to be known outside of Government according to what Mr Mbalula said and whether they would then have wanted to follow up to say but this is wrong. We need to hear what the President has to say about it. How could somebody outside of Government and actually the Guptas against whom there were allegations and so on about their friendship with the former President that they would want to know what does the President have to say about it and once we have heard what he says we must see what needs to be done to make sure this kind thing does not happen again. So I am, I am concerned whether they may have been concerned about the seriousness of this
10 allegation and therefore whether they would have wanted to follow it up even if at a later stage. You might or might not be able to say, but do you have anything to say about.

MR SIPHIWE NYANDA: No [intervenes].

CHAIRPERSON: About whether you, I must say about whether you, because you are a member of the NEC, whether you and the officials were concerned about the seriousness of this issue and whether you would have wanted this issue to be looked into and dealt with properly by the NEC or by some other structure of the party.

MR SIPHIWE NYANDA: We were obviously concerned. I think they also were obviously concerned, should have been obviously concerned the officials, but because I
20 was not part of the officials I do not know whether they did.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: Discuss this.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: And, and discuss how to handle it, because normally if things are discussed and decisions have to be taken going forward with respect to anything

that is decided on at the NEC then it is the Office of the SG that pursues such matters, puts them on the table of the officials. I am, I can also say that I was a member of the National Working Committee. Even in the National Working Committee.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: It was not pursued.

CHAIRPERSON: Hm.

MR SIPHIWE NYANDA: Yes, so and subsequent NEC meetings as I said Chairman did not pursue the matter. I think people took it as, as gospel that in fact this thing happened, but whether to engage in it was another matter for the people who occupied

10 those positions in.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: In the National Executive Committee or.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: In the NWC or.

CHAIRPERSON: Hm, hm.

MR SIPHIWE NYANDA: Among the officials themselves.

CHAIRPERSON: Yes. Thank you.

ADV MAHLAPE SELLO: Thank you Chair. You, you earlier testified that even before Mr Mbalula's disclosure there were suspicions or rumours regarding the role the Gupta
20 family played in particular in relation to the President. I understood you correctly in that regard?

MR SIPHIWE NYANDA: Yes.

ADV MAHLAPE SELLO: Now can you just give us the sense of what the rumours were or what the suspicions were in particular?

MR SIPHIWE NYANDA: Shortly that the, the, the, many of the decisions that are taken

are taken at Saxonwold. That they have got influence on the President, the Guptas and that therefore many of the things, chances that take place there in, take place in Cabinet are influenced by what is going on in Saxonwold or what those people in Saxonwold want.

ADV MAHLAPE SELLO: Now at the time of this meeting did you personally harbour those suspicions or had you heard those rumours?

MR SIPHIWE NYANDA: Yes, I, I heard those rumours. I was also dumped from, from Cabinet in, in 2010 at the same time as Mbalula was appointed and, and while I was in Cabinet, while I was Minister of Communications I had met I do not know which of the
10 brothers, because they would, they would be there in some of the gatherings of the ANC, but I met one of them who came to my office. They made an appointment and I gave them an appointment. They came with Duduzane Zuma the son of the then President and they, what they did was to introduce their, their company Sahara Computers and, and we had, I had the officials in that little boardroom that I kept next to my office and after that introduction they left and, and as I said Chairman I also had heard whispers about the impending Cabinet reshuffle and some of them were indicating that I might be dumped from Cabinet, but what I, what I know and I have said this publically that I have, I had that meeting with them and then subsequent to that they did try to, to see me again, but they did not want to see me in my office or that is
20 the impression I got, because they sent people. They sent emissaries and I will not talk about who those emissaries, but several people came to me to say these people want, the Guptas want to see you and I said they are welcome in my office. If, if anybody wants to discuss to me, with me about Government work they must come to my office. So as an afterthought because I did not, I did not suspect anything then, because there are many other people who wanted to see me. Perhaps some of them also privately,

but I always insisted.

CHAIRPERSON: Hm.

MR SIPHIWE NYANDA: On people who wanted to do, to talk about my role in Government that those people needed to come, to come to my office. Except people who I was close to of course.

ADV MAHLAPE SELLO: Yes. Now.

CHAIRPERSON: Maybe before you proceed.

ADV MAHLAPE SELLO: Okay.

CHAIRPERSON: Now you, you were dropped from Cabinet at the end of
10 October 2010. Is that right?

MR SIPHIWE NYANDA: Yes, Chair.

CHAIRPERSON: Ja. Do you remember roundabout what time, about when this approach was made to you by the Guptas and Mr Duduzane Zuma when they came to your office in relation to when you were dropped? Are you able to remember?

MR SIPHIWE NYANDA: No, I think it was quite early in my.

CHAIRPERSON: After your appointment?

MR SIPHIWE NYANDA: After my, my appointment.

CHAIRPERSON: Okay.

MR SIPHIWE NYANDA: But the subsequent.

20 **CHAIRPERSON:** And your, and your appointment was in 2009. Is that right?

MR SIPHIWE NYANDA: 2009.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: I served it for 18 months.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: About 18 months. I think it was the year 2009.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: And I think some of these approaches might have been in 2010.

CHAIRPERSON: Yes, okay. So on, on the occasion when you did meet with them in your office did they indicate what the purpose was for?

MR SIPHIWE NYANDA: They.

CHAIRPERSON: For them asking for a meeting with you?

MR SIPHIWE NYANDA: They, they were introducing their company, Computer Sahara.

CHAIRPERSON: Yes. So they.

10 **MR SIPHIWE NYANDA:** [Indistinct].

CHAIRPERSON: *Ja*.

MR SIPHIWE NYANDA: They just introduced.

CHAIRPERSON: They were just telling you what, what they are involved in.

MR SIPHIWE NYANDA: What they do.

CHAIRPERSON: Yes, what they do.

MR SIPHIWE NYANDA: *Ja*.

CHAIRPERSON: And the meeting ended at that level. They did not start talking about any, any future engagement in regard to your department and their businesses?

MR SIPHIWE NYANDA: I cannot recall Chair.

20 **CHAIRPERSON:** You cannot recall.

MR SIPHIWE NYANDA: Whether they said they would seek other meetings in future, except that those subsequent requests for meetings indicated that I needed to see them well, well.

CHAIRPERSON: Hm.

MR SIPHIWE NYANDA: From emissaries' people who told, who told me that.

CHAIRPERSON: Hm.

MR SIPHIWE NYANDA: The Guptas would like to see you.

CHAIRPERSON: Did, did they indicate whether they wanted you to go to their residence or offices or they wanted to come to your office or there was just no indication? There were just requests for a meeting?

MR SIPHIWE NYANDA: I found it strange because when they made the appointment to see me and I accorded them the respect to see them they did it through my office. They called my office. So I did not understand why other people who were not part of my office would want me to see, to go and see them.

10 **CHAIRPERSON:** Yes, yes, yes and you say there were quite a few of such requests. Is that right?

MR SIPHIWE NYANDA: Yes.

CHAIRPERSON: You cannot tell how many, but quite a few?

MR SIPHIWE NYANDA: I cannot even tell who.

CHAIRPERSON: Oh, even who, yes but you turned them down, all of them, those requests?

MR SIPHIWE NYANDA: Yes.

CHAIRPERSON: And it was on the basis that if they wanted to see you.

MR SIPHIWE NYANDA: Yes.

20 **CHAIRPERSON:** They must do as they had done before and just?

MR SIPHIWE NYANDA: Yes.

CHAIRPERSON: Communicate with your office?

MR SIPHIWE NYANDA: Yes, Chair.

CHAIRPERSON: *Ja* and you say it may be that some of those requests happened in 2010, but you are just not sure anymore?

MR SIPHIWE NYANDA: I think it was in 2010.

CHAIRPERSON: It was in 2010. Okay, thank you.

ADV MAHLAPE SELLO: Thank you Chair. You, you just indicated to the Chair that you cannot say who the emissaries were. I, do you mean that you do not know who they were or are you not willing to disclose their identities?

MR SIPHIWE NYANDA: No, I know who they, they are.

ADV MAHLAPE SELLO: You not willing to disclose their identities?

MR SIPHIWE NYANDA: No.

ADV MAHLAPE SELLO: Now in, in, in your contact when the emissaries, did they
10 express to you what the Guptas had expressed as to the purpose of the meetings they were requesting?

MR SIPHIWE NYANDA: No.

ADV MAHLAPE SELLO: Did those emissaries impress upon you to honour the invitations at any point?

MR SIPHIWE NYANDA: You know those emissaries happened to be people who I am close or close to sort of. So, because I think they knew the people who I interact with on a social basis. So they would send somebody who, whom they know has got contact with me to say these guys want to see you and I would say no.

ADV MAHLAPE SELLO: Okay. So just to, so we understand the emissaries were
20 simply delivering an invitation?

MR SIPHIWE NYANDA: Yes.

ADV MAHLAPE SELLO: Or were they impressing upon you to honour the invitation?

MR SIPHIWE NYANDA: No, they were not impressing.

ADV MAHLAPE SELLO: Okay.

MR SIPHIWE NYANDA: *Ja.*

ADV MAHLAPE SELLO: Then.

MR SIPHIWE NYANDA: They know a, a lot about me to know that they cannot do that.

CHAIRPERSON: Apart, apart from, apart from the fact that if you, if they wanted to have a meeting with you, you wanted them to go the, through the normal channels and contact your office as they had done before. Was there any other reason why you might not have wanted to meet with them at that stage or that was just the only reason?

MR SIPHIWE NYANDA: Chairman I, I meet, if, if I see people especially people who are in business in my role as, as a Minister I think I should be careful how I, I do that. In the first place I would like to be with either my PA or, or my advisor or, or, or the DG
10 of the party. More likely with PA. So that there is somebody who takes minutes or notes or who knows even if it is a verbal discussion and there is no, there is no note taking. Somebody who keeps a record of what the meeting was all about. So this meeting for instance that I am taking about there should be a record of it with them in the office there.

CHAIRPERSON: Okay, okay thank you.

MR SIPHIWE NYANDA: And at that time I, I must say that there is, there is not much that I knew about them that was negative.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: It is just.

20 **CHAIRPERSON:** Yes.

MR SIPHIWE NYANDA: The question of the principle.

CHAIRPERSON: Yes, okay to say they must go through the channels?

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: Like everybody, okay.

ADV MAHLAPE SELLO: Thank you Chair. Now getting back then to that NEC

meeting to conclude on that. You indicated that nobody commented on Mr Mbalula's disclosure to your recollection and neither did the, the President respond directly thereto.

MR SIPHIWE NYANDA: What I recall is that the President did not touch on it.

ADV MAHLAPE SELLO: *Ja.*

MR SIPHIWE NYANDA: It may have been that one or two people.

ADV MAHLAPE SELLO: Okay.

MR SIPHIWE NYANDA: Spoke about it but my, my interest was, was that or rather my curiosity was, was served by that declaration itself. That Mbalula made that disclosure
10 in that meeting. That I cannot forget.

ADV MAHLAPE SELLO: You, you informed the Chair that it was standard that at the end of the meeting then the President would summarise the salient issues that arose in the course of the meeting and the, the Chair should accept that in this particular meeting the President did summarise as was practice?

MR SIPHIWE NYANDA: Yes, the President did talk at the end of the meeting and spoke to most of the things that the meeting addressed, but did not touch on this very serious matter.

ADV MAHLAPE SELLO: Now the, the President's failure to touch on the matter as you term it did it have any particular significance for you?

20 **MR SIPHIWE NYANDA:** To me it was confirmation that the President was either uncomfortable to, to respond to this matter, because there was credence to it or that perhaps later on he would engage with Mbalula and, but the, the damage had been done. The whole National Executive Committee had listened and heard this and it was never addressed again in future. So that all of us then subsequent to that lived with the reality that the President was, was accused in a meeting of improper conduct and did

not deal with it.

CHAIRPERSON: Well let me confirm this, because I wanted to confirm. Your understanding, your understanding was that Mr Mbalula's statement included or was criticism on the part of the President in relation to this situation where he got told by the Guptas that he was going to be Deputy, he was going to be made Minister. Was that your understanding that it was, he was critical of whatever role the President might have played in a situation where ultimately the Guptas knew that he was to be appointed Minister or was he simply criticising or critical simply of the fact that the Guptas told him what maybe they should not have told him even if they knew or is that
10 difficult to?

MR SIPHIWE NYANDA: No.

CHAIRPERSON: To say?

MR SIPHIWE NYANDA: To me it was very clear that he was saying the President is derelict of the President informed other people who informed him before.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: The President actually informed.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: And he was upset about that.

CHAIRPERSON: He was upset about that.

20 **MR SIPHIWE NYANDA:** That the President did not inform him first before he informed other people.

CHAIRPERSON: Ja.

MR SIPHIWE NYANDA: And that these people who, who were the subject of gossip or the.

CHAIRPERSON: Hm.

MR SIPHIWE NYANDA: Subject, subject of undercurrent talk.

CHAIRPERSON: Hm.

MR SIPHIWE NYANDA: Had so much influence on the President.

CHAIRPERSON: Hm.

MR SIPHIWE NYANDA: So his, his declaration then.

CHAIRPERSON: Hm.

MR SIPHIWE NYANDA: Or his, his claim then was actually saying that the President of the ANC and the President of the country did or according to his knowledge informed people before he informed him and that.

10 **CHAIRPERSON:** Hm.

MR SIPHIWE NYANDA: Really upset him.

CHAIRPERSON: Ja, okay, okay. Thank you.

ADV MAHLAPE SELLO: Thank you Chair. Now you; did you after this NEC meeting personally ever have discussions with any member of Members of the NEC about what Mr Mbalula had disclosed to the meeting?

20 **MR SIPHIWE NYANDA:** I think we were all as you say Chairman shocked and, and we discussed it amongst ourselves and we also discussed the fact that the President had not even alluded to it let alone address it during his closing remarks. I, I cannot recall who exactly I discussed with, but I, I, I know that I did discuss with Mbalula himself and one of the members who sat next to me we discussed it as Mbalula was in, during the meeting of the, and even after the meeting to say it is, it is shocking that the President has not address this thing that Mbalula said. So it really does lend credence to what Mbalula is saying, because I could not understand why Mbalula would allege such a serious thing and not, and the ANC not get a response because it is serious not only for Mbalula but for the, for the NEC which at the time was beginning to, to worry about

some of these things as the large Cabinet reshuffle of October 2010 did.

CHAIRPERSON: Hm. Well I, I said earlier on that I would have thought that people who had this statement by Mr Mbalula would have been shocked. At least I am happy that you are saying you know you were shocked to hear, to see, to hear, to hear this because it must have really been something very serious, but my concern continues to be since this issue was raised at an NEC meeting the seriousness with which it should have been taken should have led to a situation where subsequently at least it was brought back to the NEC to say to the NEC on such and such meeting, at such and such a meeting Mr Mbalula raised this issue. We were very concerned about it and we
10 want to hear what the President has to say about it or maybe some of us maybe the officials have raised the issue with the President and we are reporting back to the NEC as to what the, what, what the position is, but from what you have told us until you left the NEC no feedback whatsoever was ever given to the NEC while you were a member of the NEC?

MR SIPHIWE NYANDA: Chair first, the first issue is, is, is on the shock.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: The shock was not so much about the revelation that he made or the allegation.

CHAIRPERSON: Yes.

20 **MR SIPHIWE NYANDA:** Or the claim that he made.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: People, because people had always suspected that perhaps.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: There is, there is truth in what is being whispered.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: I think what, what may then have upset many people is the second question that you are raising, about the President not having addressed the matter which set tongues wagging after the meeting and also that was a shock and also concern later like this matter never arose again and I think what I said earlier on that what perhaps happened was that perhaps people spoke to the President on the side or perhaps people spoke to Mbalula subsequently to that, but nothing happened and even I as a member of the National Working Committee did not raise it again to say President there was this allegation made. Can you discuss it because also there the agenda that is landed on the National Working Committee is processed through the
10 officials and they put the agenda, nothing like that arose and no, not that we were prevented from raising anything, but we did not raise it as well. So I think we were remiss as well as Members of the National Executive Committee in not at the subsequent meeting of the National Executive Committee not to ask the SG who puts that agenda to say but at this meeting, at the past meeting of August I think the next meeting would have been in December or perhaps the following meeting. At that meeting this was raised and it so serious as to have warranted a response from the President which did not come about and could we deal with it. Nothing like that happened.

CHAIRPERSON: Well I, I, I think part of what you have just said is quite profound is
20 because in the context of the, of that this Commission is about it is quite important that various bodies, organisations, people govern functionaries and so on that everybody should look at what this Commission is looking at in terms of state capture and being genuinely concerned about what may have happened and I will not keep on saying, I keep on saying that I, I, I, I am, I will only decide at the end of the whole thing whether there was state capture. I am asked to investigate whether, I will investigate allegations

of state capture, where there is something that they could have and/or should have done that may have assisted in one way or another in maybe stopping what we now call state capture earlier, earlier than a certain time and, and, and in doing so we, we, we need people who are going to be able to say I will, I may, I was part of this body and maybe we did not do something that we should have done or maybe say look I can see that we should have done this and we did not do it and it is, it is wrong that we did not do it. Maybe here are the circumstances that may have led to us not doing something, but at this stage we are able to acknowledge that having applied our minds yes we should have done something and we were remiss. We did not do it and, and I think that

10 kind of approach would be very helpful. Obviously one is not saying people must take, must say they should have done something if they do not feel that they should have done something, but those who look at the whole situation, look at the opportunities that they may have had to do certain things and are able to say I think here I could have contributed and I did not. Maybe at that time the situation that was prevailing was such that the focus was on something else. I do not know, but I see that here I did not do this and I could have done. That is that is quite important.

MR SIPHIWE NYANDA: Chair.

CHAIRPERSON: Yes, yes.

MR SIPHIWE NYANDA: Perhaps one of the reasons why this was so, I said earlier on

20 that at the time that I had a meeting with the, the company of the Gupta family.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: I had absolutely no inclining that the things that unfolded folded later on would.

CHAIRPERSON: Yes, yes.

MR SIPHIWE NYANDA: Would come to.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: The point at which they [intervenes].

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: Only later.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: Do we get to, to that point. Otherwise.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: We just took, took them as part of the business. Obviously people who, who are in business are warned to want to, to be close to the powers that
10 be and normally at events that we organise as the African National Congress whether it is January, the 8th or something like that or it is elections or fundraising the people who have lots and lots of money want to sit next to, to the President of the country. Want to sit next to the Minister of Finance. Want to sit next to the Minister of this and that, the important and in fact they are allocated as such also depending on, on the importance of the contribution. I do not know now that the legislation is changing with, in terms of disclosure etcetera for contributions whether that will still be the, but I think it is the case worldwide that people who have financial muscle and I will do that myself if I had tremendous financial muscle. I would want to sit next to a President of the country. Not because I want to influence the President to appoint so and so and so and so, but
20 because the closer to the ear of the President the better for, for me. Not necessarily to do wrong things, but for, for my company, the image of my company and also things that I might say that are not improper in any way. So I, I, I think that when, when the things were happening initially and we saw this happen or these people being close to the President. I think earlier on during Mr Manuel's testimony there was an eluding to a former Minister appointing of the brothers as, as part of the, of the, of Brain South

Africa.

CHAIRPERSON: Oh, yes.

MR SIPHIWE NYANDA: Board and so on. So.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: So those people were part of society, normal business people and so on, but only, only, only later did we realise that they, there was something really sinister afoot and perhaps if this thing of Mbalula was just a first indication that something was, was, was wrong that the President may, may have acted incorrectly, but it was not yet to us at least evidence of, real evidence of state capture. It was
10 beginning to, to give worries about that possibility if people have got and it was actually the first indication of worrying about, about this family apart from things that were being [indistinct].

CHAIRPERSON: Okay, thank you.

ADV MAHLAPE SELLO: Thank you. Thank you Chair. Now if you could just go back very briefly. Can you tell the Chair about the circumstances of your own dismissal and how you got to learn that you were being released from your post as Minister of Communication?

MR SIPHIWE NYANDA: I was in Durban Chairman as I said and I was called by somebody from the Presidency to say that I need to go to [indistinct], the President's
20 residence or state house. I cannot remember which and I indicated that actually in Durban it was in the morning, Sunday morning returning to Johannesburg, because I had been there for a weekend and then I got another call and I indicated that my flight was going to be in the afternoon. When I got the VIP lounge I got a call now from the President to say that I have been, I am being redeployed. That the officials have decided to redeploy me as Ambassador to Germany.

CHAIRPERSON: This was now the President speaking to you on the phone?

MR SIPHIWE NYANDA: The President speaking to me, yes.

CHAIRPERSON: Ja, hm.

MR SIPHIWE NYANDA: And I said I told him no, I am not there. I think that is why you are relaying this message, but I will come there and try to see you, but thank you very much for your appointment and I elected to go to the back benches of Parliament where I had been sent by the ANC.

CHAIRPERSON: But when you arrived in Gauteng coming back that same afternoon did you go and meet the President and maybe hear more or on anything of the
10 subsequent days?

MR SIPHIWE NYANDA: No, because he had already relayed his message. I did not and see him except Lithuli House. I saw, I saw him much later where, because I wanted to find out from, from officials, because he said it said officials who decided.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: To do this thing and one of them I do not think I have the pleasure of saying who, but indicated that he, he knew nothing about it.

CHAIRPERSON: Hm.

MR SIPHIWE NYANDA: And then I subsequently met the President, because I really wanted to find out what it is.

20 **CHAIRPERSON:** What happened?

MR SIPHIWE NYANDA: That.

CHAIRPERSON: Hm.

MR SIPHIWE NYANDA: I would be, I would be redeployed and.

CHAIRPERSON: Hm.

MR SIPHIWE NYANDA: I saw him in his office and he mumbled something about the

SABC which I did not quite understand, but I had, I had received some, some people, some gossip about people saying things about me that and I told him this that.

CHAIRPERSON: Hm.

MR SIPHIWE NYANDA: I understand you say that I run a, a private, a private intelligence outfit and so on and so forth, but he said no, it is not true. He thinks this matter is related to the SABC, but I did not really understand what those matters were in relation to the SABC.

CHAIRPERSON: Hm, hm.

MR SIPHIWE NYANDA: Which was under my.

10 **CHAIRPERSON:** Hm.

MR SIPHIWE NYANDA: Watch as Minister of Communications.

CHAIRPERSON: Hm. So, so, the purpose, when you saw him you sought to understand the reasons why?

MR SIPHIWE NYANDA: Yes.

CHAIRPERSON: The officials decided to; that you should leave the Portfolio of Communication, Minister of Communications and be given an Ambassadorship and you sought to understand that from him?

MR SIPHIWE NYANDA: Not necessarily the, the officials, but him because he is.

CHAIRPERSON: He was the President?

20 **MR SIPHIWE NYANDA:** *Ja*, he is the President. I mean we serve at his, at his [intervenes].

CHAIRPERSON: Yes, yes.

MR SIPHIWE NYANDA: He has got the prerogative.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: To.

CHAIRPERSON: So.

MR SIPHIWE NYANDA: Appoint and dismiss Ministers.

CHAIRPERSON: Hm. So you say you, you, you did ask him to try and understand and he?

MR SIPHIWE NYANDA: Yes.

CHAIRPERSON: In your words mumbled something about the SABC?

MR SIPHIWE NYANDA: *Ja*.

CHAIRPERSON: You do not understand what he was saying about it. You do not know what, what, what it was about [intervenes]?

10 **MR SIPHIWE NYANDA:** I did not understand what it was frankly.

CHAIRPERSON: Yes, but you, you left it at that?

MR SIPHIWE NYANDA: I left it at that and.

CHAIRPERSON: *Ja*.

MR SIPHIWE NYANDA: And informed him that I, I was going to, to go back to the.

CHAIRPERSON: You were going to go.

MR SIPHIWE NYANDA: To Parliament.

CHAIRPERSON: Back to Parliament.

MR SIPHIWE NYANDA: As a back bencher.

CHAIRPERSON: Yes, yes. You did not take up the offer of?

20 **MR SIPHIWE NYANDA:** No.

CHAIRPERSON: Being an ambassador, okay. Thank you.

ADV MAHLAPE SELLO: At the time that the President informed you of, of your dismissal and suggested appoint to an Ambassadorial position did you ever, did you question or did you have any basis to question the truthfulness of the reason why you were being removed from the post of Minister of Communications?

MR SIPHIWE NYANDA: I, I think this is what I have just being saying to the Chairman that I did try.

ADV MAHLAPE SELLO: No, I am; but my question if I may be clearer. At the time did you, sorry did you question the truthfulness of the reasons that were being advanced?

MR SIPHIWE NYANDA: No, I know, I knew that there was no truth in those reasons.

ADV MAHLAPE SELLO: Okay. Chair I see.

CHAIRPERSON: So, so just to understand that answer. He gave you some answer relating to the SABC which you did not understand, but you are saying as far as you were concerned that was not the true reason. Is that, is that, is my understanding.

10 **MR SIPHIWE NYANDA:** Yes.

CHAIRPERSON: Of what you are saying correct?

MR SIPHIWE NYANDA: Yes.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: That was not the true reason.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: That was not the true reason.

CHAIRPERSON: *Ja.* Now did you know what the true reason was?

MR SIPHIWE NYANDA: I, I, I suspected because I did say to the Chairman, to the Commission that I heard whispers about.

20 **CHAIRPERSON:** Yes.

MR SIPHIWE NYANDA: A possible reshuffle in which.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: I would be affected.

CHAIRPERSON: *Ja.*

MR SIPHIWE NYANDA: But I, I, I actually did not believe those rumours because I

thought that I was doing quite well in my portfolio.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: I had introduced many things. I, there was a, a stable board of the SABC.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: There were of course fights in that SABC between Ngubane and, and, and the, and the CEO of the SABC.

CHAIRPERSON: Hm.

MR SIPHIWE NYANDA: There were, but generally there was stability in most of the, of
10 the portfolios that were under my, my watch there whether it was SANTEC or, or, or the
SABC. There was general stability and the, things were beginning to take shape.
There was of course and issue between me and, which had just arisen, between me
and the former Director General which I.

CHAIRPERSON: Of your department?

MR SIPHIWE NYANDA: Of the department.

CHAIRPERSON: Yes, huh-uh.

MR SIPHIWE NYANDA: And allegations that she made because we, I had suspended
her on, on advice from, from and also on consideration of the things that were alleged
against her and then of course she went to, the thing was before the Public Service
20 Commission.

CHAIRPERSON: Hm.

MR SIPHIWE NYANDA: And then she went to allege things.

CHAIRPERSON: Hm.

MR SIPHIWE NYANDA: That were not correct.

CHAIRPERSON: Hm.

MR SIPHIWE NYANDA: And I went to the President also with respect to that, because the, the Minister of the Public Service is the one who is the custodian of all these things that.

CHAIRPERSON: *Ja.*

MR SIPHIWE NYANDA: *Ja* that is all and they were taking time and so on and doing. So.

CHAIRPERSON: Hm, hm.

MR SIPHIWE NYANDA: At that, at that point in time I thought that then we had, we had so many things in line and as far as the department is concerned [intervenes].

10 **CHAIRPERSON:** I am sorry General it may be that you need to speak a little louder or maybe [intervenes].

MR SIPHIWE NYANDA: [Intervenes].

CHAIRPERSON: I think the people at the people might not be hearing you.

MR SIPHIWE NYANDA: *Ja.*

CHAIRPERSON: Okay, *ja.* Yes.

MR SIPHIWE NYANDA: *Ja*, I was saying that I, I thought I was doing well and I was also receiving credit for the, for the chances that were taking place in that department or in relation, relation to the, to all the entities that resides under my watch.

20 **CHAIRPERSON:** Now my question was whether you knew what the reason was and you in response talked about suspecting. So maybe I should ask whether you knew the reason or whether you had suspicions only of what the true reason was for your dismissal.

MR SIPHIWE NYANDA: No, I, I, I did not, I did not, because he did not provide the reasons I, I did not know.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: I thought that he was creating space for, for somebody else to take, to take.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: My place.

CHAIRPERSON: Okay.

MR SIPHIWE NYANDA: Hm.

CHAIRPERSON: Hm.

MR SIPHIWE NYANDA: Because subsequent to that maybe there were things that were put in place with respect to governance of many of these State Owned
10 Enterprises or State Owned Companies changes began to take place as well.

CHAIRPERSON: Hm, hm.

MR SIPHIWE NYANDA: People began, people were shafted.

CHAIRPERSON: Hm, hm.

MR SIPHIWE NYANDA: Members that had appointed to, to boards, people began to move the other appointments whether it was Telkom.

CHAIRPERSON: Hm.

MR SIPHIWE NYANDA: Or SANTEC or the SABC.

CHAIRPERSON: Hm.

MR SIPHIWE NYANDA: Of course the SABC remained and Ben Ngubane stayed
20 there, but then I, I, I can only say with hindsight that.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: There are things that took place after my removal which actually confirmed that some of these were the, these were the reasons why I was removed.

CHAIRPERSON: Well, well maybe you should articulate that if you have looked at

what has happened and it throws light as far as you are concerned on why you were dismissed just articulate them to say when I look at this and that and that which happened after I had left. I think it throws light and this is the light that it throws is that is the position. If that is not the position obviously do not say that. I just want to, I just want to benefit from your own understanding of issues or your own analysis of this, of the issues to say this is why I believe I was dismissed if that, if you.

MR SIPHIWE NYANDA: Hm.

CHAIRPERSON: If you know. If you do not know you say look I do not know. I can only speculate and obviously speculation is not going to help.

10 **MR SIPHIWE NYANDA:** Yes. That is what I said to the investigators or to the, the Commissions and evidence leaders.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: That I do not have, although I am a military man I do not have any explosives stuff or bomb shells.

CHAIRPERSON: Yes, yes.

MR SIPHIWE NYANDA: But I can, I can only.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: Surmise.

CHAIRPERSON: Yes.

20 **MR SIPHIWE NYANDA:** From what happened subsequently.

CHAIRPERSON: Yes, yes.

MR SIPHIWE NYANDA: That this, this may have been the reason.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: These were the reasons.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: But I, I have absolutely nothing and I.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: I must say also since I was appointed nobody came to me both in the, as Chief of the SANDF or as Minister of Communications, nobody ever came to me with an idea that I should do something wrong.

CHAIRPERSON: Yes, yes.

MR SIPHIWE NYANDA: Nobody came to me with a proposal that I thought was, was not correct [intervenes].

CHAIRPERSON: Yes, was improper?

10 **MR SIPHIWE NYANDA:** Yes.

CHAIRPERSON: Hm.

MR SIPHIWE NYANDA: And I dismissed them as improper.

CHAIRPERSON: Yes, yes.

MR SIPHIWE NYANDA: So nothing.

CHAIRPERSON: Yes, yes.

20 **MR SIPHIWE NYANDA:** The only time some people came to me they wanted to buy shares from Eskom, from Telkom and, and I told them but Telkom is a listed entity. Why if, if, if you made this proposal public that if you expressed an interest then Government might even consider your proposal, because it would shoot, shoot up the value had you made a, made a good [indistinct]. It would shoot up the value of, of, of Telkom and the value, because of that value you might even want to, to look at such a proposal, but you cannot come and make a proposal to me as Minister. It has got a Board although it is, the Government has got a significant stake in it, but it is a, it is a public entity.

CHAIRPERSON: Ja, okay. No, thank you.

ADV MAHLAPE SELLO: Thank you Chair. Chair it is after four, with your permission

may I request that we finish.

CHAIRPERSON: Let us try and finish.

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: *Ja.*

ADV MAHLAPE SELLO: Thank you.

CHAIRPERSON: Let us try and finish.

ADV MAHLAPE SELLO: You, you indicated to the Chair previously that after Mr Mbalula had made this disclosure none of the NEC Members to your knowledge and do you in particular raise this issue again in the NEC or with the officials. You stated
10 such.

MR SIPHIWE NYANDA: Yes.

ADV MAHLAPE SELLO: And you expresses your view that you may very well have been remiss in failing to do so.

MR SIPHIWE NYANDA: Yes.

ADV MAHLAPE SELLO: Now.

MR SIPHIWE NYANDA: And also subsequent to that you know the ANC, when we were acting in other capacities now not in the capacity as Members of the NEC, because we, when the issues of Mcebisi Jonas and the 2015 dismissal from Government of Nene we wrote a memorandum to the ANC expressing disquiet at all
20 these things and so and then subsequent to that they were called to the ANC offices and one of the things we, we were demanding was an enquiry, Commission of Enquiry and.

ADV MAHLAPE SELLO: May I interject?

MR SIPHIWE NYANDA: [Intervenues].

ADV MAHLAPE SELLO: I apologise with your permission. Chair what

General Nyanda has just testified to relate to the documents that I said he brought this morning. Perhaps it might be an appropriate time to hand them in and when he addresses those issues, because he would like to address himself to the documents.

CHAIRPERSON: That is fine.

MR SIPHIWE NYANDA: [Intervenues].

CHAIRPERSON: That is fine. That may be done, but I think he may proceed, because on Mr Mashigo's evidence I think that I have recollection of a memorandum that Mr Mashigo handed up which had a list of names of I think former Ministers and Directors-General if I am not mistaken. I seem to think I saw General Nyanda's name
10 there. General did, was your name in that memorandum or do you know anything about it?

MR SIPHIWE NYANDA: You are.

CHAIRPERSON: You are not sure about that one?

MR SIPHIWE NYANDA: No, but we are talking about another memorandum.

CHAIRPERSON: Oh.

MR SIPHIWE NYANDA: Because.

CHAIRPERSON: Oh.

MR SIPHIWE NYANDA: The one from the DGs.

CHAIRPERSON: Yes.

20 **MR SIPHIWE NYANDA:** Follows the one we wrote as Senior Commanders.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: Of Umkhonto we Sizwe.

CHAIRPERSON: Okay.

MR SIPHIWE NYANDA: Former Commanders of Umkhonto we Sizwe.

CHAIRPERSON: Okay.

MR SIPHIWE NYANDA: To the ANC.

CHAIRPERSON: Yes, okay. Let me, let me have that, *ja*.

ADV MAHLAPE SELLO: Thank you Chair. In fact there are three documents that General Nyanda made available this morning.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: We have numbered them SN02 to SN07, based on the date of their production.

CHAIRPERSON: Okay, thank you.

ADV MAHLAPE SELLO: And I beg leave to hand them in and Chair if you, if you could
10 include them in your exhibit, this is for the witness, if you include them in your exhibit we will update the Chair's index.

CHAIRPERSON: *Ja*.

ADV MAHLAPE SELLO: To reflect their inclusion.

CHAIRPERSON: Hm. I am just thinking whether, so maybe we should, oh you have taken the liberty of marking them SN02 up to.

ADV MAHLAPE SELLO: Should be SN08, Chair.

CHAIRPERSON: *Ja*. Okay, no, no that is that is fine. Thank you.

ADV MAHLAPE SELLO: Thank you Chair.

CHAIRPERSON: You may proceed, *ja*.

20 **ADV MAHLAPE SELLO:** Thank you. Now you have been given a copy of these documents paginated SN02 to SN08, General Nyanda. The first is an email dated 18 March 2016 and according to this document it appears to be an email from Mr Mo Shaik to yourself and the subject matter is "Memorandum from Senior Commanders and Commissars of..." something to have been omitted there. You have the document.

MR SIPHIWE NYANDA: "...of the Military Wing of the ANC Umkhonto we Sizwe".

ADV MAHLAPE SELLO: Okay. Now you explain, is this the memorandum you were referring to initially when you, when you told the Chair; when you tried to distinguish between a document and the one that Mr Mashigo had referred to which is the memorandum of the General, of the DGs.

MR SIPHIWE NYANDA: Yes, but I was not actually referring to the memorandum. I was talking specifically, perhaps I am jumping.

ADV MAHLAPE SELLO: Okay.

MR SIPHIWE NYANDA: I was talking specifically about this issue of being remiss.

10 **ADV MAHLAPE SELLO:** Yes.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: Because.

CHAIRPERSON: Just talk about it, *ja*.

MR SIPHIWE NYANDA: At a sub, subsequent to all this the ANC leant us they are here in the form of the Secretary General and, and, and actually invited everybody to give evidence, to bring evidence to it. Instead of the Commission that we were requesting.

CHAIRPERSON: Yes.

20 **MR SIPHIWE NYANDA:** And I am saying also because I am just took the question of being remised, because even in that I think it is only Mashigo who went.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: So it was also another missed opportunity at least on my part.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: But here I was acting, I was heading a group of people.

CHAIRPERSON: Hm.

MR SIPHIWE NYANDA: On my part, because I also was privy to that NEC.

CHAIRPERSON: Hm.

MR SIPHIWE NYANDA: Now when the NEC, when the ANC says come and tell us about this state capture.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: I also did not go back to the ANC to say you remember SG this meeting of the NEC.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: This was said.

10 **CHAIRPERSON:** Hm.

MR SIPHIWE NYANDA: And I would like to submit that is one of the.

CHAIRPERSON: Hm.

MR SIPHIWE NYANDA: It is an, it is evidence as one of this, the beginning of this state capture if it is, was not the, it was not the state capture itself the essence of it.

ADV MAHLAPE SELLO: Thank you, thank you General. Can we take these documents I would suggest by in date form so that we address them sequentially as they were produced? The first one you submitted as what appears as SN02 which is that email dated March the 18th 2016, and a reading of that document would suggest that it covers a number of issues including the removal of Mr Nene and that you will find
20 at paragraph 4, the rise of factions and sleuth within the ANC and that is contained at paragraph 7.11, various crises besetting the organisation at paragraph 12, and undue influence on decisions of the State at paragraph 14. Now of particular relevance to our conversation and the Gupta Family I seem to find these matters dealt with in paragraphs 7 to 9 of that document, do you see that?

MR SIPHIWE NYANDA: Yes.

ADV MAHLAPE SELLO: Now can you tell the Chair therefore what the issues are in relation to the Gupta family that you raised as a concern on this document.

CHAIRPERSON: Maybe before he does that, which is specific to the Gupta family it might help if we were to give you an opportunity to say the thrust of this document that you sent to the ANC insofar as it might relate to the work of this Commission was the following, one, two, three or whatever, and then you can focus after that on this specific one, but if the specific issue is actually the one that you want to focus on its fine.

MR SIPHIWE NYANDA: The specific issue that this memorandum deals with is the appointment of an independent Commission to look into the matters that arose out of
10 (indistinct) disclosure that he was called to (indistinct) and told that he would become, that they would make him Minister if he accepted R600 000 and ...(intervention)

CHAIRPERSON: I think R600million.

MR SIPHIWE NYANDA: R600million ja, and did certain things, I can't think in terms of figures.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: So that was the thrust to say we need to have a Commission set up because we thought that what was happening was undermining the African National Congress and we were just concerned about our movement that is why even if you look at the resolution about saying the ANC should call an independent commission
20 to deal with these matters because we were discussing these things on a daily basis until such time as Xolisi made this claim. I can just give a background as well, I was driving from somewhere, Mabula Game Lodge when this thing came, I actually called all these people that are signatories to this thing while I was driving I asked somebody else to drive, to call these people to say we need to do something about this and all these were very senior people in the ANC and veterans of the Armed Struggle, because

to us this was now a public revelation not in an ANC NEC as it happened in the past, but public, a Minister, a Deputy Minister disclosing what he disclosed because his minister had been removed somebody else put in place for three days and then subsequently a redress sort of, of that situation when Bavim was then appointed. So we were saying this is a worry to us, with respect to what is happening in Government and also with respect to what is happening in the African National Congress

You will recall Chair that there had been elections, local government elections in 2014, the previous year ...(intervention)

CHAIRPERSON: 2016 was local government elections. Minister Nene was dismissed
10 on the 9th of December 2015.

MR SIPHIWE NYANDA: Ja.

CHAIRPERSON: The local government elections were in August I think 2016.

MR SIPHIWE NYANDA: 2016 in 2014 the ANC's majority was reduced, significantly and we were worried about that.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: And so we were planning this because we knew that or we thought that there were problems in the African National Congress or factionalism and so on and so forth and we addressed these issues again in this, but ...(intervention)

CHAIRPERSON: Ja, I see that the memorandum is dated 18 March 2016.

20 **MR SIPHIWE NYANDA:** 2016.

CHAIRPERSON: Yes. You have covered what you think is important for us to highlight in this memo?

MR SIPHIWE NYANDA: Yes.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: If I may read from the memo at paragraph 8 and please

correct me if I make a mistake, and in the context of the offer made to Mr Mbalula the memorandum state:

“In the light of these revelations we demand to know what role if any did the Gupta family play in influencing the appointment of Ministers and to what end, which other ministers have been approached by them in this manner, what private arrangements if any have been made with the Gupta family, what is their role in the appointment of board members of State Owned Enterprises. Is the leadership of the ANC aware of these arrangements. On whose authority does the Gupta family act.”

- 10 So this would be a specific issue brought to the attention that was central to the memo that you submitted on the 18th of March?

MR SIPHIWE NYANDA: Yes.

ADV MAHLAPE SELLO: The bottom end as currently appears before us seems to be an email from Mr Moshaik to yourself. Now you speak of a memorandum, can you explain the following, to whom specifically was this memorandum addressed?

MR SIPHIWE NYANDA: It was addressed to the Secretary General of the ANC and the officials of the ANC and it went to them, I think Mo sent it to me and I sent it to the SG of the African National Congress.

- 20 **ADV MAHLAPE SELLO:** And the document would suggest at page SN04 that it is signed by yourself on behalf of the list of people set out there, so the document is yours, basically, on behalf of those people, same document at page SN04.

MR SIPHIWE NYANDA: Yes.

ADV MAHLAPE SELLO: Now can you confirm whether or not the Secretary General of the ANC did receive this memorandum?

MR SIPHIWE NYANDA: I can confirm that and I will also say Chairman that this

document somebody leaked this document to the media, so the Secretary General of the ANC or rather the leadership of the ANC were upset and reprimanded us when we met them about such a leak, so it was sent to them and received by them.

CHAIRPERSON: I suspect that the reprimand was about the leak and not about this type of writing expressing your view in this memo?

MR SIPHIWE NYANDA: Ja the reprimand was about the leak Chair.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: Now following then receipt of that memorandum by the Secretary General, albeit the date is not clear, what did the Secretary General to your
10 knowledge do about that memo, what transpired thereafter?

MR SIPHIWE NYANDA: We did meet the leadership of the ANC I think it was not just the Secretary General but the officials of the ANC, I can't recall who was present in that meeting, among the officials.

ADV MAHLAPE SELLO: And when you say we did meet, do you recall who you were with?

MR SIPHIWE NYANDA: A few people I think Moshaik was one of the people in that meeting, I think Kasha Bangu, let me see in my book. I think General Mngwena, Commission Rasigatla, Ambassador Sheik, I think I can recall those, there were about five of us.

20 **ADV MAHLAPE SELLO:** Now you submitted as part of the documents this morning an email yet again, which I have numbered SN052 SN06, could you explain to the Chair the relevance of that particular email? It is dated Sunday April 3 2016.

MR SIPHIWE NYANDA: This email just talks to – this meeting that we held with the officials of the ANC and it also talks to that leak, the last paragraph of that page SN05, where I say:

“Comrades as you now our last memorandum was leaked to the media by one of us. We were correctly criticised for this reckless action. I appeal to you please keep this communication confidential to ensure that no leak ensues.”

And it spoke to the findings of the – we were asking the President to go.

ADV MAHLAPE SELLO: Can I draw our attention to – you drew the Chair’s attention to the last paragraph on that page, can I draw your attention to the paragraph before that one.

MR SIPHIWE NYANDA: Yes, to say the President had agreed to meet us.

10 **ADV MAHLAPE SELLO:** So is it correct to interpret this to mean as at April the 3rd 2016 you were confirming that there has been an invitation to meet with the President on the matter that is reflected in your memorandum.

MR SIPHIWE NYANDA: Yes.

ADV MAHLAPE SELLO: But the meeting was yet to be held.

MR SIPHIWE NYANDA: Yes.

ADV MAHLAPE SELLO: Now was that meeting subsequently held as a matter of fact?

MR SIPHIWE NYANDA: My recollection yes.

ADV MAHLAPE SELLO: Do you recall what was discussed in that meeting?

20 **MR SIPHIWE NYANDA:** I have a – I have here what I was going to say to the President.

ADV MAHLAPE SELLO: Okay.

MR SIPHIWE NYANDA: It is actually something, the notes that I prepared for that meeting.

CHAIRPERSON: And did you actually say these things that you say in this document when you met with the person?

MR SIPHIWE NYANDA: Yes, okay, thank you.

ADV MAHLAPE SELLO: Is that the document then that would be the third document in that series Chair, paginated SN07 to SN08, it's got a date there by manuscript 18.04.2016, is that the document?

MR SIPHIWE NYANDA: That's generated then.

ADV MAHLAPE SELLO: I see that it is addressed to the President.

MR SIPHIWE NYANDA: Yes.

ADV MAHLAPE SELLO: And at the third paragraph they are numbered but the third paragraph you state, or it states:

10 “We really appreciate the time and wish we could have interacted long before matters reached this state. Some of us have made such attempts to reach you.”

Now whose handwriting is it at the top there inserting the date 18.04.2016?

MR SIPHIWE NYANDA: It's mine.

ADV MAHLAPE SELLO: Is the Chair to understand that the date appearing there is the date on which you wrote this document, not the date necessarily on which you met with the President, you would have met with him ...(intervention)

MR SIPHIWE NYANDA: The date on which this was generated from my computer.

ADV MAHLAPE SELLO: Do you recall then based on that date ...(intervention)

20 **MR SIPHIWE NYANDA:** I can't recall the date that we actually met the President.

ADV MAHLAPE SELLO: You don't recall, okay. Okay is there anything in particular – so is the Chair to understand that these are then your notes of what transpired at that meeting, would that be correct.

MR SIPHIWE NYANDA: Yes.

ADV MAHLAPE SELLO: In summary then could you say, could you indicate to the

Chair what the key issues were that were discussed and their relevance to this Commission?

MR SIPHIWE NYANDA: No, I remember that it was going to be the President's birthday or something there and then we are saying there that we were really are saddened by what has happened and I – if I can just can quote what I'm saying?

CHAIRPERSON: Yes, briefly.

ADV MAHLAPE SELLO: Yes.

MR SIPHIWE NYANDA: I say:

10 “We come here with pain and heavy hearts believing that our organisation is on a slippery slope. This is not only from our own observation but from what we also heard you say at the National General Council last year. There are people who believe it is beyond remedy, some of us think it is still possible to cure it's ills and nurture it back to health in spite of that being a monumental challenge. We are prepared to be part of such an effort. That will however require a complete detour from the practice of the past decade and a will form the leadership to unite with its investigators and drive such an agenda.”

And then it goes into the resignation of Mcebese Jonas.

ADV MAHLAPE SELLO: You may read that as well, you may continue reading that into the record yes please.

20 **MR SIPHIWE NYANDA:** I must read that.

“President last month after the statement by the Deputy Minister of Finance, Mcebese Jonas, we addressed a memorandum to the leadership on that issue. We believe that the issue of the Guptas and the attendant corruption involving the State machinery which was central to that memo has evoked such resentment from many in our ranks and the wider society that the ANC

is in danger of paying a huge price in future elections. We have since interacted with the SG and the some officials and ANC members, ANC members explaining the memo and signalling our intention to participate in the process that the NEC has decided in order to give our own evidence about what we know on the matter. We do not wish to rehash some of the issues we raised in that memo save to say that it among other things called for a special conference. We are not even sure that a special conference can resolve some of the many challenges we face, but we are shocked by the assertion by the SG that forcing the President to relinquish office would tear the ANC apart. We however wonder whose interest it would serve to tear the movement apart. We do not believe that you, President, would act in such a way as to deliberately wreck the movement in order to stay in power. That would be so un-ANC, but that is the impression we get when such statements are made. Things moved quickly since then, the Constitutional Court has now found that the President violated the Constitution for which he has since rightly apologised. That may be okay with us but that cannot be enough for the country's future. The ANC through the SG came out in support of the President and the SG repeated the same assertion in aid to ask in that discussion in that memo. All findings by the Constitutional Court set precedents, so too do the actions of those fingered in relation to those findings. Are we saying that all future adverse findings against incumbents will be satisfied by a mere apology? Are we not in so doing setting precedents for similar future conduct with which incumbents will expect to be satisfied by a mere apology? Are these the standards by which we want our hard won democracy to be measured? Is it not a better

response to take full responsibility and set an example that such adverse findings in future have more serious consequences? We are therefore of the opinion that more drastic decisions should have been taken on the Constitutional Court ruling on the Ghandla matter. We agree with the (indistinct) and Comrade Kathrada that our country would be better served where the President relinquish office as an example for those who follow. This would be put the country on a high moral pedestal and be an example for future leaders that there is a price to pay for such breaches. The President would set a good example for the ANC and the country. The opposite is the case were this not to happen. It would open the door to impunity, and we do not believe that the President would want that to result from his actions. We do not view this as punishment for the President but as a rich example of the respect he would leave for governance and the rule of law.”

I don't know whether I must go on.

CHAIRPERSON: Well if you think what you have read captures the important points that's fine but if you think there is still something in terms of what you haven't read that you want to capture you can read it.

MR SIPHIWE NYANDA: No I think it does capture it.

20 **CHAIRPERSON:** It does, okay.

ADV MAHLAPE SELLO: Thank you General. Now this an interpretation that this is a recordal of the meeting you had with the President would be correct?

MR SIPHIWE NYANDA: Yes, yes.

ADV MAHLAPE SELLO: Now who besides the President was present in that meeting you said, apart from your delegation, who did you – who ...(intervention)

MR SIPHIWE NYANDA: I can't recall, I know part of the officials, I think Dr Mkizi was one of the people that I can recall, or the DSG of the ANC.

ADV MAHLAPE SELLO: At the time?

MR SIPHIWE NYANDA: Yes.

ADV MAHLAPE SELLO: Now the document starts with the salutation "President" was this delivered to the President himself at that time?

MR SIPHIWE NYANDA: Yes.

ADV MAHLAPE SELLO: This document?

MR SIPHIWE NYANDA: Yes.

10 **CHAIRPERSON:** So in other words did you come to the meeting with it?

MR SIPHIWE NYANDA: Yes.

CHAIRPERSON: Oh and then you handed it over to him?

MR SIPHIWE NYANDA: Yes.

CHAIRPERSON: And then you discussed?

MR SIPHIWE NYANDA: Yes.

CHAIRPERSON: Okay.

MR SIPHIWE NYANDA: No, we discussed, these were my notes but we left them with a copy.

20 **ADV MAHLAPE SELLO:** Okay and so you discussed the notes, the issues that are raised in this document?

MR SIPHIWE NYANDA: Yes.

CHAIRPERSON: I'm sorry, are we to take it that the sentiments expressed in this document by yourself reflected the sentiments of the – over everybody that was part of your delegation when you met the President?

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: Yes and maybe a wider group than just those who came to the meeting in terms of your delegation.

MR SIPHIWE NYANDA: Yes.

CHAIRPERSON: In other words there was a wider group behind this.

MR SIPHIWE NYANDA: Yes, yes.

CHAIRPERSON: Okay and that group did it include the individuals that are listed in the other memorandum that we dealt with that – in SN02?

MR SIPHIWE NYANDA: Yes.

CHAIRPERSON: It included them?

10 **MR SIPHIWE NYANDA:** Yes.

CHAIRPERSON: But much more or just them?

MR SIPHIWE NYANDA: I think by then we had expanded because following our intervention ...(intervention)

CHAIRPERSON: Your first meeting.

MR SIPHIWE NYANDA: That memorandum which was made public, it leaked and we discussed with the ANC other people, other former DG's I remember they called me and said they want to – why don't we take this matter to the people who are serving currently because Ministers act through their Directors General, and that it may be a good thing for us because these were just commanders, these were veterans of MK,
20 some of them were DG's before.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: Somebody came with the idea that why don't we form a DG's group which would then concentrate on what is happening now in Government because we had so many who had served the ANC and had you know a view that the correct mindset and was serving Government and not our own interest that we now need to

bring it back to people who are serving currently and the one who that has to form this, which was then the basis of another group that subsequently was formed.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: Thank you Chair. Now general did the president address any of the issues that you brought forward to his attention at this meeting at the time?

MR SIPHIWE NYANDA: The President was very unhappy about our call for him to relinquish office, and according to the President he is serving his term until the ANC – because he is elected by the African National Congress and by the branches of the African National Congress.

10 **ADV MAHLAPE SELLO:** And did you specifically bring to his attention your concerns regarding the – the so-called influence of the Gupta family on him?

MR SIPHIWE NYANDA: Yes we did.

ADV MAHLAPE SELLO: And did he deal with that aspect in the meeting?

MR SIPHIWE NYANDA: No, I think that that meeting really did not address many of these issues as it should have done. The officials just decided that they were going to follow up on the matters that we were raising and come back to us, and they did take note of the concerns that we have and they informed us that the current NEC has got a mandate from the previous conference of the ANC.

20 **CHAIRPERSON:** Okay I just want to make sure I understand what happened. The meeting that we are talking about which involved a delegation of which you were part and met with the President, did it meet with the President alone or were there officials of the ANC at that meeting as well?

MR SIPHIWE NYANDA: The one relating to the memorandum?

CHAIRPERSON: Ja, well the one relating to the letter, well it's documented letter which you said reflects your notes at the meeting.

MR SIPHIWE NYANDA: Yes.

CHAIRPERSON: Ja, that meeting.

MR SIPHIWE NYANDA: It is the one that I say my recollection is that there was the Treasury General of the ANC of the time Dr Mkezi and the Deputy Secretary General of the ANC.

CHAIRPERSON: Oh, your recollection that there were those it was the President plus those two officials of the ANC.

MR SIPHIWE NYANDA: Yes.

CHAIRPERSON: Okay, now the President you said were in regard to your suggestion
10 or demand or request of your delegation that he should relinquish office responded on what you have said on the basis that he had been elected by branches of the ANC, I thought you – the office that you sought him to relinquish was that of President of the Country and not President of the ANC.

MR SIPHIWE NYANDA: Exactly yes.

CHAIRPERSON: So did he address the issue of relinquishing the office of President of the Country?

MR SIPHIWE NYANDA: No.

CHAIRPERSON: He did not address that one, did he misunderstand and thought that you were asking him to step down as President of the ANC?

20 **MR SIPHIWE NYANDA:** You know I cannot recall. Even the issue of the elections of the President I cannot recall whether it was him or the Deputy Secretary...

CHAIRPERSON: The official...

MR SIPHIWE NYANDA: Who addressed that.

CHAIRPERSON: Oh yes.

MR SIPHIWE NYANDA: Or one of the officials who addressed that.

CHAIRPERSON: Yes. But the only – what are the issues that you can remember were dealt with or responded to by the President himself in relation to the issues you raised if there are issues that you recall he dealt with this and this is what he said? Or you cannot tell? He might have said something or another official might have said you cannot tell who said what?

MR SIPHIWE NYANDA: Because the main thing was the issue of what the constitutional court findings.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: As well as the Mcebisi Jonas.

10 **CHAIRPERSON:** Yes.

MR SIPHIWE NYANDA: Issue.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: Which they said they were going to set up a commission.

CHAIRPERSON: Okay.

MR SIPHIWE NYANDA: To look into.

CHAIRPERSON: Oh.

MR SIPHIWE NYANDA: And that this matter – all these matters were going to be looked at – into by the leadership of the ANC.

20 **CHAIRPERSON:** Oh they supported the – they were happy with going along with the idea of a commission.

MR SIPHIWE NYANDA: Yes.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: No, not the commission.

CHAIRPERSON: Ja.

MR SIPHIWE NYANDA: They were – they set up their own commission.

CHAIRPERSON: Oh their own party commission?

MR SIPHIWE NYANDA: Yes party commission.

CHAIRPERSON: Oh okay.

MR SIPHIWE NYANDA: Yes.

CHAIRPERSON: So the meeting ended on the basis.

MR SIPHIWE NYANDA: Yes.

CHAIRPERSON: That they said all these issues would be dealt with in that party commission?

MR SIPHIWE NYANDA: Yes Chair.

10 **CHAIRPERSON:** Okay. And what was your – the attitude of your delegation to this way of dealing with issues namely the suggestion of a party commission?

MR SIPHIWE NYANDA: We were unhappy about it.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: We were unhappy about it but ...

CHAIRPERSON: Yes you waited to see.

MR SIPHIWE NYANDA: We said it is fine and then we asked those who had evidence.

CHAIRPERSON: Ja.

MR SIPHIWE NYANDA: Like Mr Masego.

CHAIRPERSON: Yes.

20 **MR SIPHIWE NYANDA:** To go before that – to go to the ANC and give that evidence.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: And Jonas who had concrete evidence.

CHAIRPERSON: Yes, yes.

MR SIPHIWE NYANDA: And give that...

CHAIRPERSON: Evidence.

MR SIPHIWE NYANDA: Report to – their reports to the commission.

CHAIRPERSON: Okay thank you.

MS LEAH GCABASHE: And – thank you Chair for the record in your memorandum at paragraph 16 you record the following I can quickly read it into the record.

“Accordingly we call on the leadership of the ANC to establish an independent commission of inquiry composed of eminent persons within the ANC and civil society to investigate all claims of undue influence especially by the Gupta family on the ANC and on the state”

10 When you say to the Chairperson that the meeting ended on an understanding that a commission of inquiry was going to be established was it to look into these issues that you have raised here in your memorandum specifically?

MR SIPHIWE NYANDA: No. In fact I think there were – there were other interactions with the – with the ANC leadership that are not spoken to by these documents.

CHAIRPERSON: H'm.

MR SIPHIWE NYANDA: The point at which the ANC then committed to have its own internal investigation and to get people and where they told us that they were needed to get. I think that decision in fact was taken even without the President if I recall because it was that day what the board of the boardroom of the Secretary General where we
20 were told that there is going to be an investigation – the ANC is going to set up its own inquiry and that members must need to come to that inquiry. That is what I said we also unhappy about. But we accept it because this is our organisation and we wanted as much as it is possible to cooperate with it without necessarily upsetting it. Because there are other things we were looking to. We wanted a national consultative committee who was going to negotiate many things and – and there were other subsequent

meetings which we held and I was also part of interactions with the NEC where the President was with the stalwarts and veterans not this grouping. Neither also the DG's. Stalwarts and veterans where they gave us audience to deal with the matters that related to us.

MS LEAH GCABASHE: Yes.

MR SIPHIWE NYANDA: All these things.

MS LEAH GCABASHE: Now earlier the Chair referred to a memorandum submitted into evidence by Mr Maseko. Chair for record purposes it is in Exhibit E which is Mr Maseko's bundle in particular at page 80. Now this is dated the 22 April 2016. What I
10 have done General Nyanda is to put Mr Maseko's bundle next to you. Chair I have a copy here for your reference should you so require.

CHAIRPERSON: Ja, ja.

MS LEAH GCABASHE: But I do not expect to be long on this.

CHAIRPERSON: Ja no that is fine.

MS LEAH GCABASHE: Thank you Chair. Now this document at page 80 of Mr Maseko's exhibit E is dated the 22 April 2016 and if you look overleaf at page 81 it is signed by a number of people I think a grouper broader than your first memorandum and your name appears – the penultimate name in the first column on that page, you confirm that?

20 **MR SIPHIWE NYANDA:** Yes.

MS LEAH GCABASHE: Now it starts off by saying:

“We the undersigned are former Director Generals in the Post-Apartheid South African Government.”

Were you a Director at any point?

MR SIPHIWE NYANDA: A Director General office speciality.

CHAIRPERSON: I guess Chief of Staff is taken to be at that level or not? You were Chief of Staff in the...

MR SIPHIWE NYANDA: I was a Chief of the – I was the commander of the South African National {indistinct.

CHAIRPERSON: A commander ja. Is that what you are talking about when you say Director General of a special kind?

MR SIPHIWE NYANDA: Yes because I remember one time the former President Thabo Mbeki saw me at the birthday of the ANC in Durban after the event. I think it was the 90th birthday in Durban and then he says “Why are you here Chief?” I said “no
10 but you invited.” DG says but you a DG of a special type.

CHAIRPERSON: [Laughing]

MR SIPHIWE NYANDA: So and even when I – even when I retired I could not be appointed a Director General because it is a special category of Director General.

CHAIRPERSON: Yes, okay.

MS LEAH GCABASHE: And now this document is dated the 22 April 2106 as I said. The last paragraph on page 80 states:

“We therefore call for the establishment of an independent public enquiry then in terms of Section 41 of Paja”

You see that? So by the 22 April you were still calling for an establishment of the
20 inquiry?

MR SIPHIWE NYANDA: As part of this grouping yes.

MS LEAH GCABASHE: As part of this grouping?

MR SIPHIWE NYANDA: Yes.

MS LEAH GCABASHE: I see that letter is addressed firstly to the Minister of Finance Minister Pravin Gordhan, the Minister of Public and Service and Administration Mr

Ngoako Ramatlhodi and the President of the Republic of South Africa and the Deputy President. Was this particular letter delivered to any one of the addressees to your recollection?

MR SIPHIWE NYANDA: Addressees which?

MS LEAH GCABASHE: The Minister of Finance Minister Pravin Gordhan, Minister of Public Service and Administration Mr Ngoako Ramatlhodi, at the top there page 80 they are listed?

MR SIPHIWE NYANDA: Ja I was told so. I have no certainty about that.

MS LEAH GCABASHE: No personal knowledge of that.

10 **CHAIRPERSON:** I think Mr Maseko covered it if I am not mistaken.

MS LEAH GCABASHE: Now you personally or the grouping that you had been dealing with thus far did you receive a response to this letter at all in writing or in any form?

MR SIPHIWE NYANDA: No.

MS LEAH GCABASHE: Did you make submissions any to the subsequent inquiry that was established by the ANC on matters that you had requested that be investigated?

MR SIPHIWE NYANDA: You not talking to this.

MS LEAH GCABASHE: I am just saying generally. Following your request.

MR SIPHIWE NYANDA: No I did – I did say that perhaps because the ANC won – I said earlier on that there was nothing that I could offer any inquiry or any commission
20 because I was never approached to do anything untoward.

MS LEAH GCABASHE: So you did not have any personal knowledge on those matters and you did not submit any evidence on that?

MR SIPHIWE NYANDA: I did say that I was – I said also that in relation to the matter of Mbalula perhaps I should have gone back to.

CHAIRPERSON: Yes.

MR SIPHIWE NYANDA: That inquiry which was an internal one to say yes you want an inquiry whereas I know then Mbalula said this thing and you never addressed it.

MS LEAH GCABASHE: But you confirming that you did not bring that particular.

MR SIPHIWE NYANDA: No.

MS LEAH GCABASHE: Mr Mbalula's issue to the inquiry's attention okay.

MR SIPHIWE NYANDA: No.

MS LEAH GCABASHE: Now is there anything else relevant to terms 1.1 and 1.3 as you have read them in the terms of reference to getting appointments and dismissals that you would like to bring to the Chair's attention that perhaps we overlooked and did not deal with today?

MR SIPHIWE NYANDA: No I think I have alluded to those.

MS LEAH GCABASHE: You have covered everything? Chair unless there are questions from you that is the testimony of General Nyanda.

CHAIRPERSON: General thank you very much for coming to assist the commission. We really appreciate it. We – if we need you to come back I have no doubt that you will have no hesitation to come back and assist us. But thank you very much and unless there is something else you want to say I will be ready to excuse you but I think you want to say something and I must give you a chance to say it. Maybe when you say it I must just say this if you are able to encourage any of the other people who were part of the groups of which you were a member that expressed certain concerns about issues of state capture if you want to take this opportunity to encourage them to come forward that would highly appreciated and any other matters that you would like to deal with as we close.

MR SIPHIWE NYANDA: Thank you Chair I will encourage others to come on board. Obviously I support the commission because a lot of what has happened has affected

many of us that is why we interacted with the movement the way we did and I sit here now talking about things that are internal to the organisation. Meetings of the African National Congress where certain things that may be [indistinct] to the inquiry are dealt with but things that are internal to the organisation. But I must say that this issue of Mbalula was in the public domain even before it. I mean after it came I mean it was leaked somewhere to the public and that – therefore I do not feel constrained to talk about it. The ANC also has encouraged members of the – of the cabinet, members of government, public servants, ANC members who maybe *au fait* to things that they think are relevant in the state capture commission to come on board and give evidence to the
10 commission. So I think it is in that spirit that I come to the commission because my organisation as well supports the commission in my understanding. I thank you.

CHAIRPERSON: No thank you very much I certainly believe that the governing party supports the commission. I believe the government supports the commission. I believe many civic organisations and many people in the country are very supportive of the commission. But thank you very much once again for coming forward.

MR SIPHIWE NYANDA: Thank you.

CHAIRPERSON: Thank you. You are excused. We are going to adjourn now. Tomorrow we will start at the usual time namely ten o'clock. So we will adjourn for the day. The commission adjourns.

20 **MS LEAH GCABASHE:** Thank you Chair.

INQUIRY ADJOURNS TO 1 MARCH 2019