

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

09 APRIL 2021

DAY 371



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 09 APRIL 2021

CHAIRPERSON: Good morning Mr Pretorius, good morning everybody.

ADV PRETORIUS SC: Morning Chair.

CHAIRPERSON: Are you ready?

ADV PRETORIUS SC: Yes we are Chair. The Minister Mahlobo is present by virtual...

CHAIRPERSON: Via video.

ADV PRETORIUS SC: Connection.

10 **CHAIRPERSON:** Yes.

ADV PRETORIUS SC: And so his legal representatives are present perhaps they should place themselves on record.

CHAIRPERSON: Yes let us do that first. You can do it from where you are if your mic is working.

ADV ADONISI: Good morning Chair.

CHAIRPERSON: Good morning.

ADV ADONISI: As previously stated my name is Lehlohonolo Peter Adonisi I am from Msikinya Attorneys

20 **CHAIRPERSON:** You lowered your voice as you said your name.

ADV ADONISI: Oh.

CHAIRPERSON: So that (inaudible).

ADV ADONISI: Lehlohonolo Peter Adonisi a practicing attorney at Msikinya Attorneys and I am representing the witness Mr Mahlobo.

CHAIRPERSON: Thank you. Okay good morning Mr Mahlobo.

MINISTER MAHLOBO: (Speaking in vernacular) Your Excellence Chair and Deputy Chief Justice morning and to the colleagues there.

CHAIRPERSON: Good morning, good morning. Thank you for making yourself available to us this the commission. Yes Mr Pretorius.

MINISTER MAHLOBO: Thank you Chair.

10 **ADV PRETORIUS SC:** Perhaps may the oath be administered?

CHAIRPERSON: Yes I do not know whether there is a delayed transmission of the voice. Mr Mahlobo are you experiencing any problems with hearing us?

MINISTER MAHLOBO: No I can hear you well (speaking in vernacular).

CHAIRPERSON: Oh okay alright thank you. Please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

20 **MINISTER MAHLOBO:** My name is Mbangiseni David Mahlobo.

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

MINISTER MAHLOBO: No objections.

REGISTRAR: Do you consider the oath binding on your

conscience?

MINISTER MAHLOBO: Definitely.

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

MINISTER MAHLOBO: So help me God.

CHAIRPERSON: Thank you. The – I hope the transmitters have got the spelling for the first name right. Mr Mahlobo
10 do you want to spell Mbangiseni for the benefit of the transcribers?

MINISTER MAHLOBO: It is M-b-a-n-g-i-s-e-n-i.

CHAIRPERSON: Thank you. Yes Mr Pretorius.

ADV PRETORIUS SC: Mr Mahlobo you have before you and you will be assisted through the documentation by one of the commission investigators your own affidavit which appears in Bundle SSA2 at page 737. It is Exhibit YY13 in Divider 3.

CHAIRPERSON: Mr Pretorius.

20 **MINISTER MAHLOBO:** Well I am okay. You can proceed because I have got my affidavit.

ADV PRETORIUS SC: Yes I would...

CHAIRPERSON: Yes. Mr Pretorius.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: That is Bundle SSA bundle 1 which is has

got Exhibit YY1 and then there is SSA bundle 2. I think it is Bundle 2 that – in which we find Mr Maholobo's affidavit.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: Is that right?

ADV PRETORIUS SC: Yes.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: In that affidavit it will be part of Exhibit YY13.

MINISTER MAHLOBO: Yes.

10 **CHAIRPERSON:** Ja. Okay.

ADV PRETORIUS SC: If you would go please Mr Mahlobo to page 737 of SSA02.

CHAIRPERSON: 753?

ADV PRETORIUS SC: 737.

CHAIRPERSON: 737.

ADV PRETORIUS SC: Is there an investigator of the commission with you Sir?

MINISTER MAHLOBO: Yes they are here – they are around.

20 **ADV PRETORIUS SC:** Alright well they should assist you then please in putting that document before you. You have it before you?

MINISTER MAHLOBO: No I do have it.

ADV PRETORIUS SC: You do have it? Sorry I did not hear that.

CHAIRPERSON: Yes he says he does have it.

ADV PRETORIUS SC: No he does have it.

MINISTER MAHLOBO: Yes I.

ADV PRETORIUS SC: Thank you. Do you recognise the document at page 737? Is that your affidavit?

MINISTER MAHLOBO: That document was filed by my attorneys.

ADV PRETORIUS SC: Yes and if you go to page...

MINISTER MAHLOBO: Through the Secretariat of the
10 State Capture Commission.

ADV PRETORIUS SC: Yes. Do you – if you go to page 758 is that your signature there?

CHAIRPERSON: That is the signature above the word Deponent – there are two signatures.

MINISTER MAHLOBO: The signature there it is my signature.

ADV PRETORIUS SC: Yes. And you are you satisfied.

MINISTER MAHLOBO: That is my signature.

ADV PRETORIUS SC: That as far as you are concerned
20 the contents of this affidavit are true and correct?

MINISTER MAHLOBO: Yes, yes, yes Chair.

ADV PRETORIUS SC: You have before you three files Mr Mahlobo the one file we have just referred to is Exhibit YY2 or Bundle YY2. You are also have and you will be shown excerpts from that file in due course – not the whole

file Exhibit YY1 and then there is a third folder which forms parts of Exhibit YY13 and will be incorporated into the bundle in due course of additional redacted affidavits and transcripts. We will deal with those piecemeal in due course.

MINISTER MAHLOBO: I do.

ADV PRETORIUS SC: Now a matter we should clear up at the outset is there an classified material in your affidavit and I refer in particular to certain passages dealing with
10 operational directives – paragraphs 19.1 and 19.2. I raise this just...

MINISTER MAHLOBO: There is no matter that is classified.

ADV PRETORIUS SC: Alright so those operational directives in paragraph 19.1 and 10.2 are not classified? We may refer to them and in due course put (speaking over one another).

MINISTER MAHLOBO: Those paragraphs – those paragraphs are not classified because – because they do
20 not give you the actual contents that you will find in the directives. Remember the law you cannot publish them in a gazette.

ADV PRETORIUS SC: Alright. Well you have placed them in the affidavit. Your evidence is they are not classified nevertheless we will take the precaution of checking that

further before anything is put up on the public website but for the moment our understanding is that you may testified to those and we will get there in due course.

Before we get to the contents of your affidavit just to place your own position in its context. I understand that between 2005 and 2008 Minister Kasrils was the Minister of State Security is that what you recollect?

MINISTER MAHLOBO: Well I do not understand you to say I must put it in my own context. Is there going to be an
10 opportunity through you Chair where one would be able to make some few remarks and then – so that we can deal with the issues that were part of the summons that they issued to me through your office?

CHAIRPERSON: Well

1. If you have a written statement that you would like to read out before we proceed with your evidence I would need to see it first to see whether it does not implicate anybody who would complain that somebody gave evidence about them that implicates them
20 without Rule 3.3 Notices being given to them. If – so I will not allow it until I have seen it. You know.

So If I know that I have not been given at least I am not aware that I have been given anything. So it may be that if you have it as something that I can look at during the break and at some stage before you end your evidence you

might then get that opportunity.

If you do not have a statement that you want to read out but you have remarks to make it becomes more of a challenge because we do not know what you are going to say until you say it.

But I see you seem to have some document – do you have a statement that you wanted to read?

MINISTER MAHLOBO: Well Your Excellence Chair I want to make short remarks and we will find a way to transmit
10 them.

CHAIRPERSON: Ja.

MINISTER MAHLOBO: But I assure you.

CHAIRPERSON: Ja.

MINISTER MAHLOBO: Because I have taken an oath.

CHAIRPERSON: Ja.

MINISTER MAHLOBO: Not only this oath.

CHAIRPERSON: Yes.

MINISTER MAHLOBO: And I am very sensitive to matters of intelligence.

20 **CHAIRPERSON:** Yes.

MINISTER MAHLOBO: I will not mention people's names.

CHAIRPERSON: Yes. Okay.

MINISTER MAHLOBO: But it is a short remark.

CHAIRPERSON: It is a – yes. But you say it is in the form of a document?

MINISTER MAHLOBO: Thank you.

CHAIRPERSON: You say it is in the form of a document?

MINISTER MAHLOBO: Yes I have a small two pager document.

CHAIRPERSON: Okay

MINISTER MAHLOBO: But not – not this thing that I am going to say that there are outside some of the offending remarks on my affidavit but I wanted to place something just for your reference.

10 **CHAIRPERSON:** Ja. Okay. If – if...

MINISTER MAHLOBO: Without wasting time because I know the commission is running out of time.

CHAIRPERSON: Yes.

MINISTER MAHLOBO: But I can assure you I will not divulge any information, any name, any information that can tend to give a name of any person.

CHAIRPERSON: Ja.

MINISTER MAHLOBO: Or – both an organisation.

CHAIRPERSON: Yes.

20 **MINISTER MAHLOBO:** That the 00:13:06

CHAIRPERSON: Okay if you are not going to...

MINISTER MAHLOBO: I am very cognisant.

CHAIRPERSON: If you are not going to mention anybody's name or organisation or entity in – by way of implicating them Mr Pretorius what is your attitude. I think I could

allow it if he gives me that assurance?

ADV PRETORIUS SC: I am not sure what the Minister wants to say so I would not be able to – if it is a matter of controversy.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: Then – whether names are given or not is not an issue that requires an answer we would prefer to see it in writing so that we could prepare a proper...

CHAIRPERSON: Just to be sure.

10 **ADV PRETORIUS SC:** Proper answer;.

CHAIRPERSON: Ja. Mr Mahlobo I see there is no signal.

MINISTER MAHLOBO: Chairperson (speaking in vernacular)

CHAIRPERSON: Yes.

MINISTER MAHLOBO: I can hear you Chair.

CHAIRPERSON: Oh you can hear me?

MINISTER MAHLOBO: Chairperson I do not want us to take – Ja I can hear you Chair. I do not want us to take long.

20 **CHAIRPERSON:** Ja.

MINISTER MAHLOBO: I have made an undertaking and I am not going to break the undertaking and if I break any undertaking you are empowered to call me into order
00:14:36.

CHAIRPERSON: So – but you say you assure me ...

MINISTER MAHLOBO: It is a small..

CHAIRPERSON: You will not implicate anybody and you will not mention anybody's name or entity, is that correct?

MINISTER MAHLOBO: Definitely no – Definitely I will not do that.

CHAIRPERSON: Okay do you need two minutes, three minutes, how much do you need? Five minutes?

MINISTER MAHLOBO: Give me three minutes.

CHAIRPERSON: Three minutes. Okay I will allow you.

10 **MINISTER MAHLOBO:** Thank – thank you very much.

CHAIRPERSON: Three minutes ja. Okay.

MINISTER MAHLOBO: Your Excellence Chair.

CHAIRPERSON: Okay. We do not seem to at the moment...

CHAIRPERSON: We do not see you at the moment.

MINISTER MAHLOBO: Chair – Your Excellency Chairperson. Pardon.

CHAIRPERSON: I am saying we do not have your picture on the screen.

20 **MINISTER MAHLOBO:** I can proceed Chair.

CHAIRPERSON: At the moment but if you can proceed it is fine. Oh – oh you do not appear in one screen but you appear in another one. You can proceed ja.

MINISTER MAHLOBO: Well thank you very much Chairperson and to Mr Pretorius and the other colleagues

from the commission.

Firstly we just want to – to thank you including my legal team to thank you that you have invited us here to come and assist the commission and – because one has a responsibility to do so but it is going to be important that before we go to certain issues (inaudible) this thing by the decision of my movement which is the ANC it is 00:16:27 irrespective of the positions seated by the President we are going to cooperate with the commission.

10 Well Chairperson there are certain difficulties that I will indicate through Mr Pretorius when we engage some of the challenges we experience about – administrative challenges in the commission when it came to issues that we needed to come to deal with it here but I want to indicate that I have made the time – I have given – you could see that even in the information submitted here today there is even information that is not even on the Rule 3.3 Notices but may – in as much as it might be that particular case I will not be in a position to shy away from
20 responding to these issues.

On record I need to indicate that Chair I have looked at all the documents that are given and I want to indicate that I will try to help as much as possible especially because as a person who was a – a member of the Executive – National Executives I took an oath. And

there are certain issues that I will be able to divulge to the commission to the best of my ability.

There will also be certain limitations Chair where matters would seem to be able to indirect or direct – do you want me to divulge secrets that are entrusted to me. I am very conscious of that Chair because I had an opportunity to be assisted while I was in employ to be properly trained on matters of intelligence and I was very fortunate that I have gone to Europe, East Asia including in
10 Africa. I have a fair idea on how intelligence operates so that by my own appearance here I should not actually compromise the work of the commission but also unintentionally break the law.

But at the very same time also ensuring that the terms of the law around issues of national security and national intelligence are protected deal with the issues Chair that even an appearance of the person like me today will not only draw interests here at home but will also even draw an interest abroad.

20 Despite some of the issues that my legal team
00:19:15 with your team but I am saying I am here to account to the best of my ability. You have my full support but if there are issues that I am uncomfortable with during the course of the engagement I would request your indulgence to indicate so so that we are within the

parameters on how intelligence works and how the laws of the country but without trying to hide matters that bothers to criminality.

Those are the words that I wanted to convey to Your Excellence – team – Chair to be on record and I hope I have managed to keep my trueness not to divulge any names or bodies or institutions or methodology that can compromise matters of national security.

Thank you very much [?].

10 **CHAIRPERSON:** No thank you very much Mr Mahlobo we – you certainly kept your promise in that regard. Thank you for that. I just want to assure you that the commission also appreciates the sensitivity of matters relating to intelligence and that as the commission hears evidence it is alive to the intricacies of intelligence.

Obviously the commission will also not want to be in breach of any law itself nor will it want any witness to be in breach of – of the law and certainly matters of criminality should not be swept under the carpet so that – that is quite
20 important.

But I also want to mention to you because you did say that you noticed that there are some documents that might not have been included in the Rule 3.3 Notice to you that you may be asked about and you indicated that you would do your best to assist and deal with them.

I just want to assure you that the commission remains very committed to fairness to everybody and we – we will keep on trying to make sure that there is fairness to you as well.

Where there are serious challenges articulate them, we will look at them and where decisions need to be taken they will be taken but certainly there is no intention to ambush you or to ambush any witness so there will be an attempt to try and make sure that there is no unfairness to
10 you.

Where it is necessary that you get more time in order to deal with certain issues that can be explored within the constraints of the commission in terms of time. But thank you very much. Mr Pretorius.

ADV ADONISI: Chair sorry.

CHAIRPERSON: Yes.

ADV ADONISI: I just – can I just take this opportunity to clear something out on – on some grammatical errors.

CHAIRPERSON: Yes.

20 **ADV ADONISI:** Which I had hoped my client would address when he was addressing...

CHAIRPERSON: Ja.

ADV ADONISI: The – or making his opening remarks. Chair I know an affidavit would have to be amended by a supplementary.

CHAIRPERSON: Yes.

ADV ADONISI: However we have noted that this of the limited time work that we had to compile.

CHAIRPERSON: Ja.

ADV ADONISI: Necessary.

CHAIRPERSON: Yes.

ADV ADONISI: And there were some grammatical errors.

CHAIRPERSON: Okay.

ADV ADONISI: And there were also some incorrect
10 mentioning of a name.

CHAIRPERSON: Yes.

ADV ADONISI: In particular of a witness that has given a Rule 3.3 Notice.

CHAIRPERSON: Oh.

ADV ADONISI: And there has been an accepted to your name.

CHAIRPERSON: Ja.

ADV ADONISI: For record.

CHAIRPERSON: Yes.

20 **ADV ADONISI:** May I also with the permission and indulgence of my colleague direct you to page 15. Sorry paragraph 50 of the affidavit on YY15 (inaudible) has already been placed on record.

CHAIRPERSON: Paragraph 15?

ADV ADONISI: Paragraph 50.

CHAIRPERSON: 50.

ADV ADONISI: Yes.

CHAIRPERSON: Of Mr Mahlobo's affidavit?

ADV ADONISI: That is correct Chair. Chair you will note that there are names relating to 3.3 Notices in there.

CHAIRPERSON: Oh those names should not have been mentioned is that right?

ADV ADONISI: No these are pseudo names - some of them.

10 **CHAIRPERSON:** Oh they are – these are pseudo names?

ADV ADONISI: Some are indeed the name of a – I think just one or two they are the names – the real names of the witness and they – these are not protected witnesses – one has 00:24:54. But an incorrect name of a pseudo name.

CHAIRPERSON: Ja.

ADV ADONISI: Originally it was in the 3.3 Notice used as Sharon.

CHAIRPERSON: Ja.

20 **ADV ADONISI:** However with the proceedings that of yesterday it was accepted that Sharon should be 00:25:00 replaced with – so that my – my client can also note that – ja because he was not made aware of these particulars. So it is that Chair that I wanted to really bring other than the grammatical errors that will be progressively amended Chair with your permission with the witness himself.

CHAIRPERSON: Okay no that is fine. No thank you.

ADV ADONISI: And – yes Chair otherwise I do not want to really bother the Chair and with the time constraints ...

CHAIRPERSON: With small things ja.

ADV ADONISI: Ja with the other administrative (speaking over one another).

CHAIRPERSON: Okay no that is fine.

ADV ADONISI: Thank you Chair.

ADV VUMBI: Chair with your permission.

10 **CHAIRPERSON:** Yes.

ADV VUMBI: Chair we represent Dorothy.

CHAIRPERSON: Yes.

ADV VUMBI: And we do note the submissions and we accept same to proceed accordingly.

CHAIRPERSON: Okay alright. Do you want just to place yourself on record – you might have done so previously.

ADV VUMBI: Yes Chair.

CHAIRPERSON: But you maybe do so again.

20 **ADV VUMBI:** Chair it is Advocate Vumbi I am on instruction on brief from P G Matseka Attorneys.

CHAIRPERSON: Okay thank you.

ADV VUMBI: Thank you.

CHAIRPERSON: Mr Pretorius I wonder whether maybe during the break there should be a redaction or something on this paragraph or

ADV PRETORIUS SC: We will do so Chair.

CHAIRPERSON: Ja I am just – I am just concerned as that – as long as it remains here you know one is not compatible.

ADV PRETORIUS SC: Sure.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: We will do that Chair.

ADV VUMBI: Thank you.

CHAIRPERSON: Okay alright. You heard already Mr
10 Pretorius confer – got Mr Mahlobo to confirm that this is his affidavit. Do you – are you asking me to admit it as an Exhibit? His affidavit?

ADV PRETORIUS SC: He has done so Chair.

CHAIRPERSON: Hm. We did not admit it as an Exhibit as yet. Do you want me to admit it as an Exhibit?

ADV PRETORIUS SC: Yes please Chair.

CHAIRPERSON: What exhibit should it be?

ADV PRETORIUS SC: Exhibit YY13.

CHAIRPERSON: YY13.

20 **ADV PRETORIUS SC:** The page is 737.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: SSA2 and following.

CHAIRPERSON: Yes the affidavit of Mbangiseni David Mahlobo which starts at page 737 of SSA Bundle 2 will be admitted as an exhibit and will be marked as Exhibit YY13.

Okay alright.

ADV PRETORIUS SC: Perhaps – may I proceed Chair?
Perhaps Mr Mahlobo we can go back to the timeline and just by way of introduction to this series of questions I can just explain to the Chair and to yourself that your ministry took place in the context of a series of events that not only preceded but followed your occupancy of the ministry of State Security and in order to understand the context of the evidence that you will give and the time during which
10 you occupied the ministry it is necessary to put this timeline on record.

So if you would just bear with us for the moment.
2005 to 2008 Minister Kastrils was the Minister of State Security, you recall that?

MINISTER MAHLOBO: I recall.

ADV PRETORIUS SC: Then from 2000 – sorry had you finished?

MINISTER MAHLOBO: (Inaudible) the Minister that I will not – I did not know that he was the Minister to the
20 particular 00:29:33.

CHAIRPERSON: One second Mr Pretorius. This screen here or the technicians is it not possible to make sure it works? Somebody maybe could it - if they can attend to it without us adjourning.

ADV PRETORIUS SC: Yes, the sound from the remote

facility is not ideal as well.

CHAIRPERSON: H'm. Yes.

ADV PRETORIUS SC: So it is maybe necessary to ask Mr Mahlobo to repeat some answers.

CHAIRPERSON: Yes. Also, the technicians could look at the sound.

ADV PRETORIUS SC: Perhaps we could clear that up in the next five minutes.

CHAIRPERSON: Yes.

10 **ADV PRETORIUS SC:** If we are granted a short adjournment.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: It will save time in the long run.

CHAIRPERSON: Ja. Okay, we will take a short adjournment to give the technicians time to deal with this matters. We hope five minutes will be enough. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

20 **CHAIRPERSON:** Yes, Mr Pretorius.

ADV PRETORIUS SC: Thank you, Chair. We have attempted to improve the signal.

CHAIRPERSON: H'm?

ADV PRETORIUS SC: The screen is now operational.

CHAIRPERSON: H'm.

ADV PRETORIUS SC: But I must say that it may be that during the course of evidence, the signal deteriorates again and we might have to make some other arrangement.

CHAIRPERSON: H'm.

ADV PRETORIUS SC: But for the present... Mr Mahlobo, can you hear me?

MINISTER MAHLOBO: [No audible reply]

CHAIRPERSON: Mr Mahlobo, can you hear us?

MINISTER MAHLOBO: Chairperson, I can hear you. But
10 if Mr Pretorius can try to manage when he is standing there.

CHAIRPERSON: H'm?

MINISTER MAHLOBO: That every time when he put... Can you hear me, Chair?

CHAIRPERSON: We can hear you.

MINISTER MAHLOBO: I am making a request through you, Chair.

CHAIRPERSON: H'm?

MINISTER MAHLOBO: That Mr Pretorius need to help me
20 so that he does not get ...[indistinct].

CHAIRPERSON: Yes.

MINISTER MAHLOBO: That he tries to speak to the mic, even if he tries to refer to his notes but he must not lose the mic because when he loses the mic ...[intervenes]

CHAIRPERSON: You cannot hear him.

MINISTER MAHLOBO: [No audible reply]

ADV PRETORIUS SC: Understood Mr Mahlobo. I will do my best.

CHAIRPERSON: H'm.

MINISTER MAHLOBO: But... You know, I was just saying to the question of the ...[indistinct] or on the mic. He must not lose the mic.

CHAIRPERSON: Ja-no, no.

MINISTER MAHLOBO: Thank you, Chair.

10 **CHAIRPERSON:** He will try. Ja. Okay alright.

ADV PRETORIUS SC: Alright. And if there is anything that is unclear in any question that I ask, please, do not hesitate, Mr Mahlobo, to ask me to repeat the question. Is that in order?

MINISTER MAHLOBO: I will definitely do that Mr Pretorius.

ADV PRETORIUS SC: Thank you, Mr Mahlobo. To continue the timeline then, between 2008 and 2014, Minister Cwele was the Minister of State Security. We
20 heard evidence in related to State Security that occurred during that period.

MINISTER MAHLOBO: Yes, and I guess the time that you give is correct.

ADV PRETORIUS SC: And then you occupied the position of Minister of State Security during the period 2014 to

2017. Is that correct? That is in accordance with your statement.

MINISTER MAHLOBO: Let us put it accurately. So on 25 May 2014 until to the 16th of October 2017. I want those dates to be on record, Chair.

ADV PRETORIUS SC: Yes. We will get to your affidavit where they are, indeed on record and that detail. And then, after your period of ministry, the position was occupied by Minister Bongo between 2017 and 2019. Is
10 that correct?

MINISTER MAHLOBO: [No audible reply]

ADV PRETORIUS SC: We have a message on screen that your internet connection is unstable. Did you hear the question?

MINISTER MAHLOBO: No, I could not hear the question. You said the next minister after me ...[intervenes]

ADV PRETORIUS SC: Was Minister Bongo ...[intervenes]

MINISTER MAHLOBO: It was - it was Mr Bongani Bongo.

ADV PRETORIUS SC: Yes, 2017 to 2019?

20 **MINISTER MAHLOBO**: No, that is not correct. It cannot be 2019.

CHAIRPERSON: I think it was Ms Letsatsi-Duba in 2018 or – if I am not mistaken.

MINISTER MAHLOBO: Just get the records correct. It should have been 2018, around February because there

was a Cabinet, a reshuffling(?) that happened on the 26th of February 2018.

ADV PRETORIUS SC: Alright. Thank you for that correction. In any event, you were followed in the ministry by Minister Bongo. Is that correct?

MINISTER MAHLOBO: That is correct, Chair.

ADV PRETORIUS SC: Yes. And between 2005 and 2010, Mr Arthur Fraser was the DDG of Operations in the SSA. Am I correct in that regard, as far as you recall?

10 **MINISTER MAHLOBO:** What... I never checked Chairperson who was in the employ in the Intelligence Services before I got into office.

ADV PRETORIUS SC: Alright.

MINISTER MAHLOBO: I will not go to that.

ADV PRETORIUS SC: And then, I can just put it to you for your comment if you wish. In January 2010, our investigators tell us that Arthur Fraser resigned his position. Do you know of that?

MINISTER MAHLOBO: It will be presumptuous of me
20 Chair to comment on a matter I do not have details.

ADV PRETORIUS SC: Alright. And then in September – we will come to the point of the questions in due course – but in September 2016, was he appointed by you as Director General of SSA?

MINISTER MAHLOBO: No, it is very clear Chairperson.

In terms of the Constitution and the Intelligence Law, the appointing authority in terms of the head of the service or the Director-General is by the President of the Republic who was national – who was the Head of the National Executive or the Commander in Chief, in terms of law.

ADV PRETORIUS SC: Alright. May I rephrase it then? Whilst you were Minister of State Security, Arthur Fraser was appointed as Director General. Would that be more accurate, as far as you are concerned?

10 **MINISTER MAHLOBO:** It would be partially correct. You need to add and say Arthur Fraser was appointed for His Excellency, the President of the Republic as the Director General. That becomes complete statement.

ADV PRETORIUS SC: Alright. Thank you. Before you took office, approximately, from 2008 to 2010 there existed a principle agent network often referred to as Pan 1. Were you aware of that fact when you took office?

MINISTER MAHLOBO: Except media reports that I cannot speak about.

20 **ADV PRETORIUS SC:** Alright. But whether through media reports or otherwise, you were aware of the existence of the principle agent network?

MINISTER MAHLOBO: I am aware in terms of those media reports of the allegations of the existence of that programme.

ADV PRETORIUS SC: Alright. Well, we know and we are told by our investigators that Pan 1 was investigated internally within the State Security Agency and a report was made to Minister Cwele, approximately, in November 2010. Do you know of that?

MINISTER MAHLOBO: No, I only know when my – the time I became a Minister when I received the report from the office of the Inspector-General.

ADV PRETORIUS SC: Alright.

10 **MINISTER MAHLOBO:** But there is an indication that there was a request by former minister to investigate the programme in terms of the law where the Inspector General must investigate any matter that is either referred to by His Excellence the President of the Republic or by the Minister or by the ...[indistinct] Committee of Intelligence or by the party.

ADV PRETORIUS SC: Right. Our investigations also inform us that at least two persons were implicated in the report made to Minister Cwele in serious wrongdoing and
20 those two persons were Mr Arthur Fraser and a Mr Engel, e-n-g-e-l. Are you aware of those facts or were you aware of those facts when you took office?

MINISTER MAHLOBO: Mr Pretorius, let me help you. I do not want to speculate. I do not have a... [break in transmission]

CHAIRPERSON: I think he is frozen.

MINISTER MAHLOBO: ...somewhat mislead the panel on a document that is not in front of me.

CHAIRPERSON: You ...[intervenes]

MINISTER MAHLOBO: But when you want to discuss...

CHAIRPERSON: I am sorry Minister Mahlobo ...[intervenes]

MINISTER MAHLOBO: Yes, Chair?

CHAIRPERSON: I am sorry. While you were speaking,
10 your picture froze and I do not whether, when it froze, you were speaking but we could not hear you or whether you were not speaking. I think you might have to repeat what you were saying.

MINISTER MAHLOBO: I hope I am not... [speaking vernacular] Chair.

CHAIRPERSON: [laughs] Well, I see that when I just ask you to repeat, the screen goes black, Mr Mahlobo. So let us try again. Just say what you said again.

MINISTER MAHLOBO: [No audible reply]

20 **CHAIRPERSON:** Oh, sorry. It ...[intervenes]

MINISTER MAHLOBO: I am saying to Mr Pretorius, Chairperson.

CHAIRPERSON: H'm?

MINISTER MAHLOBO: If you can hear me Chair?

CHAIRPERSON: Yes, we can hear you.

MINISTER MAHLOBO: Chairperson, I am saying for your record, Chairperson. What Mr Pretorius is proposing, as in the report, I am not in a position to say yes or no because that report by the Inspector-General is not in front of me as we speak right now.

CHAIRPERSON: Yes.

MINISTER MAHLOBO: But I will be able to assist Mr Pretorius because I could see... [speaking vernacular]

CHAIRPERSON: [laughs]

10 **MINISTER MAHLOBO:** Yes, I will be able to speak at the time to say when you received the 10.4, what did you do? That is where I will help Mr Pretorius but the other issues are [speaking vernacular]. I might not assist him that much because I do not want to mislead you and I do not want to mislead the counsel. But as I am saying, I will not say who was actually been said to have done a wrongdoing or no wrongdoing without refreshing my mind. Remember, Chair, I held Intelligence as a Minister. It is nearly four years ago now.

20 **CHAIRPERSON:** H'm. Well ...[intervenes]

MINISTER MAHLOBO: But I will help him.

CHAIRPERSON: Yes. Well, Mr Mahlobo, you are not the first witness to include their mother tongue when they are testifying in English. Others have done so, but it does create some challenges because we do not have an

interpreter at hand. So do your best to make sure that you speak English.

MINISTER MAHLOBO: I will refrain from using my language.

CHAIRPERSON: [laughs]

MINISTER MAHLOBO: [laughs]

CHAIRPERSON: But I think. Mr Pretorius, for what it is worth. When Minister Mahlobo referred to use isiZulu to say... [speaking vernacular]. I think that means, you were
10 laying a foundation for questions to come later.

ADV PRETORIUS SC: Indeed, Chair.

CHAIRPERSON: So he was saying, he will not be able to assist you while you lay the foundation but he will assist you when you ask him directly on certain issues later. Minister Mahlobo, is that what you meant?

MINISTER MAHLOBO: You are absolutely correct, Chair.

CHAIRPERSON: Okay alright.

ADV PRETORIUS SC: Alright. Well, let us move above ground level then immediately Mr Mahlobo. When you took
20 office or before you took office or after you took office, were you briefed on the Pan 1 Report?

MINISTER MAHLOBO: Well, Chairperson, I will be weary to use the word Pan 1, what, what, what. But what I want to place it on record. In as much as I do not have the documents here right now... [break in transmission –

speaker unclear] ...the then Minister in 2014 – in 2014 or from the 25th(?) of May, I was ...[indistinct] that my predecessor did the handover. In other words, to brief me of issues.

But I must also qualify. The issues I needed to know and once I am in Intelligence, there are things that you need to know and there are things that they will not give it to you because they are governed by the rules of confidentiality or secrecy. The issue of Pan was one of
10 those that was brought to my attention and I was ...[indistinct] but.. [interruption in transmission]

CHAIRPERSON: Hey, this technology is really giving us problems today.

MINISTER MAHLOBO: ...in the office. They are able to give me the reports. I can hear you, Chair. Can you hear me?

CHAIRPERSON: We can hear you but your picture froze for a few seconds earlier and we could not hear.

MINISTER MAHLOBO: I will repeat ... [speaking
20 vernacular]

CHAIRPERSON: Yes, yes.

ADV PRETORIUS SC: Chair ...[intervenes]

MINISTER MAHLOBO: [Indistinct] captured the one about handover?

CHAIRPERSON: We did, but I think Mr Pretorius has a

suggestion.

ADV PRETORIUS SC: Yes. Well, one suggestion might be we persuade Minister Mahlobo to attend the hearing in person.

CHAIRPERSON: H'm.

ADV PRETORIUS SC: If that is possible. We will take all the necessary steps.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: The other possibility is to ensure
10 that the place from which Mr Mahlobo gives evidence has an adequate internet connection with the venue.

CHAIRPERSON: H'm.

ADV PRETORIUS SC: I say so, because the detail and the wording of questions and answers may become relevant and one cannot have a situation where we do not hear an answer or an answer is not properly on record or there is some misunderstanding in communication.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: It is very important that this
20 evidence be accurately and thoroughly recorded.

CHAIRPERSON: Are you not too far from where we are Mr Mahlobo? Is there a chance that we could adjourn and you could come to the venue and give evidence in person in order to avoid these technical problems?

MINISTER MAHLOBO: I am in Pretoria, Chair.

CHAIRPERSON: Well, from Pretoria to here should take about, what, an hour or so? We would be prepared to adjourn and – for that time, because these technical problems are just becoming more and more intolerable. Would that be fine with you?

MINISTER MAHLOBO: Yes, Chairperson, because I do not have another time to deal with these matters including...

CHAIRPERSON: Yes.

10 **MINISTER MAHLOBO:** ...[indistinct] reason. But I do not want it to be an obstructing to your work. You can – the guys that you sent here from the team because they are from the Security Services. Let us be fair(?). Oh, I must be careful... [speaking vernacular]

CHAIRPERSON: [laughs] You are not allowed to break the law Mr Mahlobo.

MINISTER MAHLOBO: [Speaking vernacular]

CHAIRPERSON: [laughs]

MINISTER MAHLOBO: Yes.

20 **CHAIRPERSON:** What, quarter to twelve?

MINISTER MAHLOBO: Let us... I want to finish today.

CHAIRPERSON: Yes, yes.

MINISTER MAHLOBO: [Indistinct]

CHAIRPERSON: Yes. So what, half-past eleven?

MINISTER MAHLOBO: Chair, ja, half-past eleven let us

resume.

CHAIRPERSON: Oh, okay. No, that is fine.

MINISTER MAHLOBO: Okay but ...[intervenes]
...[intervenes]

CHAIRPERSON: Okay thank you very much. Okay thank you. You can get onto the road. That is fine.

ADV PRETORIUS SC: Thank you.

ADV ADONISI: Okay. No, no Chair. There were two options provided but I think it seems like there is
10 concerns(?) as with the witness ...[indistinct]

CHAIRPERSON: [laughs]

ADV ADONISI: Because the reason why he agreed like(?) it(?) was true but I heard my colleague saying there are precautions that will be taken.

CHAIRPERSON: Yes.

ADV ADONISI: And ...[intervenes]

MINISTER MAHLOBO: I have already informed my ...[indistinct] comrade(?) ...[indistinct] [break in transmission – speaker not clear.]

20 **ADV ADONISI:** Ja.

CHAIRPERSON: Oh, okay ...[intervenes]

ADV ADONISI: So I think there is no big(?) issue(?) ...[intervenes]

CHAIRPERSON: It is an obligation.

ADV ADONISI: Otherwise... Because I was going to

suggest of the second option of him relocating into his house, closer to his – his, probably, route because that – the second option my colleague proposed.

CHAIRPERSON: Oh ...[intervenes]

ADV ADONISI: But it seems ...[intervenes]

CHAIRPERSON: Just wait for the first one, ja.

ADV ADONISI: Yes.

CHAIRPERSON: Ja.

ADV ADONISI: If my client is comfortable ...[indistinct]

10 ...[intervenes]

CHAIRPERSON: No, he is – I think he is comfortable. Because we do not want to try another one and find that one is also problematic.

ADV ADONISI: Exactly.

CHAIRPERSON: So if he can come here straightaway, that is much more helpful.

MINISTER MAHLOBO: Chair ...[indistinct]

ADV ADONISI: [laughs]

CHAIRPERSON: Oh, okay.

20 **MINISTER MAHLOBO:** [Indistinct]

CHAIRPERSON: Yes, but I think you can get onto the road, Mr Mahlobo. We will adjourn just now. Your counsel was just mentioning – was talking about the other alternative but we – I think we agreed that the best thing is for you to get onto the road and be here at half-past

eleven.

MINISTER MAHLOBO: I will be there at quarter to twelve.

CHAIRPERSON: Sorry?

MINISTER MAHLOBO: I should be there before quarter to twelve.

CHAIRPERSON: Okay alright. Okay alright.

ADV ADONISI: Chair, I am being rejected by my colleague ...[indistinct] to ask you indulgence to address you.

10 **CHAIRPERSON**: Who is that?

ADV ADONISI: He will place himself on record.

ADV ADONISI: Chair, I did not place myself on record because we did not anticipate that we will be heard today. I am – the name is Raplane(?) Goredira(?) [phonetically] from Goredira Diamond(?) Incorporated [00:20:56]. I represented Dr Fraser, Graham Engel and a number of people. And from the last question, it appears that some of my clients may be implicated.

For the record, we have not received any notice
20 with regards to today's proceedings and we just need to place that on record. And for that matter, to the extent that I am here and maybe perceived that we condone the failure to comply with the rules, I will be leaving now.

CHAIRPERSON: That is fine. We are going to adjourn. Mr Mahlobo says he will be here before quarter to twelve.

We adjourn.

ADV PRETORIUS SC: Thank you.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: You have arrived, Mr Mahlobo.

MINISTER MAHLOBO: [Speaking in the vernacular]

CHAIRPERSON: Thank you. Mr Pretorius, are you ready?

ADV PRETORIUS SC: Thank you, Chair.

CHAIRPERSON: Thank you.

10 **ADV PRETORIUS SC:** We were dealing with the PAN
report ...[intervenes]

CHAIRPERSON: Before you proceed, must just mention
that it is “mtiyane” [inaudible – speaking simultaneously]

MINISTER MAHLOBO: This is what the [indistinct] have.

CHAIRPERSON: Oh, okay.

MINISTER MAHLOBO: Ja.

CHAIRPERSON: Thank you. Mr Pretorius?

ADV PRETORIUS SC: Mr Mahlobo, we were dealing
before the break with the PAM report and let me just stress
20 that I am aware of the fact that you would have no direct
knowledge of whether or not any particular person was
actually engaged in the activities set out in that report. So
the purpose of the questions are simply to ask you what
you knew about the existence of the report and its
contents. The report itself is a classified document, the

PAN 1 report is classified document. The Commission has sought declassification of a summary of that report and we are awaiting the outcome of that request but the question is, were you briefed in relation to the PAN report when you took office or at the time you took office?

MINISTER MAHLOBO: Well, thank you very much, Chair, our Deputy Chief Justice [speaking in vernacular]

CHAIRPERSON: Oh, you got it right this time.

MINISTER MAHLOBO: [speaking in vernacular] to Mr
10 Pretorius. Well, Chair, and you, I will respond, Mr Pretorius, but with a small indulgence that I will try to help you and the Commission as far as matters I know and especially during the term where I was involved but at the very same time, the incident that happened, while were virtually, I think I should place it on record I have no intention in terms of access to information and documents whether governed by the Information Security Act, which is still valid, but including the issues of oversight because they were [indistinct] today as every component of doing
20 oversight. Well, I had the discomfort, Chair, when there were certain names of people that were being mentioned because as a person who was a minister and the oath of office, I cannot disclose names indirectly or directly and secrets placed on me but I have a responsibility to account. The Oversight Act is very clear that at no stage

shall I divulge any information, any methodology including any organ that might inadvertently reveal names. I was a little bit uncomfortable when certain names of people were being mentioned and unfortunately, the signal failed us but I want it to be on record so that I do not – I do not want to be seen as a person who is very conscious about intelligence matters, as if I allowed myself to implicate individuals but then I can respond to what Honourable Pretorius is saying while I am having those safeguards. I
10 thought I should just put that important point.

CHAIRPERSON: Ja, no, that is fine. I assume that when you talk about names that were mentioned you are not talking today, you are talking about sometime in the past.

MINISTER MAHLOBO: Your Excellency, what happened, Adv Pretorius started quoting certain things that are in the PAN report.

CHAIRPERSON: I do not remember that.

MINISTER MAHLOBO: Let me help you, uBaba Zondo, I will help you.

20 **CHAIRPERSON:** Yes, yes.

MINISTER MAHLOBO: There are two names he mentioned, that that report had an adverse finding on two individuals. The names were mentioned here and it is my responsibility to help the Commission that I do not want your Commission, Chair, that sometimes it gets

unwarranted attacks and I must be very conscious in assisting you that we do not do that. There were two names.

CHAIRPERSON: Ja.

MINISTER MAHLOBO: And I will not be able to repeat them.

CHAIRPERSON: No, you cannot.

MINISTER MAHLOBO: Because I will be complicit, Chair.

CHAIRPERSON: Ja.

- 10 **MINISTER MAHLOBO:** But now I am happy that Pretorius is indicated the report is classified and is sorting declassification, then I will respond to him now so that in as far as I was concerned, without getting into the body of the report, I want to place it on record. Mr Pretorius, when I became a minister I received the report officially and that report, when I received, it had a number of recommendations and those recommendations were acted upon and there were remedial actions that had to be taken. Those remedial action had to be referred to the accounting
- 20 office for execution and on an ongoing basis because reports of IDU(?) there are also reports that we must report it to parliament to the Joint Standing Committee on Intelligence. They had a sight of what the recommendations were, they were shared and on an ongoing basis we reported on the progress made. At this

stage I will not be able to say how far did they implement.
I do not have the document here.

And secondly, while I was at home I made a reference to say I do not know this numbering, PAN 1, but I know in the media statements that another political party has made the request again to the IG to further investigate and I have not heard now whether that particular investigation has been concluded. But on record, I did have a sight of the report. I acted on the report, there
10 were certain remedial actions that were to continuously report to by the accounting officer to me as an executing authority and the same we reported to parliament. That is how I can help you.

ADV PRETORIUS SC: What we know then is that there was a report, a PAN report, that you were briefed on the report or given a copy of the report and you took certain steps.

We know two things and these may be clarified once we – and if we obtain declassification of the summary
20 of the report and there is absolutely no reason why we should not obtain declassification and the view of the legal team but we will take those steps further.

What we know is that there have been no prosecutions arising out of the PAN 1 report, correct?

MINISTER MAHLOBO: Well...

ADV PRETORIUS SC: That is not classified input.

MINISTER MAHLOBO: No, you see what you are doing, Mr Pretorius, you are making an error. You want us indirectly to start to divulge the contents of the report. Remember, the content of the report in terms of law, check your Information Security Act and check your Oversight Act. I cannot sit here and start to speculate. I am saying to you, at my level I received a report, it had remedial actions, it had recommendations, remedial actions and
10 what I did was to say those remedial actions must be acted on by management under the guidance of the accounting officer. That is the action I took.

Secondly, we brief parliament through the Joint Standing Committee on Intelligence which is a mechanism as the breach in terms of the constitution in terms of Chapter 11, Section 210, that there must be a monitoring mechanism, a multiparty committee will be in place, that multiparty committee to assist the Commission, check the records of that committee inasmuch as there are certain
20 classified if you want to further investigate whether action was taken or not but there are remedial actions to say please do the following, the very same issue that I will insist when it comes to matters of an audit report. The audit report, you have to have a duty to ensure that after AG issued it, like they have issued it in the past, remedial

actions are produced and you start to implement the plan. That is how far I could be able to help you.

ADV PRETORIUS SC: Mr Mahlobo, you have told us at some length what was done pursuant to your receipt of the report. I do not understand why you cannot say what was not done.

MINISTER MAHLOBO: Well, you want me to actually place me in an untenuous[sic] situation.

ADV PRETORIUS SC: I just, Mr Mahlobo ...[intervenes]

10 **MINISTER MAHLOBO:** No, no, no, let me finish, Mr Pretorius, let me finish please our respective ...[intervenes]

ADV PRETORIUS SC: No, sure. My apologies.

MINISTER MAHLOBO: Please do not put words – I am saying to you, I do not remember the things that are said in the report because I do not have the possession of the report and I will not want [indistinct] to speculate. I am saying, in as far as the broad thrust, what should an executing authority do? And I have responded now to say what did I do and if there was incomplete implementation
20 of the remedial action, is another matter.

CHAIRPERSON: Well, I was going to ask you whether part of your concern is that answering the question whether there were prosecutions following your instruction for the implementation of the remedial action whether that might lead to you indirectly disclosing that remedial action

may have been recommended, whether that might be part of your concern.

MINISTER MAHLOBO: Chairperson, you have captured it correctly. I remember one specific recommendation in that report but if you push that line indirectly, I am going to have to disclose what this action is while Mr Pretorius has not had this report being declassified. I do not want this recommendation and in terms of the oath of office I took both as a Minister but also in terms of the law.

10 You know Intelligence, Mr Pretorius, what is different? There are certain things you say in a particular way and when you say them, right now, when I am speaking right now, I can tell you we are being watched all over the world and there are certain things that will actually indirectly confirm some of the things, but if this report is here, uBaba [indistinct] ...[intervenes]

CHAIRPERSON: And it has been declassified.

MINISTER MAHLOBO: I am very, very clear, I remember that one recommendation but I am not going to put it here
20 on record and behave as if I am a novice when it comes to intelligence matters. I might not have the right word but I just use the word novice but I am very conscious.

CHAIRPERSON: Maybe let me ask this question and in part it might or might not assist, Mr Pretorius. You gave instructions for the implementation of the remedial action,

is that correct?

MINISTER MAHLOBO: Yes, definitely correct.

CHAIRPERSON: And the person whose duty it was to make sure that your instruction was carried out was the accounting office, is that right?

MINISTER MAHLOBO: That is correct.

CHAIRPERSON: Did you at any stage get to know whether your instruction was carried out?

MINISTER MAHLOBO: The accounting office provided
10 reports on the implementation of the agreed remedial action proposed.

CHAIRPERSON: Yes, yes.

MINISTER MAHLOBO: Equally, those remedial actions from time to time, we apprise the Joint Standing Committee on Intelligence.

CHAIRPERSON: Yes.

MINISTER MAHLOBO: The reason why we have to do this, Baba Zondo, it was a matter of public interest.

CHAIRPERSON: Ja.

20 **MINISTER MAHLOBO**: And it continued to be so.

CHAIRPERSON: Yes.

MINISTER MAHLOBO: But when we come here, I want to assist to the best of my ability so that you can be able to see the truth from this other smoke but the manner the question is couched, very conscious class I am going to be

starting to say there was this recommendation, there was this recommendation and nothing actually – that is the bearing.

CHAIRPERSON: Ja. No look, I think you can accept that both from Mr Pretorius' point of view and from my point of view, we certainly do not want you to act in breach of the law, it is just going to be an attempt on your part and on his part and on my part ...[intervenes]

MINISTER MAHLOBO: That is why I [indistinct] that is
10 why I came in quickly the manner I came.

CHAIRPERSON: Yes, yes.

MINISTER MAHLOBO: Because if you look [indistinct] at this, that [indistinct] no good, accuses you around the political shenanigans and noise outside.

CHAIRPERSON: Ja.

MINISTER MAHLOBO: When you finalise your report everybody is satisfied we went through a process that was fair and just so that at least we do not play to sound.

CHAIRPERSON: Ja.

20 **MINISTER MAHLOBO:** Every time I see a particular point that might made us to do and disturb you will pardon me, I will highlight it.

CHAIRPERSON: Ja, ja. I thought you might be able to say, without talking about details, I thought you might be able to say look, I am aware that my instruction was

carried out or I am aware that in some respects my instruction was carried out but in some respects it might not have been without talking about in what respects.

MINISTER MAHLOBO: Well, Chair, I can put it on record, certain aspects of the remedial action were implemented.

CHAIRPERSON: Okay, okay.

MINISTER MAHLOBO: And it was an ongoing thing.

CHAIRPERSON: Okay.

MINISTER MAHLOBO: And hence now, Mr Pretorius, we
10 have this thing coded PAN 1, that is why those who are there now must complete the work. It is not about my performance assessment here to say at what stage did we do that but the most important thing, actions were taken, continuously reports were provided and there were certain individuals that were not happy about certain things.

CHAIRPERSON: Okay, okay.

MINISTER MAHLOBO: That is why they requested, which is a public knowledge, they requested the office of the Inspector General please reinvestigate some of these
20 aspects.

CHAIRPERSON: Yes.

MINISTER MAHLOBO: Because they were not happy with certain aspects of the first report.

CHAIRPERSON: Okay.

MINISTER MAHLOBO: And this is how far I could be able

to assist you, volunteer.

CHAIRPERSON: Yes, okay. Mr Pretorius?

ADV PRETORIUS SC: Who was the accounting officer you refer to?

MINISTER MAHLOBO: Well, at the time the accounting officer, Ms Kudjoe. Ambassador Kudjoe was the accounting officer when I became the minister and then there was others after she left, on acting capacity.

CHAIRPERSON: Maybe you can just provide the spelling
10 for her surname?

ADV PRETORIUS SC: K-u-d-j-o-e.

CHAIRPERSON: Ja, okay, alright, just for the transcribers.

MINISTER MAHLOBO: And I want to hope that by mentioning the name under your protection I am not breaking the law. I am saying it reservedly because accounting officers, they are generally known.

CHAIRPERSON: Ja, they are generally known.

ADV PRETORIUS SC: It is only operatives that require
20 names to be concealed.

MINISTER MAHLOBO: Pardon?

ADV PRETORIUS SC: The law only requires the names of operatives, not officials, as we understand it.

MINISTER MAHLOBO: No, it is ...[intervenes]

ADV PRETORIUS SC: So accounting officers, ministers,

they names need not be kept secret.

MINISTER MAHLOBO: No, no, no, that is why I said it, Mr Pretorius, let us not have a problem. I have said I am mentioning it because it is a generally known thing but immediately it starts to deal with operational matters, even if it is a DG, whether it is a DDG, I am not allowing, it is operational. I know the law, Chair.

CHAIRPERSON: So what you are saying is, if the DG – if you are asked about a particular matter that relates to
10 intelligence in an operational way, if it was done by a DG or DDG even though generally a DG is known but in relation to that particular project you would not be allowed to mention the name. That is what you are saying.

MINISTER MAHLOBO: It is definitely so and...

CHAIRPERSON: Ja.

MINISTER MAHLOBO: But where it is general information, it has nothing to do with ...[intervenes]

CHAIRPERSON: Operations.

MINISTER MAHLOBO: No, no, let us not use operations.

20 **CHAIRPERSON**: Yes, those are too wide.

MINISTER MAHLOBO: Because those are wrong intelligence words.

CHAIRPERSON: Ja.

MINISTER MAHLOBO: If it has everything to do, Chair, with counterintelligence.

CHAIRPERSON: Okay.

MINISTER MAHLOBO: You know, sometimes these words are used wrongly.

CHAIRPERSON: Yes, yes.

MINISTER MAHLOBO: And I want to do within the intelligence nomenclature so that that nomenclature is a nomenclature in law.

CHAIRPERSON: Okay. No, that is fine. Mr Pretorius?

ADV PRETORIUS SC: Just two things then arising out of
10 these exchanges, Mr Mahlobo, the first is that Arthur Fraser was appointed in 2016, correct?

MINISTER MAHLOBO: I would not recall when – which date he was appointed, but indeed he was appointed as a DG and I do not have the dates here.

ADV PRETORIUS SC: And, as I understand your evidence, that the responsibility for that appointment would have been that of the President at the time, former President.

MINISTER MAHLOBO: The law is very clear how
20 accounting officers and also in terms of the intelligence legislation that the appointing authority is the head of the National Executive, which is the President.

ADV PRETORIUS SC: And leaving aside the report, the contents of the report, the contents of the summary of the report, what recommendations were implemented and what

recommendations were not implemented? Our information is that there have been no prosecutions arising out of the conduct of the SSA dealt with them.

MINISTER MAHLOBO: Well, I did make my reservation, Chair, you are doing a [indistinct] again. Now indirectly you want me to get into those remedial actions.

ADV PRETORIUS SC: If you do not want to answer, that is fine, I need to place it on record.

MINISTER MAHLOBO: No, no, no, Mr Pretorius, please,
10 let us help uBaba Zondo. You own the questions, I own the answers and if you want to probe, I am saying to you now this question is placing me to start to confirm matters that are in the remedial action, and I will not do that, ...[intervenes]

ADV PRETORIUS SC: I understand your answer, I do not agree with your answer but we can make submissions to the Chair ...[intervenes]

MINISTER MAHLOBO: But it is my answer.

ADV PRETORIUS SC: It is my turn please, Mr Mahlobo. I
20 understand your answer, I do not agree with your answer whether or not there have been prosecutions is a matter of public record and should remain a matter of public record. But let us move on.

MINISTER MAHLOBO: Chairperson, you will help us. Well, if Mr Pretorius decides to make opinions that has

insinuation will you be able that you start to get into that?
I do not have intentions to do that because right now he is making indirectly a judgment that what I am saying I am wrong and I do not want to be starting challenging him.

CHAIRPERSON: Ja.

MINISTER MAHLOBO: I am saying immediately you raise the matter of prosecutions and it is your call ultimately when you finalise your report, I am saying is the same first thing that I was asked but in a different way. Let us not try
10 to actually stick to that direction because I have responded.

CHAIRPERSON: Ja. Let us leave it where it is. Mr Pretorius said he is happy to proceed. Let us leave it where it is. Ja, okay.

ADV PRETORIUS SC: In your affidavit, Mr Mahlobo, you deal with certain procedural matters. I would just like to place certain things on record which should not be controversial. In January 2021, six Rule 3.3 notices were forwarded to you, in fact on the 19 January. Are you able
20 to confirm that?

MINISTER MAHLOBO: Which paragraph are you referring to?

ADV PRETORIUS SC: No, I am putting facts on our records to you.

MINISTER MAHLOBO: No, no, no, remember I have given

you my affidavit ...[intervenes]

ADV PRETORIUS SC: Yes, well, I am asking you a question, Mr Mahlobo, I am asking you if you confirm that six 3.3 notices were sent to you. If you do not know, just say so.

MINISTER MAHLOBO: Mr Pretorius, please, let us help the process, do not do this. I am saying this matter is in my affidavit, help me and refer me to paragraph because you are starting to mention a date now. What if I give a
10 wrong date and I start to mislead the judge? I do not want to do that.

ADV PRETORIUS SC: But, Mr Mahlobo, you are perfectly entitled when I ask a question to say let me refer to my affidavit, it is your affidavit and we will be very patient. If the information is in your affidavit we can place it on record. If it is not I would still like to ask the question.

MINISTER MAHLOBO: No, it is fine, where you refer to dates, if they are not in my affidavit you will give me the source, then I will respond. Chair, I do not want to confirm
20 the date, I want to confirm that I did receive a notice.

CHAIRPERSON: Yes, you cannot remember whether this would have been January 2021 this year or last year towards the end – that you cannot remember.

MINISTER MAHLOBO: No, they were received this year.

CHAIRPERSON: They were received this year.

MINISTER MAHLOBO: And the records in the Commission and secretariat including my legal team here ...[intervenes]

CHAIRPERSON: That can be checked.

MINISTER MAHLOBO: They have the specific dates.

ADV PRETORIUS SC: Well, I am putting this to you, if I may, what appears from the records and my instructions, I think, are not controversial, that you did receive 3.3 notices. When you first received them there were no documents annexed, they still had to go through a
10 declassification process but my instructions are that that the declassified documents were sent to you some weeks later on the 8 February that were annexed to the 3.3 notices ultimately.

CHAIRPERSON: Well, maybe let us do this. In paragraph 4 – I think paragraphs 4 and 5 of your affidavit, Mr Mahlobo. In paragraph 4 you say:

“During the period that the State Security Agency evidence was led in January 2021 and following the Section 3.3 notices that were issued to me, I
20 immediately informed my legal representatives to interact with the legal team of the State Capture Commission where in they made a claim that I intended to cooperate with the State Capture Commission and to also apply to cross-examine some of the witnesses whose statements implicated

me in acts of wrongdoing and furnish the Commission with an affidavit.”

Certainly what does seem to – it does seem that it might have been in January or soon thereafter that you received 3.3 notices there. You do not put it directly like that. And paragraph 5 says:

10 “Several letters were issues shortly after I was served with the Section 3.3 notices wherein I requested to be furnished with the witnesses’ statements, the annexures referred to them and the documents in possession of the State Capture Commission and the SSA as far as they related to me.”

It does not look like you do state when you received them but you have said that it was this year when you received them. I think what remains, you remember whether it was six 3.3 notices or you do not remember that detail.

MINISTER MAHLOBO: Well, Chair, in my affidavit it is self-explanatory on record I did receive the notices and
20 when the notices were received they were referred to my legal team and my legal team, that is here now, they started interacting with the secretariat of your office – the secretary of the Commission and it is clearly that we received the notices but there were documents we requested from the Commission and there are

correspondence to that effect on administrative matters that I do not want to get into it because I want to get to the substance.

ADV PRETORIUS SC: Mr Mahlobo ...[intervenes]

MINISTER MAHLOBO: And – I was still concluding, Chair.

CHAIRPERSON: Ja.

MINISTER MAHLOBO: And I am on record that these documents were not furnished until these documents, most of them, we got them last night but which was an issue that
10 I said, that there are some administrative challenges attached to them but that does not preclude me to engage on the matters that are raised in the notices but I want to confirm that notices were received and maybe they were received. Others, they were received in the course of the proceedings.

ADV PRETORIUS SC: Mr Mahlobo, it is incumbent upon me to put to you the record of what documents were sent to you and your attorney and I wish to do so in order to deal with the allegations you make in the paragraphs in
20 your affidavit. If you do not know the answer to the question that is fine, I just to place them on record and you can make whatever comments you choose because there are certain allegations in here which are incorrect and they need to be corrected. This is your statement, it is on oath and I am entitled and it is incumbent upon me to deal with

it, in fairness to you and in fairness to the Commission. So I am going to ask you against that background if you can confirm or not confirm or whether you have any knowledge of what the record is. Six 33 Notices were sent to you January 2021.

MINISTER MAHLOBO: Yes, I did receive the notices.

ADV PRETORIUS SC: Yes, in February, in fact on the 8th of February those notices were resent, this time with the declassified annexures attached. You know that would not
10 ...[intervenes]

MINISTER MAHLOBO: No, I will not recall that.

ADV PRETORIUS SC: Alright, that is fine. On the 25th of February 2021, a request for an affidavit, together with a bundle of new declassified documents were sent to your attorney, do you know of that?

MINISTER MAHLOBO: That's not true.

ADV PRETORIUS SC: Well, I'll call the evidence if necessary.

MINISTER MAHLOBO: No, no, no Mr Pretorius allow me
20 to respond, you see, I was not going to put something here. One of the things...[indistinct] that I tried to do there have been frustrations both by the Commission's secretariat not you in furnishing my attorneys documents and the – ultimately even SSA refused official requests there has been too many letters and if Mr Pretorius wants

to deal with administrative issues around paperwork, I'm not in a best place to help him, my attorneys here can be able to respond because I don't want us to spend the whole day dealing with administrative issues. I said despite all these administrative challenges that have happened, including receiving 305 pages yesterday in the ...[indistinct] after seven when there were discussions that these documents are going to be delivered by 5 o'clock both to my house and ordinarily I would not be at my house
10 now but my attorney requested me to do so for documents to be delivered, they were not delivered, they were actually even brought electronically in the afternoon but that's now why I'm here, to argue documents. the issue is to say, do I know this document, if I know I'll say so I'll deal with the allegation placed on it. If now, I'm going to be fighting over dates I'm not competent to do that.

CHAIRPERSON: Okay, Mr Pretorius I suggest that we do the following. To the extent that, in relation to the exchange of documents there are some things that Mr
20 Mahlobo's affidavit that do not accord with the legal team's understanding. Can we have an arrangement in terms of which discussion, maybe during the lunch break can be had between yourself and Mr Mahlobo's legal team so that, if possible, later on you can just place on record something that's kind of agreed to say, that's the position, if it's not

agreed we can then take it from there...[intervenes].

ADV PRETORIUS SC: Well, there is one important thing, Mr Mahlobo has gone on oath to say that certain documents were received only in the past two weeks. That is incorrect as a matter of record, it's stated on oath and its incumbent upon me to put what we will argue in due course, is incorrect.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: Just one issue I want to put to him
10 now.

CHAIRPERSON: Ja then you are done with the...[intervenes].

ADV PRETORIUS SC: Well, yes.

ADV ADONISI: Chair,[indistinct] I've ...[indistinct] and I equally reserve my obligation and duty as a legal representative and I've been referred by my client, seeking protection from you. You have also suggested to my learned colleague as to how to deal best with the administrative issue but you would have heard from my
20 client, he's tried several times, for hours now to avoid to engage on the administrative issues and we get to the crux and the trust of the issues but it cannot also be correct as it has been put forward as a matter of correcting what is an incorrect version from my side but there's two sides of the coin which you've given guidance and directive and I

would, respectfully accept that we deal with it off the record to not indulge in administrative issues as my client has said. So, however, my colleague would want to deal with it because there are a lot of things that I could have stood up and spoken about that we're unhappy that we can record as prejudice but as my client has said, we have tried to come here, relatively on the short notices griping and being dragged but as an obligation and a duty we owe to the citizens, we have done so grudgingly but we are
 10 here, we are trying to help you. So, can we progressively
 o to the thrust of the issues instead of – as you have suggested Chair.

MINISTER MAHLOBO: Chair can – with your permission, Chair, that you indulge me, I'm happy that you have made the suggestion and my legal representative is correct, I'm amenable to that, I'm not going to be discussing details here, even in my affidavit, I am not accusing that this document, this document, it's a broad general statement that I've made and the last point on a..[indistinct] Chair, I
 20 even insisted when there were certain things happening that, you know what, I want to deal with these matters there was even a suggestion to postpone for Monday and I refused, I refused. I'm here today to say, even if you go long haul, I want to deal with these issues because some of them, they impact on my reputation and I'm happy that

the administrative issues where there's an issue what, those talk among themselves as you directed, we correct what we need to correct.

CHAIRPERSON: Mr Pretorius my inclination is this, one, what I have understood from Mr Mahlobo and his legal team is that they're not taking the point that, because, on Mr Mahlobo's version they didn't receive certain documents timeously, they don't want to continue. My understanding is that Mr Mahlobo's position is, I will try and deal with all
10 issues that I can deal with, even in regard to documents that I might have received late but where I am unable to, I will say so. So, my inclination is that there needs to be that discussion that I talked about and at a later stage a decision – you can indicate to me whether you do want to place certain things on record and that will be fine, but it seems to me that that discussion should precede that.

ADV PRETORIUS SC: Well, Chair, I would appreciate the opportunity to address you on that.

CHAIRPERSON: Ja do that.

20 **ADV PRETORIUS SC:** In paragraph six Mr Mahlobo makes a statement on oath to the effect that certain documents were only given to him with the 10(6) notice recently. Now, I understand that between an attorney and a client the communications may not be such as all the matters are within Mr Mahlobo's knowledge, but this is a

statement on oath. All I want to put on record, is that those documents which he complains were sent to him late, were, in fact, sent in February, that's all I want to put.

MINISTER MAHLOBO: Chair, I want to respond, I've not said in my affidavit which document. That administrative issue, as you have guided us, the lawyers must work on it but I am putting it on record because I received those documents, it's not an opinion and I don't want any aspersions to be cast on my legal team, let
10 them...[indistinct] but we're here on the serious matters and they can be able to do that because the statement in my affidavit it says, some, then they will deal with that...[indistinct].

CHAIRPERSON: Ja, okay, alright, my ruling is that there should be that discussion and at a later stage if the Commission's legal team wants to place anything on record, we can take it from there at that stage. So – did I summarise your position correctly that even with regard to documents that you may have received, on your version,
20 late, you are here, you are prepared to answer as far as you can?

MINISTER MAHLOBO: And [speaking in vernacular], I'm even prepared to answer, even, documents that are not here as far as I can help you. I don't want an impression that I never assisted. I've instruction from my party and

my President to cooperate.

CHAIRPERSON: Ja.

MINISTER MAHLOBO: Those issues, if there are going to be limitations because of documentation on a particular point when you deal with substance, I will advise you and you make a determination.

CHAIRPERSON: Okay, alright.

ADV PRETORIUS SC: Let's move on then Mr Mahlobo if we may. Paragraph nine of your affidavit – and I'm going
10 to deal with certain issues in your affidavit, if I go too far, in other words if I leave out something that you wish to emphasise please stop me and deal with it but your affidavit is a matter of record, it is before the Chair, and I'm going to ask you certain questions on the contents of your affidavit, then I'm going to put further documents to you but you're free to say, but you're now on paragraph nine, in paragraph eight I want to say x, y and z.

MINISTER MAHLOBO: It's very helpful.

ADV PRETORIUS SC: Good, in paragraph nine you say,
20 "I participated in the high level review panel on the SSA by giving testimony on activities and the conducts of the SSA",

The question I'd like to ask you, do you have any record of your evidence?

MINISTER MAHLOBO: Well, the record of my

participation will be with the panel itself, I never recorded myself but there the secretariat had his own record, I participated.

ADV PRETORIUS SC: Yes, no, my question is somewhat different, we've...[intervenes].

MINISTER MAHLOBO: I don't have the record.

ADV PRETORIUS SC: Do you have your own notes, do you have your own prepared statement?

MINISTER MAHLOBO: I don't have them here.

10 **ADV PRETORIUS SC:** Here, do you have it at all?

MINISTER MAHLOBO: No, I don't have.

ADV PRETORIUS SC: At all?

MINISTER MAHLOBO: Yes, they never asked me for an affidavit, their methodology, I was interviewed but I'm on record on the interview they made and did the best ways to provide you with that report and remember the President actually, ultimately released the report in as much as it was a redacted version.

20 **ADV PRETORIUS SC:** As your attorney pointed out, there are certain typographical errors, but I don't think we need to deal with them they're quite obvious typographical...[intervenes].

MINISTER MAHLOBO: Yes, the spelling of the names, thank you.

ADV PRETORIUS SC: There has been evidence by Dr

Moshomade and others in relation to the status of the white paper and the constitutional requirements, you deal with those in paragraph 12.

MINISTER MAHLOBO: Well, I don't only deal with the matters of the status of law, I start to deal with the status of the constitutionality because constitutionality was a serious matter raised here and on record it must be started from 10/11 and you can proceed there Mr Pretorius.

ADV PRETORIUS SC: Well, if you wish to raise anything
10 in relation to the legislation outlined by you in paragraph 11, please do so but...[intervenes]

MINISTER MAHLOBO: Well, I just want to place on one or two matters [speaking in vernacular] that witnesses came here, and they created an impression that only two legislation matters and it's only the constitution and the white pages and that impression is wrong, and I want to put it on record. Intelligence, because of our past and where we come from and the abuses and politicisation and so forth that were used as an instrument that some of us
20 got exposed to as a young person, including yourself and others, in South Africa, is highly regulated and the constitution is very clear, that there will be national legislation and I've started to assist the Commission. These are some of the national legislation as required by the acts of Parliament, Chair that govern this environment

and on page 12 where, honourable Pretorius, you're trying to refer to, in the doctrine of legislation making in South Africa you either produce a green paper or you produce a white paper. Those documents, they are not equating to national legislation, but they relate to strategic intent, policy aspects but ultimately, ultimately, it's the law passed by Parliament and assented by the head of the national Executive. The assertion that was made about the status of the white paper, to say, not correct on record.

10 **ADV PRETORIUS SC:** Well, we can look at the detail of what was said in that regard, several witnesses gave evidence in relation to the contents of the white paper. Be that as it may, can I move...[intervenes].

MINISTER MAHLOBO: But can I just come in Chair, you'll help me, Mr Pretorius because I don't want to interject. Let's not throw opinions in passing let's deal what is the law. The white paper is not the law.

CHAIRPERSON: Well, he's responding, Mr Mahlobo to what you said, you said certain witnesses came here and
20 gave the impression that the white paper is law, I think, that's what you said.

MINISTER MAHLOBO: I take the point.

CHAIRPERSON: Ja his response is, we'll look at whether that's what those witnesses said, ja, but that's how, at least, I understood you.

MINISTER MAHLOBO: Okay.

CHAIRPERSON: Okay, alright.

MINISTER MAHLOBO: We're on the same page.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: And indeed, I don't think there's any disagreement that the most important expression of the law is in the constitution.

MINISTER MAHLOBO: Definitely.

ADV PRETORIUS SC: I'd like to move on to paragraph 16
10 to deal, very briefly, with what you found when you came into office in 2014.

MINISTER MAHLOBO: Paragraph 16?

ADV PRETORIUS SC: Paragraph 16 yes.

MINISTER MAHLOBO: Okay, I'm there.

ADV PRETORIUS SC: It says in paragraph 2 – or you say in paragraph 16 line 2,

“There was no proper accounting structure in place, mainly because of the nature of the operation of the Intelligence community”,

20 Would you explain that please?

MINISTER MAHLOBO: Well, this is a broad statement, I will not give specifics because here there are certain things that, it's important, that one explain his role. When you come into an institution you do what your colleagues – an institutional planning in military score recon just assess

and very importantly there were matters that were very problematic and somewhere we deal with them, some of these things you see in the notices about behaviour this, accounting this, these are some of the issues that I'm referring to, just to give all the same way or the same word [speaking in vernacular] used, what do you call it, laying the foundation, insisting on laying the foundation but these are the systematic issues that come over time and here I'd want to be in a position that, after this foundation is laid by

10 16, started to respond to the question, what did you do because enterprising was giving, really nothing was done, probably you aided the worsening of the situation that's why you'll see how this affidavit is couched but this is an affidavit of my own subjective assessment, either informed by audit reports, informed by other things, I'm putting it on record as my foundation for engagement and also dealing with some of these issues, Pretorius, you remember these issues where people think about politicisation and all this, we'll deal with them later on but these issues, they actually

20 proceed even that time I was. I never found a ship that was floating there were things that were working and there were things that were worrying.

ADV PRETORIUS SC: In fact, I'm sure that, with your experience, Mr Mahlobo, the Chair would be very interested in your understanding on what remedial

measures might or might not be required, we'll come to that.

MINISTER MAHLOBO: Yes.

CHAIRPERSON: Maybe I could say, Mr Mahlobo, I think Mr Pretorius wanted to establish whether you are able to say, in relation to that sentence, you are able to say, for example, there was no structure that assisted with this type of accountability, there was no structure that assisted with this type of situation and this – the absence of that
10 structure created these types of problems. I was thinking maybe he had...[intervenes].

MINISTER MAHLOBO: I want to do that but little bit cautious.

CHAIRPERSON: Yes, yes.

MINISTER MAHLOBO: Because some of these matters, I will deal with them later on, on the specifics on the affidavit but generally there were witnesses.

CHAIRPERSON: Yes.

MINISTER MAHLOBO: And very serious one and some of
20 them systematic.

CHAIRPERSON: Okay.

MINISTER MAHLOBO: And they don't even start at the time of 2014, May, they start as far back as 1995.

CHAIRPERSON: Okay.

MINISTER MAHLOBO: When these Intelligence Services

were established but till we start to engage on the meat we will engage, but the environment was there having its difficulties, there were things that were working and there were things that were not working, and I had to tighten up certain things. Well, it will be a matter whether my efforts were the best I could or not, but we'll then demonstrate it.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: Let's move then to paragraph 17 where you say,

10 "I inherited an agency that was greatly divided and characterised by mistrust and allegations of political interference".

The notion of political interference in the affairs of the State Security Agency has, to an extent been dealt with by previous witnesses, it would assist us if you gave us your understanding of what is not proper by way of political interference, what are you referring to there?

MINISTER MAHLOBO: Well, if I'm referring to issues of political interference you will have to be able to make a
20 reference to the constitution. The constitution is very clear as our supreme law that when we speak on chapter 11 around security services, there are guiding principles, how they must do certain things and there are certain things they must not do and over years, there are certain things about political issues, political meddling or being security

services used as an instrument to advance certain interest, whether factional, whether – whatever is that but it's very important that I must insist what the law says, those are the principles. This matter of political interference or political issues around how state institutions are being used, not a new phenomenon. As far back as the challenges of my movement of which I know that the leadership is coming here in the next few days to engage with you, those allegations were made at that time and
10 they continue to be made at the time the other person came in and they continue to be made even today, that's the environment. Whether the merits and demerits, it's a different matter but it's a matter which is called common cause, that's what I in that institution and that's what continues to be and it's one of the matters that, even going forward, I will do and show that those guiding principles I referred to under Section 199 of the constitution, we do our best of our abilities that they are safeguarded and where there are witnesses we started to say, is it a witness in
20 law, witness in policy, witness in leadership or witness in terms of consequence management, that's what I'm placing it on record.

CHAIRPERSON: I understand you to be saying, and I just want you to confirm that my understanding is correct, I understand you to be saying, when you took office as

Minister of State Security you found, among other things, that there were allegations of political interference in matters relating to your portfolio, you understood that they were not new, they had been there for a long time you go back to 1995 and you say allegations of political interference have continued, continued during your term in office, they continue even today. Is my understanding, what I say correct?

MINISTER MAHLOBO: Maybe, Chairperson, you are
10 correct. Let's, maybe, probably before you look at allegation of political interference, there Security Agents because on how we arrive at the democratic dispensation. There were people that were brought together, they never saw eye to eye. They did things to each other that are terrible but we're to forge a unity, prosperous in a democratic South Africa. They were brought together, they had issues of prejudice, there are issues of how they felt among themselves, those issues never dissipated on one thing. Even today the people that work for the Apartheid
20 Security Forces was there in Security Forces and their orientation and their side, and there are people that are coming from formal liberation movements in terms of [speaking in vernacular] they are there, and they are trained in a particular way. You know how you see when there are problems in intelligence, you rent people they

come and do peddling, peddling [speaking in vernacular], it creates certain stories, we'll come and deal with them. One of the stories they created about judges and create about people that they're spies and yet you look *in situ*, even yourself they will say things about you also and you'll find people leaking documents, you know the law is very clear how information must be mandated, and it continues to happen today. There are certain things and practices because on how we concluded our matters, they continue

10 to be bedevil this and all of us, we should be party with a solution to help. There are very good men and women there but there are also men and women whose conduct and whose orientation, actually is not taking the country forward but we'll deal with that but it's very important because people who came here [speaking in vernacular] they never gave an opportunity to explain how Intelligence is, how does it come from and so forth even they too, I can tell you, they are political animals, political players, and as an Intelligence person that has been trained, I can read

20 what their end game but I'm not going to do that because we have – but it's important to say, let's not be selective on how far our challenges are so when you make a recommendation, probably far reaching reforms are going to be required to do that but just read a page – it's not page, paragraph 17 in context because most of you that

are here, we're not Intelligence people, we've been on the ground, we know how it works and so forth, you interpret the law, thank you Mr Pretorius.

CHAIRPERSON: Okay, Mr Pretorius?

ADV PRETORIUS SC: Yes, so, I understand you refer to common cause and matters of principle. It to be a matter of principle, as far as you're concerned that the State Security Agency shouldn't interfere in party politics of factional politics within parties.

10 **MINISTER MAHLOBO:** You are correct, but let's qualify it, Mr Pretorius, as long as those parties, they don't do anything against the law, the intelligence is everywhere including even in my own bedroom. I can have a spy in my bedroom or in my home. It is everywhere. It is not that – is support the security of the state and its people and it will be there. In intelligence it is very simple. They say that you must just know that someone – always note that someone is listening or someone is watching. Well I always know that God is watching but that is ...

20 **ADV PRETORIUS SC:** We assumed that for the last two years and I think correctly.

MINISTER MAHLOBO: No, no it is true. When we will talk about some – some funny things that are even happening now about my team how intelligence is being used to certain things that we must say no to because unlawful things must

not happen and 00:00:53.

ADV PRETORIUS SC: In the last sentence of paragraph 17 you say you made it your duty and mission to steer the agency towards a new direction of transparency and accountability. Can we deal with that at the end of your testimony as to ...

MINISTER MAHLOBO: Thank you very much (speaking over one another)

ADV PRETORIUS SC: Because the Chair will have to make
10 some recommendations about the evidence he has heard.

MINISTER MAHLOBO: Well we will gladly share what is our thought about how we can improve certain things. I know His Excellency our President says certain things must be done they are there to support him. But my views will not be the 00:01:34 for all the challengers but I have a view to make.

ADV PRETORIUS SC: We go to paragraph 19.2 towards the end of the paragraph you are talking about the operational directive that you refer to there and you say:

20 “This directive would explain why I would not have direct access to operations, the nature of the operations, the members involved in that particular operation and the persons or the person who conceived agreed those operations has they were conducted on a

need to know basis.”

What I would like to ask is the position of the Minister in the SSA and whether that Minister should be involved in or have knowledge of operational activities?

MINISTER MAHLOBO: Let us probably with your indulgence Chair I am referring to matters of directives or regulations they are provided for in the law. I might not be quoting the right one now here but the law is very clear about the powers of the Minister especially in the National Strategy
10 Intelligence Act it has got to be amended over time and again and equally there is this law called the General Intelligence Amendment Laws and it also – even the Intelligence Oversight Act it says in the cause of our duties to implement the law – the National Legislation we might do regulations. Sometimes the regulations are in form of directives or guiding...

CHAIRPERSON: I hear you battle when you are facing this side.

MINISTER MAHLOBO: My apologies (speaking in
20 vernacular). I am saying on the basis of law the powers of the Minister are very defined but for intelligence to work we must create rules. This document called Operational Directives is one of the rules that is very important and policy making is the responsibility of the executing authority which is the Minister.

This is one of the important issues that for all the issues that are relevant to counter intelligence I do not want us to use these words Special Operations because this work is about counter intelligence.

There had to be rules because there were problems – the problems were there the first thing you do as a Minister – hey what do we do let us strengthen the law or let us strengthen the regulation.

These two that I am mentioning here Mr Pretorius are
10 not the only two – there are a number of them – they are called Operational Directives and I think certain elements have to do with HR and certain elements have to do with a covert operation and so forth and I am placing it on record because the witnesses that came here they created an impression we worked willy nilly and these ones I am putting there.

Not only this Baba 00:05:04 there was even things and Mr Pretorius called – which is part of the regulation or guideline is even called Ministerial Payment Directive.
20 Those are the most important things that we were to put in place.

And some of them they were there before I must be able to say I must not create an impression they were not there. They were there and every time, every year the AG requires that policies must be updated – there is even a

review period. One of the thing I signed in 2015 – remember I came in the middle of the financial year.

One of the things that immediately the financial year ended so that you can start 2015/2016 well was to ensure that regulation on how we do our work is (inaudible).

ADV PRETORIUS SC: You say however and I understand that it is difficult to make absolute statements and general statements sometimes lead to misunderstandings but you do say here

10 “This directive would explain why I would not have direct access to operations, the nature of the operations, the members involved in that particular operation and the person who conceived that operation as they were conducted on a need to know basis.”

Now arising out of that and arising out of the evidence that other witnesses have given as a general principle is it correct or incorrect that a Minister should not be involved directly in operational activities?

20 **MINISTER MAHLOBO:** Well let me answer some of these allegations while we are here.

1. There is no law – there is no law and these people were here they could not tell you Bab Zondo which law says the Minister may or may not use. There is no law. I will come to this directive but there is no law Mr

Pretorius that 00:07:13.

In my case I was not involved that is my answer – I was not involved but there was no law bearing me not to do that. But do you know that people who are ...

CHAIRPERSON: Just before you proceed Mr Mahlobo Mr Pretorius is going to tell me if I misunderstood his question. He was asking whether you agree or you do not agree that a Minister should not be involved in those matters. Now should not might mean you should not because it would be
10 unlawful to do so but should not might mean that although it might be lawful maybe for other reasons such as ethics and other things it might not be...

MINISTER MAHLOBO: No I would want to help you Bab Zondo.

CHAIRPERSON: Yes.

MINISTER MAHLOBO: Because we have witnesses who come here and they do not share how intelligence environment works. I will respond – my answer is very clear the allegations they are making that I was involved in
20 operation I deny it.

CHAIRPERSON: Ja okay.

MINISTER MAHLOBO: I am on record. But I want to assist this commission and remember we are not being watched here Baba we are also watched internationally. Even other foreign internal agencies right now that are here at home

and abroad they are watching and let us not actually create some stupidity of ourselves.

There is something that I want to put it on record. There is no law that says Ministers or the Minister – let me use the word – the Minister or the President must be involved or not involved. There is no law.

But let me just assist you and say do you know that when you run counter intelligence in the course of your national interests there are people that get to be recruited to
10 assist you to push your national agenda or national interest. They are not on the same level.

Even the biggest intelligence organisation whether it is the Russians, whether it is the Chinese, whether it is the British Military Intelligence, whether it is the CIA even Presidents you can recruit a President.

Other countries in terms of intelligence work they actually get Presidents that they want and interfere in other countries things where another – would you think that a President can be managed by June, would you think that a
20 general in a country will be managed by June? The levels are not the same. Who then becomes everybody in intelligence is a recruiter.

Some they come themselves to be recruited. We must be able to demystify certain things that have happened here. There is no law but depending on how aggressively

you push your national interests using intelligence because intelligence is not something that is new is actually centuries and centuries ago you will know. For an example if tribes are not supposed to fight you will get your daughter to marry on the other side.

It still happens today. Even other countries they get their certain citizens to go and get to be married in other countries. You do not know whether we are – we are actually staying with a spy or not.

10 But I thought I should be able to say this thing because if I do not say it an impression will be created that intelligence which is information very important to make decisions can only be gotten to people of certain levels.

But my answer I might have been long winded I never ran operations but equally so there is no law that says you can do this or you cannot do that.

ADV PRETORIUS SC: I understand your answer Mr Mahlobo one thing I would like to place on record because this theme has emerged in evidence before is that certainly we will
20 submit to the Chair that the standards which should apply and be adhered to I – our own state security agents should be established by our own policies and our own constitution and if those are more strict and higher standards than other countries so be it but the standards are our own standards not those of other countries.

MINISTER MAHLOBO: Let me just assist you Mr – that is an opinion they made. That standard they could not tell you where is it. There is nothing in law. I am very conversant with the legislation that govern intelligence it is an opinion.

Probably going forward you might want to discuss the question why should be the role of politicians? But also do not discuss the role of politician without understanding what is intelligence when everybody can become a recruiter as long as you advance your national interests and national
10 security.

And this is not a new doctrine. Intelligence is a trade craft. It has its own ways of working. There are views that traditionally even big democracies even today they are still grappling with it because the more we will practice these things we find certain weaknesses. So everywhere you will find it. Even ourselves are not unique for dealing with that but this thing of a standard there is no standard here written.

These guidelines – these guidelines or directives are a policy in terms of law that [00:13:25] and they are very
20 clear what could be done, what do you do with this one? Probably they are not adequate depending on our experiences that is what I would say. But it cannot be a matter of fact if these standards were there they will have been part of the documents I will have been furnished.

ADV PRETORIUS SC: Let us go to paragraph 32. I know it

is a great leap forward.

CHAIRPERSON: You can keep your mic on Mr Mahlobo at all times.

MINISTER MAHLOBO: No just (speaking in vernacular).

CHAIRPERSON: Ja.

MINISTER MAHLOBO: (Speaking in vernacular). I do not want to discuss methodologies. When it is my time just indulge with me you will – when it is my time to respond I will make it on.

10 **CHAIRPERSON:** Yes. You made a promise earlier on you remember not to revert to your mother tongue. You have forgotten that. You want to just say that again for – so that everybody knows what you were saying.

MINISTER MAHLOBO: It is a chat between a father and a son. I do not think it is material Chair. The Chair was asking me to keep the mic on. I told him that I have a preference I – for certain security rules into repeat.

CHAIRPERSON: Ja.

MINISTER MAHLOBO: Ja.

20 **CHAIRPERSON:** Okay. Alright.

ADV PRETORIUS SC: Thank you we learning – secure along.

MINISTER MAHLOBO: No I am here to support and help.

CHAIRPERSON: Well Mr Mahlobo I guess I should ask you whether I should keep mine on.

MINISTER MAHLOBO: You see Baba Zondo it is very simple. I can – I can do profiling how you speak, how you breath, how you do certain things and we have people now watching you there. Remember this thing is not on a closed session.

CHAIRPERSON: Ja.

MINISTER MAHLOBO: Someone is taking notes somewhere.

CHAIRPERSON: Ja. I guess they take notes when I cough.

10 **ADV PRETORIUS SC:** Note it is one o'clock Chair.

CHAIRPERSON: Even when I cough or sneeze. Yes Mr Pretorius. I see it is one o'clock. Because of the problems of technology we have lost quite some time this morning. I wonder whether we should take less than an hour for our lunch or whether we should stick to an hour. So I am just checking so that I do not impose.

MINISTER MAHLOBO: May you Chair with the break and with your indulgence and the permission of Mr Pretorius just push for another hour then we take a break.

20 **CHAIRPERSON:** Hm.

MINISTER MAHLOBO: I am here to help.

CHAIRPERSON: Yes.

MINISTER MAHLOBO: I want us to conclude (speaking over one another).

CHAIRPERSON: So your suggestion is maybe let us

continue and then take the lunch break a little – a little later.

MINISTER MAHLOBO: Ja let us push for an hour.

CHAIRPERSON: And make some progress.

MINISTER MAHLOBO: And then we are trying to make up time.

CHAIRPERSON: Hm. Mr Pretorius what do you think?

ADV PRETORIUS SC: I am happy as long as it is convenient to you.

CHAIRPERSON: Ja, no I – I do not have a problem.

10 **ADV PRETORIUS SC**: I know that one has arrangements sometimes.

CHAIRPERSON: Sorry.

ADV PRETORIUS SC: I know that you might have arrangements.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: Over the lunch breaks.

CHAIRPERSON: Ja, no – yes sometimes I do but I think it is fine. Maybe not for an hour as such but maybe – let us see how far we are at half past one.

20 **ADV PRETORIUS SC**: Yes.

CHAIRPERSON: And then maybe we can go up to quarter to two.

MINISTER MAHLOBO: I am comfortable Chair.

CHAIRPERSON: Yes. And I think your Counsel is fine as well with that.

ADV ADONISI: I am Chair thank you.

CHAIRPERSON: Yes okay alright let us continue.

ADV PRETORIUS SC: Let us go to paragraph 32 of your statement. I just have one question to ask in relation to the contents of that paragraph where you say that:

10 “During 2014 the country experienced
unprecedented levels of sharper political
contestation characterised by subversive
activities within and outside of Parliament all
these factors and challenges economic
weakness seen in 2014 had serious
implications for National Security and the
stability of South Africa.”

All I want to ask in this context and on the basis of this statement Mr Mahlobo is activities which undermine or negatively influence the economy of the country are those activities which may fall within the mandate of the SSA?

20 **MINISTER MAHLOBO:** Well thank you very much Chair. This does fall within the mandate Chair of intelligence services and you will find even a better answer – I do not have the notes here for you Advocate Pretorius a definition of national security. It is in the National Strategic Intelligence Act.

It is very broad – very broad it compasses economy, environment – it encompasses everything and people they

have views – different views even today that broad definition is a problem. There are those views but I am not going to start to express a view but it is there in law what it covers.

That is why Mr Pretorius there is something that is very important that you will see when we start to deal with something which is called National Intelligence Estimate which is paragraph 84. Because National Intelligence Estimate on the basis of law whether – how National Security – National interest is defined and all these other things.

10 The country is required by law that it must have a security assessment. That security assessment the law place it correctly that it is the responsibility of all the intelligence services. There are three of them. They come together in a structure called the National Intelligence Coordinating Committee and it is established by law – it has a code name.

 They do a threat security threat assessment then from there they look at all the issues as defined as part of the broader trust of the National – the National Security
20 including National Strategic Intelligence. What is National Strategic Intelligence? It is there.

 Then they have pillars. At a particular point I decided to share with you and the commission what were these areas of the National Intelligence Estimate?

 So that when government started to actually

discharge its responsibility in terms of the law – the constitution but also in terms of the governing party manifesto that those that have won elections. They produce a strategic document called medium term strategy framework. What are these risks? What are these opportunities? That information it looks at the totality of the state. State I do not mean the executive – the state – our nation both from domestic threats and foreign threats then you produce this important document and every time we
10 must start to work. We must start to respond to these risk assessment tool.

But later on we will get into that. That is why on 34 it says:

“The NIE was always linked to National Security Intelligence as required by the law. On the basis of the security risk and threat assessment the Intelligence Services embark on counter intelligence. Counter Intelligence is very important. What are the things that
20 needs to be done there? Covert collections, domestic and foreign intelligence operations in line with national security and national interest’s imperatives.”

I wrote this because there is a view that other people came and share here. That a number of counter intelligence

activities that were done they were done outside the law and we have to be able to dismiss that with the contempt it deserved because the law – and when you do an assessment you break it down. Fortunately I am a former Accounting Officer – I worked in Government as an HOD – I know these administrations.

You start to link. How does it link to the medium term strategy framework? How does it link into the strategic plan? How does it link to the NIE? And all these things that
10 have been done or they think that are allegedly that they were being done.

The question must be asked was it within these risk assessment provisions by law? This provision Chair it must be considered by the executive – National Executive. Not something for you there. Help them – you go in there – you present to Cabinet. That thing had died before I became a Minister.

There was a time where there was allowed – were – the executive by law could have considered this important
20 risk assessment too. I worked with the people that were supposed to do for the first time as a security cluster we actually reintroduce it, further it – we can be able to say but really why did you do this, why did you do this? I did this because this was linked to this, this was linked to this and anything that is not linked to that you can be able to say but

this is an out lie. Then you can explain your actions.

I might have been long Mr Pretorius but it is important that we assist each other when we come here.

ADV PRETORIUS SC: In paragraph 36 then you refer to the particular threats to the authority of the state that you foreshadowed in your discussion of the National Intelligence Estimate – the NIE. I just want to ask you in terms of paragraph 36 sub-paragraph 4 you deal with threats to the economy of the Republic and specifically mentioned under
10 that head is the concept of corruption.

Corruption too would be a matter that might legitimately draw the attention of a security agency in South Africa. Is that correct?

MINISTER MAHLOBO: Before I respond to that I need with your permission Chair there is something here probably I will need – okay. No, no, no I have got it right now. You know your light is not good here. On 36...

CHAIRPERSON: Oh the lighting is not good there.

MINISTER MAHLOBO: (speaking in the vernacular). No I
20 am going to come to this corruption issue now. The NIE I have decided to say what were these pillars of the NIE? And I want to put them on record so that we also demystify that certain thing that happened might have not been informed by policy position.

The threats that we faced as a country they were

classified into five areas and these five areas Chair without actually disclosing the NIE because the NIE is not a public document. But this one Chair I am taking liberty that when I appeared in Parliament in the Joint Standing Committee on Intelligence presenting my strategy plan, they approving the budget including what you call it – policy and budget statement. You know those budget books. These things say – Mr Pretorius on all my speeches I have referred them to – the pillars.

10 The first four pillars they are referring to issues that are domestically in terms of domestic strategic intelligence and the last pillar are referring to intel – foreign matters.

On the first pillar Chair there is a – there was a – our security architecture as a country it looks to the threats to the authority of the state. It has certain elements in that document. Violent community protests, violent industrial actions, violent in the transport sector, violent protests in the education sector, viper security, activities of private security industry and protective security.

20 There is something very interesting Chair that you need to be able to note on the first one. There is always an adjective that has been used before community protests.

Remember protests are allowed but could you see that there is always a qualification violent, violent, violent because the constitution allowed people the right to express

freely, they can march, petition but immediately they do this qualification it borders on matters of the law.

Because I do not want at a particular point in time the men and women who worked so hard to produce what we call NIE without as if they were not conscious just of the issues of the Bill of Rights.

The second matter the threat was to the territorially integrity of the Republic. We control and the management of border security. Illegal migration. We are not saying
10 migration is a problem we are using also the right word illegal and anti-foreign 00:28:48. These things 00:28:52 by discriminating people. Then there is a threat to the well-being and safety of South Africans. Those are the issues of want. The water, your food, your energy security, terrorism and extremism. Right now you have challenges in Mozambique. The problems of gangsterism and narcotics and then there is a threat super economy of the Republic.

Corruption is the biggest matter that you raise here. Illicit of mining of precious material. That was the
20 intelligence report and assessment. Theft of ferocious and non-ferocious material including wild life poaching. Those are the issues that we looked at. Those are the domestic matters.

Then there are foreign matters. Threats arising from abroad which are security challenges on foreign terrain,

00:29:55 contacts and African Continent and putting these things. We never acted without a tool for certain things to be done because a number of things, Mr Pretorius, will come in later on. This will create an impression by these people who were here that some of these operations, they happened with no basis, either in law, either in policy.

Well, Mr Pretorius, I agree with you. Corruption is our enemy. Our enemy, not only here, but even the whole world and it must be fault in its different forms and
10 hence the own creation of these, the Commission itself, to deal with these issues. I thought I should raise these issues there, Your Excellency, Chair.

ADV PRETORIUS SC: [Microphone not switched on.]

ADV ADONISI: Your mic. You have lost us.

CHAIRPERSON: Oh, ja.

ADV PRETORIUS SC: Thank you. You then go into some detail in paragraph 37 and you deal in more detail with the threats that you summarised in paragraph 36. Now it may be that later on in your evidence these threats are the
20 context of certain projects that I would like to put to you that emerges from the evidence and documentation that we have.

But if we could go to – and a matter of interest to, certain the evidence leaders, there is a statement in the second sentence of paragraph 37.1, where you say:

“Foreign Intelligence Services were aligned with negative domestic forces to destabilise the state’s ability to govern the country...”

The negative domestic forces you talk about there, what are they? Political parties, non-governmental organisations? What are those forces?

MINISTER MAHLOBO: Well, it is not a specific statement but let us be on record. Not everybody is a friend to South Africa. We do have enemies. That is how Intelligence
10 works. We do have enemies and we live in a world where we do not have enemies, we live in a different world.

Even our own friends – you know, there are those countries where we share certain things. These countries, they will never hesitate, even if they are a friend, on matters of pursuing their national interest including even issues of dominance or economic advantage.

We use Intelligence to do these things. Some of these people, Chair, they live here. Some, they are
20 declared here in South Africa. We know that this country have these people but in the covert world and counterintelligence, there are people that you will never see and you must never see them.

When you catch them, they are in trouble but sometimes they do a slipup, you catch them, sometimes

you do not catch them. The duty for Intelligence is to influence, to get information so that you can make decisions. You can have an advantage and a covert world gives you an advantage to recruit certain people of influence to advance a particular cause.

Very alive that there are these other foreign intelligence in countries. South Africa is not a small country. Very strategic in terms of its location and of resources and others and influence and leadership, both
10 here at home and abroad.

They must work on certain people so that these people knowingly and unknowingly, for wittingly and unwittingly, they must pursue their national objective. This is what is happening and nobody, and I repeat, nobody is immune from being recruited.

They can even recruit a minister, they can recruit a president, they can recruit a judge, they can recruit a parliamentarian. You can recruit, as long as you know what kind of information and influence you need and
20 that is how, Pretorius, you should look at these things.

How will you actually get an advantage if, really, you do not know these people in the influence of power? You would find them anywhere.

ADV PRETORIUS SC: We will come to the detail in due course, Mr Mahlobo, but the concern that under the

absolute statement here, all manner of activities may be justified but look at the statement that you make here.

“The Foreign Intelligent Services were aligned with negative domestic forces to destabilise the state’s ability to govern the country...”

Not to gain economic advantage for their own country but clearly to destabilise the state’s ability to govern the country. Now that may seem legitimate. And my question is, what are those domestic forces? Are they
10 trade unions or NGO’s?

MINISTER MAHLOBO: Let us help you. Let us help you. Firstly, understand the doctrine. It is not about matters of economy. I am not referring in this sentence to the economy. On our matters of government. You know, countries, Chair, even today there are countries and governments that have collapsed because of operations of other intelligence services.

Governments have been removed. It is not a hearsay. It is not a story. Governments have been
20 installed, leaders have been installed so that people can get an advantage on all matters. Immediately, your question started to say I must **lead(?) [00:07:01]** Why would I actually start to divulge an information or a methodology for **a body(?) [00:07:08]** because that is not the ...[indistinct] where I am starting to be able to call

certain people as a threat.

When you go to the projects, the counterintelligence activities – let us cross the bridge that is there. Let us not actually try, with this statement, to insulate(?). I am just giving you how the world of intelligence works. We do it ourselves. But I will never tell you which country wanted an advantage in the interest of national security or national objectives.

Let us not single out certain sectors. They can
10 be in any sector but as long they are becoming perceptible(?) and they are becoming a target that they can wittingly or unwittingly, knowingly or unknowingly become a target and they start to work for other people without knowing. The others they know. It is money. You know, to sell information is money.

That is why, either they come to say: Hey, you know what? So and so is saying this about you. Or someone can actually even walk to you house and say so and so is like, there would – there are these that balance
20 and checks that you need to do but let us put it on record how our intelligence doctrine works. Foreign interferences by other countries is a matter we got. That is why we even have an intelligence when I was there.

There was a branch responsible for Foreign Intelligence. But because of relationships we do, do you

know that in embassies all over the world, including them, these are the parties. They even sent in their own intelligence officers here but they must be clever so that they do not do things that undermine us but in certain instances, they run their own covert work, then start working here in this country(?).

And then when we find them, we find them. Sometimes we do not find them. Then they call it an intelligence failure. This is the environment we live in.

10 **ADV PRETORIUS SC:** Well, let me put the question in a different way, if you are not willing to categorise these domestic forces. Are these domestic forces in the private sector, the public sector or both?

MINISTER MAHLOBO: It can be any citizen, it can be any organisation, both in the public and private sector. We are all vulnerable in one way or the other to get and protect, to be used, whether we know or we do not know to push certain things or interest we do not know. I have – Mr Pretorius have – I do not know. We never had time to
20 have tea or coffee. Probably, one day we will have one.

ADV PRETORIUS SC: Maybe stronger.

MINISTER MAHLOBO: We will have one. You know, even businesspeople, you know, business – there are serious issues of intelligence. Intelligence is information. Do you know there is the biggest problem, even in private sector,

called issues of espionage where companies wanted advantage?

You know it is a doggy-dog situation. They want to have a competitive advantage. Why you were put in an IP, your Intelligence Property laws? Because you want to protect certain things. This is the reality we live in.

Therefore, the answer, all of us, there is a possibility and a threat that we could be recruited, either we wish to or sometimes we do not wish to. I cannot say
10 who is a spy and who is not a spy, whether my wife is a spy or not.

ADV PRETORIUS SC: No, understood. In paragraph 37.3. This may become important later. You deal with violent industrial action and under that head, you talk of an assessment report which revealed that labour provides another platform to be used by Foreign Intelligence Services to destabilise our economy and pursue their agendas.

Now if one is talking about violent industrial
20 action, one is no doubt talking also about trade unions, not so? Is that what you mean by labour?

MINISTER MAHLOBO: Well, we are not ...[intervenes]

ADV PRETORIUS SC: Organised ...[intervenes]

MINISTER MAHLOBO: You are narrowing it if you say industrial trade unions. If you speak about industrial

action, it can be people who are organised or not organised but they employed in a particular sector or industry. They started to get involved in certain things.

Remember the architecture. Very clear. Immediately exercising their rights for petition and protest and deal with the issues at the workplace. Immediately they do their qualification, they acted violent. It will be a matter of national security and it cannot be ignored.

CHAIRPERSON: I guess that your answer is that your
10 reference to labour in that sentence includes both trade unions or activities where trade unions are involved and activities where trade unions are not involved?

MINISTER MAHLOBO: [Indistinct] Labour by clear definition, I am speaking about workers working wherever they are working.

CHAIRPERSON: Yes.

MINISTER MAHLOBO: We can try to put the languages somehow but I am using labour the way the word labour is known without any specificity.

20 **CHAIRPERSON:** Well, you see, as I understand it. Quite often when the word labour is used, it may be understood to include unions and sometimes not to include it.

MINISTER MAHLOBO: I fully agree.

CHAIRPERSON: Yes.

MINISTER MAHLOBO: As long as it is so broad like you

are saying it, Baba.

CHAIRPERSON: Yes.

MINISTER MAHLOBO: It cannot be narrowed.

CHAIRPERSON: Ja-no, no that is fine.

MINISTER MAHLOBO: Because I am always cognisant
...[intervenes]

CHAIRPERSON: Yes.

MINISTER MAHLOBO: ...what is our security architecture
and framework.

10 **CHAIRPERSON:** Ja, ja.

MINISTER MAHLOBO: It looks like in this particular area
– and it is a fact – this particular area at a particular point
and time ...[indistinct]. Remember the problems that were
there, they are common cause and we look at the live – or
maybe let me use this word that I never use.

You know, risk assessment is also having the
gravy. High-risk, low-risk and medium – low-risk and
medium. I am jumping. I should have included medium in
there. But that is how it looks. It is so scientific but it is
20 on the basis of data.

We do not act without data. And the data – we
have a process. It is the ability to evaluate. You know,
evaluation is an important issue. Well, there they use the
word analyse. Sometime the data will be accurate,
sometime the data will be indicating as probably. The

probability. And sometimes the data is false.

But later on, we will deal with certain people who give us information and give us false information or they give you a hybrid of information, lies and truths. And if you do not have the right instrument to do data verification. But I will not go to the methodology.

CHAIRPERSON: Ja.

MINISTER MAHLOBO: Because the law does not allow me to go to a methodology.

10 **CHAIRPERSON:** Yes.

MINISTER MAHLOBO: But evaluation and analyses, an important aspect in the doctrine.

ADV PRETORIUS SC: Right. And then in paragraph 37.4 to 37.6, you highlight several other threats, violence in the transport sector, violent protest and in the education section and cyber security threats. I do not have any questions. The statements, they are quite clear, and the next topic would be funding of the operation of SSA which perhaps we can deal with after the break, Chair.

20 **CHAIRPERSON:** Yes-no, that is fine. Let us take the lunch break now. Let us – let me see whether we agree to take less than an hour and if so, shall we talk about 30-minutes or 45-minutes?

MINISTER MAHLOBO: 30-minutes, I agree to.

CHAIRPERSON: You are happy with 30-minutes,

Mr Pretorius?

ADV PRETORIUS SC: I am in your hands, Chair.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: Maybe 40-minutes.

CHAIRPERSON: 40?

ADV PRETORIUS SC: [Indistinct] Chair.

CHAIRPERSON: [laughs] Okay alright.

MINISTER MAHLOBO: Are you providing me lunch
[speaking vernacular]

10 **CHAIRPERSON:** [laughs] We are, unfortunately, not
providing your with lunch Mr Mahlobo.

MINISTER MAHLOBO: [laughs] Okay.

CHAIRPERSON: Or maybe I should not say that because
I do not know everything that happens. So it may well be
that witnesses are provided ...[intervenes]

MINISTER MAHLOBO: No, no, no. ... special
arrangements... [speaking vernacular]

CHAIRPERSON: Ja.

MINISTER MAHLOBO: [speaking vernacular]

20 **CHAIRPERSON:** [laughs]

MINISTER MAHLOBO: [laughs]

CHAIRPERSON: Okay alright. Let us ...[intervenes]

MINISTER MAHLOBO: No, no. It is fine. My team will
find ...[intervenes]

CHAIRPERSON: Ja, that is fine. We are at twenty-seven

minutes to two. Shall we, let us resume at twenty past two?

ADV PRETORIUS SC: [No audible reply]

CHAIRPERSON: Okay. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES:

CHAIRPERSON: Okay. Let us continue.

ADV PRETORIUS SC: Thank you Chair. Mr Mahlobo, may we go to paragraph 38 of your affidavit. You describe a
10 process there in paragraph 38 which is the basis of how we understand the operations to be in accordance with existing evidence. If I may read it, it reads:

“Once a need for a certain project had been identified a project manager would be appointed and the project would be given a covert name. These covert projects were pursued by the chief directorate special operations. A submission would then need to be prepared, which included a project plan and
20 a project budget for the proposed project. The final approval of projects of this nature were at the discretion of the accounting officer, the DG. Covert operations were more operational and as a minister I was not involved on the day to day operations of the agency. What I

knew and what came to my attention was what I needed to know and that goes for everyone in the SSA and the government.”

As I understand it whether as a matter of practice, principle, law the minister as far as you were concerned, and certainly between 2014 and 2017 was not involved in the day to day operations of the agency. Is that correct?

MINISTER MAHLOBO: That is correct.

ADV PRETORIUS: You say that:

10 “In as much as I was not involved in the day to day operations of the agency I remained accountable as minister SSA to parliament. The CDSO ...”

That is the chief directorate special operations projects and operations:

“Often ran over budget due to operational challenges and I intervened by reviewing and strengthening policies, systems and internal controls.”

20 You may deal with those later when you speak to the Chair about operational improvements that could be affected. Then you say in paragraph 40:

“The official records of the secret services do not reflect the true nature of the operations and projects run by CDSO as these were

covert. Even the names given to these operations, did not necessarily mean that the operation ...”

And it reads:

“Is accrued after its name.”

The true nature of these operations was only known to the project manager and the team which is commonly referred to as assets. Once again information about these projects would only be provided, only to those who needed
10 to know as the principle of quote, “*need to know basis*” was applied.

That statement, at least the first sentence of paragraph 40 is somewhat puzzling Mr Mahlobo. If the secret records do not reflect the true nature of the operations and projects, are there any records which reflect those?

MINISTER MAHLOBO: Well, remember you have given certain documents about certain project name, and when you have given them, those names were not chosen by
20 those who chose them. So in English to mean that just make an example.

A project is called Tin Roof. What does it mean? There are many examples where you would want to come to your annexure at a later point, but I am just giving you as a fact. It does not necessarily mean that and at the

very same time, those who are handling documents, there are clear rules how to handle certain documents.

That is why I made a reference, what is the role of the minutes. The minister must ensure there are policies. One of the biggest policy imperative that had to be complied with, I hope they will help you as a commission, depending who is security vetted.

Even if they cannot give you the documents, a document called operational directive, you will see there
10 what these requirements are, how do you do certain things. But as I was saying to you it is a document classified, it is a document by law.

It cannot be published even in the government gazette, but I will not go to it even myself. I am saying you will have a better sense.

ADV PRETORIUS: Well, it is still not clear from what you say here Mr Mahlobo. The statement in paragraph 38 reads that:

“There would be a submission prepared. That
20 would include a project plan and a project budget for the proposed project.”

MINISTER MAHLOBO: Maybe let me help you Mr Pretorius so that we do not take time.

ADV PRETORIUS: Perhaps I can finish.

MINISTER MAHLOBO: Okay, because I understood and

the assumption that I never understood is not correct. You probably want to put the question the other way ...[intervenes]

CHAIRPERSON: Ja, let him finish the question.

MINISTER MAHLOBO: Let me probably allow him to finish.

CHAIRPERSON: Ja.

MINISTER MAHLOBO: To put it differently.

CHAIRPERSON: Ja.

10 **MINISTER MAHLOBO:** But the reality, I understood it.

CHAIRPERSON: Ja, okay. Let him, Mr Pretorius.

MINISTER MAHLOBO: My apologies for interrupting.

ADV PRETORIUS: It is me that does not understand and so I am trying to clarify. In paragraph 38 you talk about what I presume are official records. The submission, the project plan and a project budget. Now am I to understand that these do not reflect the true nature of the operations and projects that they refer to?

20 **MINISTER MAHLOBO:** Chairperson, probably let us assist so that we do not take long. The accounting or the approval authority, now that the policies are there, the NIE is there and everything, to run any covert operation and in terms of the law, which is the policies that are there, the person will have a sight of that document, is the accounting officer.

It does not come to the minister. That is why even in your packs there is not a single document that has anything to do with projects, with respect to authorisation that just came to me and you do not have my signature there, approving projects.

Probably that is how we should be able to help each other.

ADV PRETORIUS: But ...[intervenes]

MINISTER MAHLOBO: I do not want to get into
10 interpreting these things as if I am there.

CHAIRPERSON: Ja, let me ask this way because I understood Mr Pretorius's question in relation to the first sentence of paragraph 40 in a certain way. I understood that sentence, I understood Mr Pretorius's question to be asking whether in that first sentence ...[intervenes]

MINISTER MAHLOBO: Which paragraph?

CHAIRPERSON: Paragraph 40, first sentence:

20 "The official records of the secret services do not reflect the true nature of the operations and projects run by CDSO as these were covert."

So I thought what he was asking you is this question. Do you mean that there would be these operations, but the records about those operations would be inadequate?

MINISTER MAHLOBO: Well, it is an area Baba Zondo, that probably when you conclude towards the end, we can discuss about it. There has to be some systems improvement. Remember, I am appearing here in front of you.

Now I have a line of sight. Of some of the documents that were not approved by the minister. Now I am doing my own reference to say no, no, no but remember there are certain things that were reported to me on a
10 basis of certain intelligence products.

Now I look at these documents we have, but probably more details would have been given. That is how the context Mr Pretorius needs to read in.

CHAIRPERSON: But does it mean, because this is what I am checking. Does it mean that what you are saying is you are not necessarily talking about the fact that the labels that might be reflected in terms of the document might be misleading to somebody who was not involved in labelling, but you are talking about the fact that anyone who wants to
20 know exactly what is there and what is covered there, and let us assume it is somebody who is authorised to know, they will not find that the records correctly reflect the situation.

MINISTER MAHLOBO: As I was saying Chair, on the line of sight on the documents I have ...[intervenes]

CHAIRPERSON: Ja.

MINISTER MAHLOBO: And the things you have given me here ...[intervenes]

CHAIRPERSON: Ja.

MINISTER MAHLOBO: I could see some words are so broad.

CHAIRPERSON: Ja.

MINISTER MAHLOBO: Without more prescriptive and you could see yourselves here ...[intervenes]

10 **CHAIRPERSON:** Ja.

MINISTER MAHLOBO: In the documents you have. That is what I am implying to. Remember, I am responding to notices with certain documents. This is my observation.

ADV PRETORIUS: So I understand that you are not saying that the documents have been falsified in order to hide the nature of the project. As I understand what you are saying that the full detail of the project would not necessarily be reflected in the official records. Am I correct?

20 **MINISTER MAHLOBO:** You are correct. I am not saying the documents have been falsified.

CHAIRPERSON: Well, I thought that maybe not now, but earlier on, I thought that you were saying that the situation is such that the name of the project for example that could be given to the project, to a project, could be misleading. It could be about, it could give the impression that it is

about tin roofs, when it is about complete something else.

So and I thought you were saying in that environment that is acceptable.

MINISTER MAHLOBO: You are correct, Chair. Read my affidavit correctly. It says:

“The official records of the secret services do not reflect the true nature of operations.”

You could see. You have the documents that they have given you. Some be classified, but you cannot give a
10 sense. Remember, it is a trade craft. It has adoption. If you are not supposed to know, you will not be knowing. Only those who ran the things must know.

That is one component even in the documents here. That is why you will scratch your head and say but what are they trying to say. They will not tell you. I will also not even tell you because it is not even my document. Then there is another part I am saying in the same sentence, even the names you see here, remember there are people here cooking.

20 There is something called operation justice, you are rushing the judges. It is one of the thing interested to know. I will deal with it, but was it really meaning that. Is the document you have, giving you that sense? I am saying both in terms of the document, because of the nature of the work, you will not get the full details unless

those who had to do the job, they tell you.

What you will only get, you will get an intelligence brief. An intelligence brief product will say to you we are running this operation to be able as part of the counter intelligence, not special operations. Special operations is just an instrument, a structure.

Go and run counter intelligence, and then they will come to you. They will never tell you the method. They will not tell you the object, but they will tell you that this
10 information, this is what it means in the country. Either as a decision maker you act on it, or you do not act on it.

If it belongs to you, you will get it when it belongs to you. When it does not belong to you, depending on the level of confidentiality, I can be able to cast the information to someone else if permissible by law, those that must implement it.

That is how it works.

CHAIRPERSON: Mr Pretorius?

ADV PRETORIUS: In paragraph 41 and 42, you make it
20 clear that the SSA is required to comply with the prescripts of the public finance management act, it should read. I presume that is the Act you are referring to. The secret services account Act and the ministerial payment directives and internal policies which govern covert operations.

You, I take it that Public Management Act, PMFA

...[intervenes]

MINISTER MAHLOBO: Well, it is one of the issues my learned brother here indicate it is a typo but you could see, the abbreviation has the F. We just have to insert that.

CHAIRPERSON: Ja.

MINISTER MAHLOBO: Thank you Mr Pretorius just for highlighting it.

ADV PRETORIUS: Right and then at paragraph 43 you deal in brief with the funding process, the submission that
10 is drafted for approval of the project and its financial resources. The appointment or assignation to a project manager and the like.

You go on to say:

“I would not have knowledge on who is the project manager and the details of the project. These were on a need to know basis. My involvement was only when I get to be briefed through intelligence briefs.”

Is that correct?

20 **MINISTER MAHLOBO:** Yes, I have used this statement so that it can help you Baba Zondo. To deal with Annexure A. You have an Annexure A here in terms of your summons. In rule 3.3 where I am asked a plethora of projects. Do you know this project, the project name, who is the project sponsor, how much and so forth?

This 43 is answering that question. It is not in my domain and I will not be even able to help you. I am not an approving authority and that is why I am even referring to you on paragraph 42, to say look who is an approving authority, what are the instruments that are in place for any consideration to be made.

But your Annexure A, which I will not be able to help the commission.

ADV PRETORIUS: If one looks at paragraphs 45, 46, 47
10 and 48 ...[intervenes]

MINISTER MAHLOBO: You are running too fast. You are saying paragraph?

ADV PRETORIUS: 45.

MINISTER MAHLOBO: Okay.

ADV PRETORIUS: 46, 47 and 48. The allegations here or the statements here, appear to indicate that unless there are financial irregularities brought to your attention in the form of a report, you would only know about things when briefed about them during the intelligence brief, and by
20 things I presume you talk about covert projects. Correct?

MINISTER MAHLOBO: Just for a second, you are on paragraph what now? The part that you are reading?

ADV PRETORIUS: Well, perhaps I am going too fast.

MINISTER MAHLOBO: No, no, no I am fine but I was just, is it just a statement broadly because I have seen 45, 46,

47.

ADV PRETORIUS: 48 says:

“With regard to the projects I would only know things as and when I was briefed during the intelligence brief. I would only be briefed on aspects that I needed to know.”

MINISTER MAHLOBO: No, no, no this one I am very, if I could see it now, I want to help you. Here we have people so that they can prove a story. You know, a story and lies
10 that minister is involved and minister branch operation. This point is clear even in this affidavit and Rule 3.3 notices.

There are certain instances where certain people are making statements that minister got involved with an asset for an agent. I will not have been involved with an agent, but ultimately the buck stops with me. If someone comes and complains I am not saying I am ill-treated.

Either this thing being given by members of parliament, either even given by the agents themselves or
20 by my principle which is the president, that so and so has a problem. That will be a time when I will say fix this problem.

Fix this problem. It does not necessarily mean you are running the project. I have instances and let, probably with your permission, I can give them now because I do not

want to waste your time, and if ...[intervenes]

CHAIRPERSON: Ja. Mr Pretorius, is that fine in terms of your planning?

ADV PRETORIUS: Well, I am going to go into detail in relation to the allegations made at the time.

MINISTER MAHLOBO: No, no, no Chair, I want to deal with them now.

CHAIRPERSON: Ja.

MINISTER MAHLOBO: I will repeat my answers, because
10 the other issues, my affidavit is self-explanatory. You know, let us make an example. We have a project name called Lock. We have a project name called E-Wing. You have it in your packs.

These people, they come ... that one, that person has not come to testify here as an example. Someone purports that this minister got involved in an operation. I am not, firstly there is something that I must put as a reservation on record, because I am going to use the name, the project name that are given.

20 There is a misstep that happened here. Either unknowingly or knowingly. Certain people come here, they name certain agents, especially the agent under the project name called Lock. It is irregular. You do not do that. Even if that information is in the public domain, you do not do that to divulge names because it is not you who

put it in the public domain.

Then there is this guy called Tiemie on the other affidavit by Steven. This guy is a well-known guy. The same matter was in the public domain. He has issues and these issues, they come to my attention and the president and what do you do?

Ultimately you must go in or deal with the problem. Because I do not want us to be going around the very same thing, someone speaks about the creation of a union and
10 you put a name here of a person. You do not do that. You do not do that and I will also not do it because I am very cognisant of the law.

But then there is a problem. You turn away as an executing authority and do not solve a particular problem. I will then allow Mr Pretorius at that point in time, when he wants to ask certain details, but I am placing it on record. If there is a problem, those who are in authority, vested with authority, they have a duty not to ignore people and get to those who are responsible to solve problems.

20 That is why I might have taken long, because I do not want my affidavit to be interpreted by other people, otherwise and this affidavit in mind is also helping you to clarify certain issues, but when the detail is required ...[intervenes]

CHAIRPERSON: Ja.

MINISTER MAHLOBO: I will be able to give you certain things that I am allowed to or the thing that I would not be able to do.

CHAIRPERSON: Yes.

MINISTER MAHLOBO: But I thought let me be able to do that because there is a narrative. When you intervene, it is like focal interference. When you intervene, there is a problem. It is a matter that must be regarded you ran operation.

10 I wanted that clarity to be there.

CHAIRPERSON: Mr Pretorius?

ADV PRETORIUS: In paragraphs 50 and following, you place on record certain denials at a general level, concerning evidence that has been led, which may implicate you or may not implicate you. If you wish to highlight any of those denials, please feel free to do so but we will be going into detail now.

MINISTER MAHLOBO: No, let me just help you. The denials and I have given the context because everything is
20 on record. The things that have been said here to implicate me by all these individuals, are incorrect. They do not even have a shred of evidence, Chair that they have to demonstrate that.

They were sitting here Chair. All of them, those three that appeared here, they told you in [indistinct].

They told you. It is hearsay. This is what they say about this one, this is what they say about this one, but at the end when they concluded, they told you they do not have evidence.

They are on record. After they have spoken for the whole day they told you they do not have evidence. Ultimately what did they tell you as a fall-back position? No, no, no project Vesa is incomplete. That is what they told you.

10 There is no evidence. You know, I am not a lawyer. I am just a pure scientist. I only know water, but I also know intelligence and I deal with facts, not fiction. They never gave you evidence. They say I took money, as an example.

You have it on record here. If someone must take money there is a paper trail and you do not have my signature there. It is on record. Someone says I broke the law, they never told you. Someone says they were standard in intelligence.

20 They are not there. There is one matter, when Mr Pretorius will want to come to certain detail. Chairperson, project Vesa is incomplete. It is on record. They gave you. There is a person called Dorothy. I just wanted, without bringing your meeting into, your commission into disrepute.

Someone in the commission they have decided to put a document and even another document that has been submitted by the lawyers of Dorothy, where the matters you want to discuss about Dorothy, I know now. Dorothy has furnished them.

Furnished them with an affidavit that have not been included in my pack. Dorothy is on record there. She never brought money on that thing, but that is why I have indicated Chair, there are also additional people. Let me
10 just help you.

There is other names here because other documents came yesterday. We have someone called an inspector general of intelligence. There is a Rule 3.3 that we only received that probably last week if I am not mistaken, I will not be accurate on time.

Do you know something so funny Baba Zondo? You know if someone is going to give you a report, you cannot come here. This is one problem Baba Zondo when it comes to the commission, where people they will think that
20 the commission is being used.

You need to ask us the difficult questions. There are people who came here, but they have actually gotten away with murder. They have actually by their own conduct, politicise this which is not your intention. I believe in your bona fides.

I believe in your bona fides Mr Pretorius. You have an inspector general of intelligence. He comes on a 3.3. The minister of state security directed a deputy minister of state security, who then directed an official to give bursaries to certain people.

Those minister, the deputy minister has never said here on record that I actually did that. I was not even interviewed. These are the things on 50, that these allegations and these things you are trying to actually
10 implicate me, are not true.

Unfortunately in the intelligence Baba Zondo, in the intelligence they use a particular platform to get a particular narrative. Here you are sitting with political animals. You know political animals that have their own issues?

I will demonstrate at a particular point with a matter of judges, where one of these witnesses called Steven as an example, he lies here. He has not come here. My legal team had said no, no, no but do not speak about people
20 who have not come here.

I said no, I am not going to allow Baba Zondo to think that I am hiding things. In the affidavit he writes, he claims that I introduced judges to him. In the affidavit he says he does not remember the judges I introduced him. he is then asked by the then acting DG hey man, try to find

pictures here so that you can be in a position to actually say no, no, no but minister ran something about judges.

Then ultimately in the same affidavit in the documentation here, he says he cannot be in a position to confirm which judge. Do you know, this witness who was an acting DG comes here to you and say I do not, Baba Nfumati, in a very leadership way, he says no, no, no but let us not try to create this impression about judges.

I do not want to venture there, but no, the acting
10 DG comes – but I have some circumstantial evidence. In this affidavit before the end I can tell you this character called Stephen is the one that right now, as I speak, they are working on a false alert to implicate a judge as if judges are bought and they are bringing the institution into disrepute. In the affidavit they say no, no, no, they do not know about it. They are running the operation. That guy is a [indistinct] he is the same guy who chose to lie about certain politician and a head of Chapter 9 institution and said that these guys are a CIA, that guy. And when you
20 say no, no, but produce reports here, that this judge – these people are CIA, we open up, say no, no, no, let us even open up a case. Then we have a situation where the information was not forthcoming until I left. As I am standing here without any fear or favour or contradiction I know there is a judge they are trying to frame when a

judge has never received money and I want to place it on record, I have never given an instruction that a judge must be bought and in terms of my knowledge, there is not even a single judge that has been bought. It does not necessarily mean that these judges, the honourable judges, you do not have your own missteps, the balance and checks that are there are very adequate.

These are some of the things, insinuations that have been made here. I never wanted uBaba Zondo to waste your time and go to each detail. That is why my laying of foundation, what are the sixteen, what, what, what, I just wanted to give you a sight of these things but these things that they are saying here, I am record, I deny them.

CHAIRPERSON: Well, you ...[intervenes]

MINISTER MAHLOBO: Only denying them, uBaba Zondo, they have never presented you with a shred of evidence. When Mr Pretorius goes to details we should be faster because where you do not have my signature I do not want us to be boring each other on matters that are really inconsequential because this is evidence but where there is a knowledge – but these are the issues, the country is waiting, judges are being paid, judges are being bought.

CHAIRPERSON: Well, you mentioned a certain affidavit that you said, as I understood you, should have been

presented to you but has not been presented to you that I think you say indicates that you were not involved in something that you were alleged to have been involved in. I just want to check that because obviously we want all facts to be in the open. Do you know anything, Mr Pretorius?

ADV PRETORIUS SC: Certain affidavits have been given, there is a small bundle of documents which have been given to Minister Mahlobo only recently, he has expressed
10 a willingness and a desire to deal with and we will put them on that basis. If he is not ready to deal with it then we will obviously have to deal with it at a later stage but that – my suggestion is let us put each one rather than in the general terms that have been put now.

CHAIRPERSON: No, no, that is fine, the only one I am asking about is the one he talked about in particular where he was saying there is an affidavit that is in the possession of the Commission from I think Dorothy, some pseudo name, that I think exonerates him.

20 **ADV PRETORIUS SC:** Yes, I understand the question.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: We have received information, if I may use intelligence term, to the effect that such an affidavit exists. We spoke to Dorothy this morning who denies that such an affidavit was ever attested to by her

and if such an affidavit exists it must be brought to us and we will investigate it but we know of no such affidavit.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: We certainly have not concealed any such information and would never do so.

CHAIRPERSON: Okay.

MINISTER MAHLOBO: Now Chairperson, let me help you. You know, you are trying your best, your system cannot be bullet proof. I am saying to you I am not going to come
10 and lie here. I am saying to you in that position of the Commission's team, the lady was trying to come and show Mr Pretorius right now, there is that affidavit and I will not tell you, there is even the advocated that represented Dorothy here and remember, all of us, via the legal teams, I am saying to you Dorothy has submitted an affidavit, I am not going to be discussing that but that affidavit in the – that I know it is in the possession of your team, that affidavit does not say that I took money and I do not want us to go there.

20 **CHAIRPERSON:** Yes.

MINISTER MAHLOBO: You will be in a particular position where I will help you with certain aspects but I just put it on record, let us not it a meal out of it and at a particular point [speaking in the vernacular]

CHAIRPERSON: No, that is fine, what I do not want or

what I did not want is a situation where you have made a statement that somebody within the Commission has concealed something that should be brought to your attention and we do not find out what is happening. Maybe we should leave it on the basis that Mr Pretorius will investigate and try and establish where this affidavit is and then take it from there.

ADV PRETORIUS SC: No, Chair, it is a serious allegation. To the extent that we received information that
10 there was talk of such an affidavit existing, we investigated the matter.

MINISTER MAHLOBO: Let us investigate ...[intervenes]

ADV PRETORIUS SC: May I finish, Mr Mahlobo, you have made a serious allegation. Let me deal with it.

MINISTER MAHLOBO: But do not raise your voice please, let us respect the Chair.

CHAIRPERSON: No, no, no, wait, Mr Mahlobo.

MINISTER MAHLOBO: Chair...

ADV PRETORIUS SC: No, let me finish.

20 **CHAIRPERSON:** Yes, wait, let Mr Pretorius finish.

ADV PRETORIUS SC: I want to place on record that according to the best of our inquiries and according to our legal team that supports me as evidence leader in this matter there is no affidavit from Dorothy which denies what she has said in previous affidavits.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: That is our knowledge for the present. If there is such an affidavit and if we have been misled we would welcome being provided with such an affidavit.

CHAIRPERSON: Okay, alright.

ADV ADONISI: Chair?

CHAIRPERSON: Ja?

ADV ADONISI: If Chair might allow me, I think if I not
10 address this issue I would not have act on the best interest
of my client because earlier this morning I was approached
by the team, the legal team of the Commission and the
legal team of the Commission did talk about the affidavit
that the minister is bringing to the picture now and I was
requested to call my client with that regard to say on the
corridors there is that thing in that there is an affidavit
which contradict the affidavits that he had submitted
already. Then my client did say no, I do not know if any
affidavit that the Commission requested which I did not
20 submit.

In addition also, the questions that the Commission
brought forward, I did answer and respond to the
Commission. I went back to the legal team of the
Commission. I get them the response of my client. Now
the legal team of the Commission did give me a respond to

say we do have an affidavit which was submitted to the SSA, State Security Agency, by your client and I said hold it right there.

Now we are not going to play mind games because even though I have not told them that you are not playing mind games but I am learned person and I have read into everything that they were discussing with me. An affidavit that is submitted to SSA, it is not for the Commission and certain work of the SSA, it is for a classified high level.

10 Now for that information to be brought into this Commission, it needs to be declassified and the Commission to discuss that affidavit with me, they need to tell me or who me proof or certificate that this information is declassified.

Now if I do not stand up and address this issue or the engagements that we had with the legal team of the Commission, I would not act on the best interest of my client. So the minister to say whatever that he is saying right now, he is well within – position is right because this
20 thing has been happening since morning and we are hearing all this information.

CHAIRPERSON: Can I ask you this question? What you have told me now, does it amount to saying as far as you are concerned and as far as your client is concerned, the Commission does not have an affidavit that contradicts

what your client previously said in the affidavit as far as you and your client are concerned?

ADV ADONISI: Chair, all the affidavits in terms of Rule 3.3 notice that were requested from my client have been submitted and accordingly so. In addition also to the questions, 19 questions that were submitted to my client, have been submitted to the Commission.

Now if there is anything else outside of that scope which my client was given to respond to the Commission, 10 then we are not aware of and like I am saying, when one of the legal team says this affidavit was submitted to SSA, I said I cannot come here at the Commission to deal with the Commission and be expected to also address issues of SSA, it is a different scope and I am not going to entertain that.

CHAIRPERSON: Okay, alright, what I propose should happen is from the – obviously there needs to be some investigation or discussion of some kind because from Mr Mahlobo's side he is definite, I think that there is such a 20 affidavit which contradicts what Dorothy said previously and he believes that the Commission is in possession thereof and certainly Mr Pretorius has indicated that he is not aware of that. So at some stage, at a later stage, there would need to be a clearing of the air to establish exactly where everything is but maybe let us say everybody

has noted what everybody has said and let us continue for now.

MINISTER MAHLOBO: Chairperson, I agree with your decision, it suits me and I was not going to hide this matter from record. No mistakes can happen but let us allow them to look at it including the legal representative of Dorothy. Then I am fine.

CHAIRPERSON: Okay, alright. Mr Pretorius.

ADV PRETORIUS SC: For the present, Chair, your ruling
10 is noted, I would just like to make three points. All – there is more than one affidavit of Dorothy. There is no affidavit that we have, to my knowledge, that contradicts everything she has said. First point.

Everything we have has been declassified, second point.

Third point – and we must not conflate these two issues. There is an accusation on record that the Commission's investigation and legal team, that is the Commission, is withholding an affidavit to whatever
20 prejudice might in future be alleged.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: I know of no such allegation and in order to assist us in that regard we would appreciate if we could be provided with the so-called affidavit so we can investigate.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: But the existence of the affidavit and its deliberate concealment by the Commission are two different issues. The latter one is a very serious accusation.

MINISTER MAHLOBO: Chair, let me come in.

CHAIRPERSON: Ja.

MINISTER MAHLOBO: You see, let us not complicate the work of the Commission and throw stones. I never used
10 word of conceal matters and so forth. You know when people they start to express opinions and try to make others look bad, that is not my intention. You have made a very sound ruling, I respect you. Let them go and do this thing. If there is an error being made there, let us not try to be adversarial, please. I have just put it on record, I am respecting your decision. Well, there are the other issues that there is declassification and so forth, it is fine to respond to but someone must not to start to say I have used words like concealing, do this, I was just bringing to
20 your attention and in a good spirit we have handled the matter well.

CHAIRPERSON: Well, Mr Mahlobo, I must say that my own understanding of what you said included that you said that affidavit has been hidden from you or something like that. Did I misunderstand you?

MINISTER MAHLOBO: Chairperson, I am on record. I say it has been brought to my attention.

CHAIRPERSON: Ja.

MINISTER MAHLOBO: And I can even tell you, Chair, remember I am in intelligence, I am not actually going to divulge any secret or any person. I do have the copy and if – remember we are dealing with certain ...[intervenes]

CHAIRPERSON: But I just want to check whether I misunderstood you.

10 **MINISTER MAHLOBO:** No, no, no, you I misunderstood me.

CHAIRPERSON: Okay, you are not alleging that [inaudible – speaking simultaneously]

MINISTER MAHLOBO: I will never use those words. That is why I am comfortable and I would be very, very wary immediately people started to say I have accused the Commission. I will never try to bring your Commission into disrepute. I put this matter on record now in that good spirit you have done, let them look at it.

20 **CHAIRPERSON:** Okay, alright.

MINISTER MAHLOBO: And if I am making an error in judgment on what I have, I will come and say regrettably there is an error.

CHAIRPERSON: Ja.

MINISTER MAHLOBO: But immediately we start to be

venturing who is bringing the Commission into disrepute, that is not – I am not actually at that point.

CHAIRPERSON: Okay, alright. Mr Pretorius?

ADV PRETORIUS SC: Thank you, Mr Mahlobo, our coffee date still stands then.

MINISTER MAHLOBO: Definitely do, we have a country to build for you and me and our children's children. That one I guarantee.

ADV PRETORIUS SC: For the present let us go to bundle
10 SSA1, if you will, at page 30.

CHAIRPERSON: Somebody will assist you. Maybe Ms September can help him to identify the right bundle. Bundle 1.

ADV PRETORIUS SC: Page 30, please and I am referring to the black numbers in the left hand top corner of each page, so if you go to the documents in that bundle after the index.

MINISTER MAHLOBO: Okay.

ADV PRETORIUS SC: After the index, you will see in the
20 top left hand corner a page number, SSA01/030.

CHAIRPERSON: I am sorry, Mr Pretorius, I was busy ...[intervenes]

MINISTER MAHLOBO: Why cannot you use this - Mr Pretorius, these things A or B or what?

CHAIRPERSON: Hang on, Mr Mahlobo, I did not hear the

page because I was trying to get the attention of my registrar unsuccessfully, so what is the page?

ADV PRETORIUS SC: SSA01, page 30.

CHAIRPERSON: Okay, alright.

ADV PRETORIUS SC: Yes, I understand the frustration, it has been expressed by several witnesses but it is for later recordkeeping that we need to have these numbers ...[intervenes]

MINISTER MAHLOBO: Let them just show me just quick –
10 so that I can run quickly because the team you brought, they taught me about A, B, C, D.

ADV PRETORIUS SC: Yes, well you can go to C, if that makes it easier but I will still refer to the page numbers.

MINISTER MAHLOBO: No, no, that is easy now, when you say C it is easy now, I am there.

ADV PRETORIUS SC: So you are at page 30?

MINISTER MAHLOBO: Yes.

ADV PRETORIUS SC: That is a letter dated the 4 November 2015 and it is addressed to the Honourable
20 Minister Mr D Mahlobo, Minister for State Security Agency. If you go to page 34.

MINISTER MAHLOBO: Okay.

ADV PRETORIUS SC: You will see at the bottom of that page, paragraph 5.2:

“Approved. R130 million approval”

And then there is a signature. Is that your signature?

MINISTER MAHLOBO: Ja, that is my very fancy signature, Mr Pretorius.

ADV PRETORIUS SC: Yes and if you go to page 31:

“Budget reprioritisation”

You will see in the middle the page a table and under sub programme Ministry, it reads:

“Projects approved by the minister.”

Do you know which projects those were? Can you recall?

10 **MINISTER MAHLOBO:** Which paragraph?

ADV PRETORIUS SC: Paragraph 3, Budget reprioritisation on page 31, there is a table in the middle of the page and the second item under the heading sub programmes is headed Ministry and under Project Activity is:

“Project approved by the minister and R20 million funds were requested for those projects.”

As I read the document. Now the question is, can you recall what projects are being referred to in this document?

20 **MINISTER MAHLOBO:** This thing is very faint. Which line is talking Ministry?

CHAIRPERSON: Can you see that – can you see - you know, under paragraph 3 can you see it says “Budget reprioritisation.” Can you see that heading?

MINISTER MAHLOBO: Yes, I see.

CHAIRPERSON: And then there are two paragraphs below that heading, can you see that?

MINISTER MAHLOBO: Ja, I see the one start at the programme.

CHAIRPERSON: Yes, the second one starts with “This means...”

MINISTER MAHLOBO: Okay.

CHAIRPERSON: And then below that last one then there is a table there which has got columns. The first column,
10 the heading for the first column is sub programmes and then the heading for the second column is “Project/Activity”.

MINISTER MAHLOBO: No, no, no, I can see it now.

CHAIRPERSON: You can see it now?

MINISTER MAHLOBO: Ja. I see in this one – let us place it on record. Minister does not approve projects. The naming to say it is projects approved by minister, it is a wrong naming because in your records there is not even a single project where I am the approving authority. I do not
20 even want to interpret what it says but that is what the law says and this is what the documents will have. Therefore I will not be able to assist Mr Pretorius when he starts to ask which projects were approved by minister.

ADV PRETORIUS SC: Well, if you look at page 33, paragraph 5.2, the fourth bullet in that paragraph

...[intervenes]

MINISTER MAHLOBO: 5 point?

ADV PRETORIUS SC: 5.2.

CHAIRPERSON: I think it is 6.2, Mr Pretorius. Or is it –
oh no, ja, 5.2.

MINISTER MAHLOBO: No, no, no, I can see.

ADV PRETORIUS SC: It says there:

“Minister’s project R20 million.”

Is that another misnomer?

10 **MINISTER MAHLOBO**: No, no, no, as I am saying to you,
it is misleading because you are having a document and I
am just seeing it now here, Judge Zondo, Minister does not
approve projects, these are clear and everything you have
here in front of you, very clear stipulated, there is no
approval by minister.

ADV PRETORIUS SC: Well, if you total those projects
referred to in paragraph 5.2, R130 million, that is the
amount you approved by your signature on the 16
November 2015.

20 **MINISTER MAHLOBO**: But do not read it that way. Do not
read it that way, why will you approve 130 million when the
ministry for projects is allocated 20? Read this document
properly, not in the eyes of the people who come and
testify here only. Here this what we call it in terms of the
PFMA and in terms of the Secret Services Special Account

Act. At a particular point there has to be an adjustment of budget depending whether the budget is adequate or not and that is allowed in terms of those two legislation and that affidavit, if this document, you want to read it selectively, you will actually mislead people. There are a number of programmes – there are programmes there that were not performing well, they requested reprioritisation and the reprioritisation, Chair, it does not say it was only meant for projects, there was a reprioritisation for the
10 entire budget of SSA and I am required by the law, the Secret Services Act that at a particular point when the recommendation comes to me, I look at the recommendation, I approve it. After I am approving it, remember on the Secret Services special account, that information even before you spend the money you must send the approval by the executing authority to the other executing authority, which is the Minister of Finance. Look at the date here, 16 November 2015, those are the times around adjustments when they are being made and the fact
20 that there is some kind of an insinuation in that document that we are approving a project is not actually what do you call it here, supported by facts and to suggest that the total amount for the projects was 130 like Mr Pretorius is suggesting, not true. Just check that table you are referring me to. There are a number of programmes, there

are a number of proposed budgets and then the total for all of them, this is what it means.

CHAIRPERSON: Are programmes as contemplated here within the environment of SSA part of projects all the time or can there be programmes that are not under projects?

MINISTER MAHLOBO: Well, it is very simple, when we use the word programmes there are programmes as defined by the Public Service Regulation. Any organisation in the PMFA, it has a programme structure and in each
10 programme 1, programme 2, programme 3, like the ministry, as an example, it falls under programme 1. There is domestic intelligence falling under what and under it there are sub programmes. This is what this approval is about. It has nothing to do ...[intervenes]

CHAIRPERSON: Yes but hang on, just focus on my question, is the position that in certain circumstances within the context of SSA, maybe of the whole public service but let us say SSA, is the position that programmes can sometimes be under projects and sometimes they can
20 be independent of projects?

MINISTER MAHLOBO: No, no, no, programmes are the structural arrangement.

CHAIRPERSON: Yes.

MINISTER MAHLOBO: In terms of the requirements by the Public Service Regulation that you must have a programme

structure.

CHAIRPERSON: Yes.

MINISTER MAHLOBO: And then it does not matter under what programme where a particular project can be implemented. That is my answer.

CHAIRPERSON: Is it a project that can be under a programme [inaudible – speaking simultaneously]

MINISTER MAHLOBO: Yes, it will be under a programme.

CHAIRPERSON: Oh, okay.

10 **MINISTER MAHLOBO:** The project does not supersede the programme.

CHAIRPERSON: Oh, so the project is – can be part of a programme but a programme cannot be part of a project.

MINISTER MAHLOBO: Ja.

CHAIRPERSON: Ja, okay, alright.

MINISTER MAHLOBO: Thank you, Chair.

CHAIRPERSON: Mr Pretorius, I am not sure whether your question was answered but you would know.

ADV PRETORIUS SC: Yes, there may be a
20 misunderstanding in relation to the question.

MINISTER MAHLOBO: No, there is no misunderstanding, as soon as ...[intervenes]

CHAIRPERSON: Hang on, hang on, Mr Mahlobo, let Mr Pretorius ...[intervenes]

ADV PRETORIUS SC: The I misunderstanding might be

on my part, Mr Mahlobo. If you go to paragraph 5.2.

MINISTER MAHLOBO: I am there.

ADV PRETORIUS SC: You will see four bullets there.

“Domestic intelligence R90 million.

Foreign intelligence R20 million

Minister’s projects, R20 million.

Total R130 million.”

As I understand this document, that amount of R130 million which includes R20 million under the head, as we read it,
10 Minister’s projects, is the amount approved by you on the 16 November 2015?

MINISTER MAHLOBO: I have put it on record that the reflection calling it Minister’s projects, it will have been used incorrectly and there is nothing supporting that because remember your first question was to say which projects? I am on record for you, minister does not.

ADV PRETORIUS SC: Okay.

MINISTER MAHLOBO: And the other view that you put in to say no, no, no but all this money was going to projects,
20 like these witnesses were trying to insinuate.

This document when it says Minister’s Project is fundamentally wrong, and it is something that I see here and is something that is not even a practice and it is not even documented that can say this is Minister’s Project but the whole submission Chair, do not lose the essence of the

submission.

The essence of the submission someone comes here because sometimes we must not beat up on the bush. Let us just go to the matter. Someone says no, no but it is the Minister decided to actually give special operations for budgets, that submission here is a proof that they gave R130million. The heading is clear, it is a secret services account at certain programs, needed resources.

And in my own affidavit, if you noticed Chair, that I
 10 am even saying that it is certain programming projects were actually over running budget. And I thought that I should be able to do that but I see what Mr Peters is referring to the naming as Minister's Project.

CHAIRPERSON: Yes, okay. You see Mr Mahlobo we will make - I know you want progress, I want progress, Mr Pretorius wants progress, everybody wants progress. I accept that when you answer certain questions, you may have to explain yourself but where you are able to answer briefly, and to the point, it helps, you know...[intervene]

20 **MINISTER MAHLOBO:** To do that one.

CHAIRPERSON: Ja, do that but when I say that, I do not want you to feel that where there is a need to explain something you are being suppressed, because that is not the case.

So let us all try Mr Pretorius, I was not sure

whether you had actually formulated your question to Mr Mahlobo when he responded. I know that you had said that in effect, if you put together those, the first three bullet points under 5.2 you get the total which is reflected in the fourth bullet point. But I am not sure whether you took it further and I thought you were going to take it further.

ADV PRETORIUS SC: I did as I understood it.

CHAIRPERSON: Ja.

10 **ADV PRETORIUS SC:** And I might not have understood Mr Mahlobo's previous answer, but that R130million was the amount approved by his signature on the last page of that doc but I think we are there at the moment.

CHAIRPERSON: Ja, can...[intervene]

ADV PRETORIUS SC: I may ask you to go to SSA1, page 453 please.

CHAIRPERSON: Before he does, he goes there Mr Pretorius may I ask this Mr Mahlobo, if you look at page 34 the same documents that we have been looking at, page 34
20 where your signature appears.

Can you see there is a line above your signature, and then the - then we see the words:

"130 M, approval."

Whose handwriting is that, 130 M approval?

MINISTER MAHLOBO: That is my handwriting and that

Chair, is in line with 5.2.

CHAIRPERSON: Yes, okay alright. And now, you - and then there is another 5.2, I see here on page 34 just above 130 M, 5.2:

“Has approved/not approved.”

And the words not approved have been crossed out. Did you cross them out or you cannot remember?

MINISTER MAHLOBO: Where you actually do not agree with the recommendation it is always crossed out but it, ja.

10 **CHAIRPERSON:** Yes, no, no, I understand the import I was just wanting to make sure that you crossed out not approved because you did not approve. You did - because you were approving.

MINISTER MAHLOBO: The one that is remaining Chair, is the one that remains.

CHAIRPERSON: It is the one that you were going along with, ja. Okay, now you have made the point that the Minister does not approve projects, okay. But you have said that round about this time when this document – when
20 you signed this document namely November 2015, would be the time for reprioritisation I think.

MINISTER MAHLOBO: It is normally in terms of the calendar of adjustment and so forth. They happen around September, October, November but it depends, it is not only that it is on a specific date.

CHAIRPERSON: Now you must help me because when I look at – when I look at this document, my understanding is that it sort approval for what was dealt with in the letter and that seems to me to be approval of a budget for projects. Now, are you saying that is not what the document is about?

MINISTER MAHLOBO: Read it, read the heading Chair. There is always a heading there it says:

“Approved for budget reprioritisation.”

10 **CHAIRPERSON:** Yes.

MINISTER MAHLOBO: If you want to reprioritise the budget, follow the Secret Services Act, there is a law and the most – the action for the utilisation on unexpended balance from the budget, blah, blah, blah, required by programs in the mid-year review. That is the heading, that is the purpose, self-explanation.

CHAIRPERSON: So are you saying that what you were approving was the reprioritisation...[intervene]

MINISTER MAHLOBO: Of the budget.

20 **CHAIRPERSON:** ...of the budgets?

MINISTER MAHLOBO: Because they cannot move - the authority to reprioritise the budget lies with me, in terms of the Secret Services Act with the concurrence of finance.

CHAIRPERSON: Yes.

MINISTER MAHLOBO: Until I do that nobody must touch

the money.

CHAIRPERSON: Yes, okay, Mr Pretorius.

ADV ADONISI: Chair, may I seek you indulgence and that of my colleague, Chair. As you have noted, when the witness was testifying that being my client that he would have – when referred to the bundle.

He will have said he has noted the document in reference to, but I have always been alive in the engagement with Advocate Wendell[?] and - but I just need
10 indulgence to check because I have got a document when we discovered – because maybe let me just say the bundle that now being referred we are assured that the confidentiality will be given at the hearing we do not have, so meaning myself and the client do not have.

CHAIRPERSON: Oh, you do not have?

ADV ADONISI: Ja, but however, I have throughout the process of preparations and as the evidence has been led saw that there is almost a similar document that I just want to check through the Chair, with the indulgence of my
20 colleague. That on why to you as you have been guided, and the paginated numbered pages 81 or so because on one, why, on 1, 2 or so which is the discovered predicament we have at page zero thirty-four we do have a similar document but I am just checking with my colleague, whether, is it the same document that you are now

referencing because it reads almost the same including what you have been canvassing now in evidence.

CHAIRPERSON: Yes.

ADV ADONISI: And approval - so I just want to check.

CHAIRPERSON: Ja, the document that we are talking about appears at least in terms of what I have here, in SSA bundle 1 and it starts at page three zero.

It is addressed to the Honourable Minister, Mr D Mahlobo, it is dated 4 November 2015. Is it the same
10 document?

ADV ADONISI: Ja.

CHAIRPERSON: You have the same document?

ADV ADONISI: I have the same document, what seems to be is not - maybe the pagination that has gone on some.

CHAIRPERSON: Oh, okay.

ADV ADONISI: But I now know why I am lost in term of – thank you Chair.

ADV ADONISI: Okay, alright, Mr Pretorius.

ADV PRETORIUS SC: As I understand your evidence, Mr
20 Mahlobo you ceased being Minister of State Security in October 2017, is that correct?

MINISTER MAHLOBO: Yes.

ADV PRETORIUS SC: Would you go to page 453, please.

MINISTER MAHLOBO: Of, under cover?

ADV PRETORIUS SC: Of SSA 01.

MINISTER MAHLOBO: Under cover what?

CHAIRPERSON: Oh, he wants you to tell him about A, D, C, D.

MINISTER MAHLOBO: Ja, that is what helps me.

CHAIRPERSON: That helps him.

ADV PRETORIUS SC: Well by the time we get there the alphabet has been exhausted. So it is...[intervene]

MINISTER MAHLOBO: Maybe you will help me.

ADV PRETORIUS SC: It is 3, divider 3.

10 **MINISTER MAHLOBO:** Remember the team that has brought the documents in the morning they might have packed it otherwise, but the A's, the B's, the C, the D they have, its annexure what?

CHAIRPERSON: Well, maybe Mr Pretorius...[intervene]

ADV PRETORIUS SC: It is divider 3, hard board divider 3, it is right there by your printer.

MINISTER MAHLOBO: Oh, three?

ADV PRETORIUS SC: Yes.

MINISTER MAHLOBO: Okay, thank you for doing that.

20 **ADV PRETORIUS SC:** And go please to page 453.

CHAIRPERSON: 453?

ADV PRETORIUS SC: Ja.

MINISTER MAHLOBO: 453?

CHAIRPERSON: Yes.

MINISTER MAHLOBO: Okay I am there.

ADV PRETORIUS SC: Right, now I would like to put to you certain passages that appear later in the document. To place this document on record, it is a letter addressed to the Director General SSA and certain other parties dated the 31st of May 2016. You see that?

MINISTER MAHLOBO: Yes, I see.

ADV PRETORIUS SC: It is a request for authorisation renewal of Cover Project Mayibuye and payment of expenditure related to Project Mayibuye from 1 April 2016
10 to 31 March 2017. Do you see that?

MINISTER MAHLOBO: Yes.

ADV PRETORIUS SC: If you go under the heading background and explanation mention is made and a description is given, a description is given of the Project Mayibuye. Do you see that?

MINISTER MAHLOBO: Yes.

ADV PRETORIUS SC: If you over the page to paragraph 3, financial implications. You will see there in the table nature of expense Project Mayibuye estimated amount
20 R54,120,000. Do you see that?

MINISTER MAHLOBO: Yes.

ADV PRETORIUS SC: On the next page, that is page 456 of SSA 01 you will see under the heading compiler signature of code name Darrell. Do you see that?

MINISTER MAHLOBO: Yes.

ADV PRETORIUS SC: And then underneath that you see recommended, not recommended is crossed out and the note as per instructions issued by the Minister and then there is a reference number. Do you see that?

MINISTER MAHLOBO: Yes, I see that.

ADV PRETORIUS SC: Do you know anything about any instructions you issued in relation to Project Mayibuye?

MINISTER MAHLOBO: I never issued an instruction and please note that if I had issued an instruction that had
10 financial implication, any executive instruction will comply with Section 64, Sub-section 64.1, 2 and 3 of the PFMA.

Instructions must be in writing - I am not actually – let me not waste time, no instruction was issued and if any person says there was an executive instruction, he will produce to you that has financial implication in terms of the PFMA Section 64.

ADV PRETORIUS SC: Underneath the words as per instruction issued by the Minister, Not entirely legible.

CHAIRPERSON: A date is given there on I think maybe
20 06/05/2016 that is how I see it. So in that handwritten part seems to read:

“As per instructions, or instructions issued by the Minister on 06/05/2016.”

MINISTER MAHLOBO: I see that.

CHAIRPERSON: Ja.

MINISTER MAHLOBO: And the answer is that if someone says there is an instruction from me on this date, that has financial implications and I am not aware of any such instruction, please ask them in terms of Section 64 of the PFMA to furnish the Commission.

ADV PRETORIUS SC: Perhaps that document still exist, if it does exist.

MINISTER MAHLOBO: Well, those who put it here they will have to help.

10 **ADV PRETORIUS SC:** Yes, and then if you go over the page to page 457.

MINISTER MAHLOBO: Four, five?

ADV PRETORIUS SC: Seven.

CHAIRPERSON: The next page.

ADV PRETORIUS SC: The next page.

MINISTER MAHLOBO: Okay.

ADV PRETORIUS SC: The first paragraph reads;

“Recommended and not recommended, has been crossed out.”

20 It seems that Matthew another pseudonym signed this on the 31st of May 2016. It reads:

“An amount required of 54 point, and I cannot read the rest, million for this project was not budgeted for in the current baseline allocation of FY16/17.”

I presume that is financial year 2016/2017.

“A request will be made to, now I cannot read the next word, funds from the retained earnings.”

Now I think that is excess funds from the retained earnings.

“The request for RE, I presume that is retained earnings, will have to be approved by the Minister after recommendation by the VP.”

MINISTER MAHLOBO: I see that.

ADV PRETORIUS SC: Right, and as I understand your
10 evidence, there would be nothing at all unusual untoward for you to approve the use of retained earnings.

MINISTER MAHLOBO: The law provides it because there is an Act retained earnings clearly define what are the conditions to do but in terms of this document it is their own conversation there. I am not even involved in that conversation.

ADV PRETORIUS SC: Beneath that is, what appears to be the signature of Dr BWJ Langer, Director Domestic Branch VP01 and his comment if I may put it on record is:

20 “Recommended based on Ministers express instruction and directed for payment to be made urgently. It is also based on the expectation that all conditions prescribed cover projects in line with ODO9.1 will be complied with by the end of June 20, and the rest is not legible.”

Do you have any comment in regard to, the references there to an express instruction for payment to be made?

MINISTER MAHLOBO: I have responded Chair, if someone says there is an instruction, let them give you in terms of Section 64.

ADV PRETORIUS SC: Did you ever issue an express instruction and directive for payment to be made urgently in respect of Project Mayibuye?

MINISTER MAHLOBO: I am saying Chair with due
10 respect, if there is an instruction issued to me, as required by the law, because I cannot ask people to do something outside the law. Let them put it here and then I will deal with it, but there is no instruction here.

ADV PRETORIUS SC: I did not follow the last part of your answer. Do you recall whether you issued any such instruction?

MINISTER MAHLOBO: Chair I have said if there is an instruction I have issued it has to be in writing and if anybody carries an instruction an executive directive or
20 instruction outside the law, I cannot be held liable for that. And if the instruction was issued and the instruction was illegal, the law is clear what we do, ultimately the matter must land with the National Treasury and the matter must land with Parliament, which is good.

CHAIRPERSON: And let us - I would like you to deal with

the issue much more directly. One, did you issue any written instruction?

MINISTER MAHLOBO: Chairperson, there is no instruction I issued.

CHAIRPERSON: Did you issue a verbal instruction?

MINISTER MAHLOBO: No instruction.

CHAIRPERSON: Okay, Mr Pretorius.

ADV PRETORIUS SC: Thank you, Chair. If you could just bear with me a moment.

10 **CHAIRPERSON:** Okay.

ADV PRETORIUS SC: Would you go to page 36 please, that is in divider letter D, SSA1 page 36. Do you see that document dated, it is a document dated 30 August 2016?

MINISTER MAHLOBO: Yes.

ADV PRETORIUS SC: It appears to be addressed to yourself, Minister for State Security Agency. Do you see that?

MINISTER MAHLOBO: Yes.

20 **ADV PRETORIUS SC:** If you would look at page, the last page 44 bundle SSA01. Is that your signature there?

MINISTER MAHLOBO: Yeah, that is my signature.

ADV PRETORIUS SC: Under the head approved?

MINISTER MAHLOBO: Yes.

ADV PRETORIUS SC: If, you can go back to paragraph 1, it reads:

“The purpose of this submission is to request the Director General to recommend to the Minister of State Security to approve the utilisation of unexpended balance to fund urgent refurbishment of infrastructure, provincial property acquisition and augment funding for Special Operations, covert operational projects for the financial year 2016/2017.”

Do you see that?

10 **MINISTER MAHLOBO**: Yes.

ADV PRETORIUS SC: Then on the second page of that document which is SSA01, 37 there is a heading in the table Project Wave. Do you see that?

MINISTER MAHLOBO: Page what?

ADV PRETORIUS SC: See on page 37.

MINISTER MAHLOBO: Okay, I see, yes I see.

ADV PRETORIUS SC: Project Wave it says:

20 “Objective of the project, Project Wave was specifically designed to intensify Special Investigations associated with CI/CE related cases as identified outside the South African borders, such investigation will be undertaken by the same personnel utilised in Project Construcão. The extent of the investigation is to be undertaken as per the client's request.”

And then there is a list in the next box of the table:

“Project activities and planned events, and the budget amount is R24million.”

Do you see that?

MINISTER MAHLOBO: Yes.

ADV PRETORIUS SC: Then over the page, there is another heading Project Construc ao and certain project activities are listed against six bullets in the next box and planned events a budget of R24million. Do you see that?

10 **MINISTER MAHLOBO:** Okay, yes.

ADV PRETORIUS SC: And then 3:

“Project Mayibuye, objective of the project, Project Mayibuye was specifically established to provide counterintelligence support that will enable to step up State authority and its organ of governance (justice, Parliament, provincial legislatures) against hostile behaviour or radical intents aimed at undermining the rule of law and governance in general.”

20 Do you see that?

MINISTER MAHLOBO: Yes.

ADV PRETORIUS SC: And then several project activities are listed, and the first:

“Is to create an agent network within identified State apparatus.”

Second bullet:

“Continuously provide early warning information to the Chief Directorate Special Operations Management serves to advise a client accordingly.”

Third bullet:

“Monitor movements and activities of identified targets in order to confirm, or refute the involvement of the FIS influencing such behaviour.

And fourthly:

10 “Assist to influence decisions and thinking ways within the target camp.”

You see that?

MINISTER MAHLOBO: Yes.

ADV PRETORIUS SC: The way it reads or qualify probably, or even possibly reads, is that the target camp would be the State authority and its organs of government, including justice, Parliament and provincial legislature. Do you agree or do you not agree?

MINISTER MAHLOBO: I do not agree with you; it is not
20 written here. It is your proposition.

ADV PRETORIUS SC: No, it is proposition I am putting to you as even a possible way of reading this, can you help us?

MINISTER MAHLOBO: I do not want to speculate, remember, when they do projects I am not the approval

authority to say this is a project plan how does it look like.

ADV PRETORIUS SC: So, you cannot speculate as to what is meant here, to help us?

MINISTER MAHLOBO: No.

ADV PRETORIUS SC: Alright. Then paragraph - in the table on page 39:

10 “Project Academia, objective of the project to neutralise threats aimed at disrupting institutions of higher learning, identifying, neutralise, and disrupt any confirmed hostile forces.”

Third bullet:

 “Recruit and place strategic assets within the student leadership of institutions of higher learning. We look for support any form of government initiative that address issues of learning within institutions of higher education.”

The project activities under Project Academia are:

20 “Continuous engagement with student leadership and other relevant stakeholders, monitoring and evaluation of any form of activities, bandwidth in institutions of higher education.”

And third bullet:

 “Initiate any form of educational lectures that will assist in advancing understanding of government educational policies and programs.”

And the budget for that is R8,867,100. Do you have any comment?

MINISTER MAHLOBO: Chair, let me help you, I am not going to comment on things I am on record right now that I am not part of the approval authority. These are projects and I will not actually have the project concept document. And Mr Pretorius does not try to get an answer out of a stone, this answer applies to all projects.

ADV PRETORIUS SC: Well, let us go to...[intervene]

10 **MINISTER MAHLOBO:** And secondly, I will not want you to comment and speculate on something that I was not privy to this project plan as per the approved document.

CHAIRPERSON: No, that is that is fine but Mr Pretorius will not necessarily know in advance in the gut which questions you will not be able to comment.

So he may put questions and then you are free to say I cannot comment on it, and then move on.

MINISTER MAHLOBO: But Chair by they are the same, because these are both projects.

20 **CHAIRPERSON:** Yes.

MINISTER MAHLOBO: And the difficulty I have, projects there is a clear mechanism that I have explained.

CHAIRPERSON: Let him go according to his plan, from your side you will be able to say look, I cannot comment, and then he can move on, okay continue.

ADV PRETORIUS SC: Do I understand the position correctly, then that, as appears from page 44, of SSA01 when you approved expenditure for the utilisation of unexpended balance to fund covert operational projects, you do not know what those projects are?

MINISTER MAHLOBO: Firstly the submission must not be read in part. The approval was for the utilisation of the unexpected balance to fund refurbishment of infrastructure, property acquisition and lastly, covert projects. And when
10 it comes to projects, and those project details, they are not in my page.

ADV PRETORIUS SC: I understand your answer but it does appear from this document at least that you appended your signature to a document which named allocated money to and described project activities for a number of projects which have been the subject matter of evidence before the Chair.

MINISTER MAHLOBO: Remember the approval - let me help, the approval in terms of the background, go to 2
20 point what – is it 2.1 where it speaks that if you want to reprioritise budgets and be able to take it from other programs to other programs, you have to get the Minister's authority, that is what it means. Let us not put it the other way around, it is self-explanatory as I was empowered by the law.

CHAIRPERSON: You say we should go to 2.1?

MINISTER MAHLOBO: Ja.

CHAIRPERSON: That is 2.1, I think at page 36, is that right?

MINISTER MAHLOBO: Yes, including even the purpose itself.

CHAIRPERSON: Well 2.1 say:

10 “The purpose of this submission is to request the
Director General to recommend to the Minister of
State Security to approve the utilisation of
unexpended balance to fund urgent refurbishment of
infrastructure, provincial property acquisition and
augment funding for special operations of covert
operational projects or the financial year
2016/2017.”

And then 2.1 which is under background:

20 “In the last, is that medium term budget MTEF
cycles 2015/2016. MTEF budget process is the
agency led by its accounting officer and through
MTC processes engage National Treasury to
appraise it about department medium term funding
priorities. In essence, these priorities are informed
by MTSF outcomes, Ministers action plan arising
from 2015/2016 budget, both speech and strategic
medium.”

Okay.

MINISTER MAHLOBO: ...[speaking in vernacular]
because it becomes more useful, what is the law, law that
you not touch these monies under a certain condition that
is what is the essence of the submission.

CHAIRPERSON: Mr Pretorius.

ADV PRETORIUS SC: Let us just continue the description
of the projects contained in this document that you signed
and approved. Mr Mahlobo, the next project is Project
10 Khusela, that is project number five on page 39:

“The objective of the project includes devising
strategies to counter the designs and plans of FIS
and other forces seeking to undermine the
constitutional order in South Africa.”

You have referred to that type of objective in your
evidence, but the project activities include:

“Mobilisation, staging of rallies, media influence,
and infiltrating organised youth formation.”

Do you see that?

20 **MINISTER MAHLOBO:** Yes, I see do.

ADV PRETORIUS SC: Budget, R25,180,000.

MINISTER MAHLOBO: Yes.

ADV PRETORIUS SC: And finally there is on page 40,
Project Tin Roof.

MINISTER MAHLOBO: Yes, I do.

ADV PRETORIUS SC: The project activity there is:

“The project is informed by a situational analysis that highlights a range of security threats confronting the client environment and related institutions.”

Would it be reasonable to infer that the client there is the former President?

MINISTER MAHLOBO: I will, I will not disclose that and in this document, there is no such disclosure.

10 **ADV PRETORIUS SC:** Alright, and the budget for that Project Tin Roof is R8million, simply then what I need to put to you is when you signed this disapproval, did you read the document?

MINISTER MAHLOBO: Chairperson, the document is self-explanatory, there is nowhere in this document that says we are approving projects.

CHAIRPERSON: Yes, but hang on Mr Mahlobo the question is did you read the document?

MINISTER MAHLOBO: I read the document.

20 **CHAIRPERSON:** Okay.

MINISTER MAHLOBO: But also the line also want to create an impression, let us not lose - I want to put it for my own record for you. The purpose of the approval is not amounting to approval of projects but there you have a description, what these things mean.

CHAIRPERSON: Okay, Mr Pretorius.

ADV PRETORIUS SC: The approval on page 44 is the approval for the expenditure of money on covert operational projects. You see that?

MINISTER MAHLOBO: No but on page 44 the approval is written there on top:

“Is approval of the utilisation of the unexpended balance to fund refurbishment of infrastructure, property acquisition and covert operational project.”

10 **ADV PRETORIUS SC:** Yes, well, I just left out what...[intervene]

MINISTER MAHLOBO: No, let us not leave it out because we are using one document. I will have a difficulty Chair with your permission. Where is - you know what, you go and select one point, let us read the whole thing - what is the approval as on record.

CHAIRPERSON: That is a fair point.

ADV PRETORIUS SC: I am perfectly happy to do that Mr Mahlobo. The approval that you gave on the 2nd of
20 September 2016 under your signature in a document whose purpose was to:

“Request the Director General to recommend to the Minister of State Security to approve the utilisation of unexpended balance to fund urgent refurbishment of infrastructure provincial property acquisition and

augment funding for Special Operations covert projects for the financial year 2016/2017.”

MINISTER MAHLOBO: Where you reading that?

ADV PRETORIUS SC: Paragraph 1 on page 36.

MINISTER MAHLOBO: Okay, page 36, sub-paragraph what?

ADV PRETORIUS SC: Yes, paragraph 1. I simply want to put...[intervene]

MINISTER MAHLOBO: No, no I just want to be sure, are
10 you referring to 1.1?

ADV PRETORIUS SC: 1.1.

MINISTER MAHLOBO: There is no word, yes that is the purpose clearly defined.

ADV PRETORIUS SC: Sorry, there is no word?

MINISTER MAHLOBO: I am saying that is the purpose as you see there it is clearly defined what was this meant for.

ADV PRETORIUS SC: Yes, sure. What I am putting to you is that the covert operational project referred to in paragraph 1 and referred to above your signature on page
20 44 are the projects outlined in four pages of this document.

MINISTER MAHLOBO: Yeah, that is - those are the one that you see them outlined.

ADV PRETORIUS SC: Chair, I am aware that they are at the counsel here, and I need to save it I suppose...[intervene]

CHAIRPERSON: Yes, no...[intervene]

ADV PRETORIUS SC: It is obviously in your hands, but we will be a while still unless we break now.

CHAIRPERSON: I think we should take a short adjournment and then I could have a discussion in chambers with yourself and the Evidence Leader in the next work stream and counsel for Mr Mahlobo I think should come as well so that we talk about how we are going to deal with the situation. As well as the counsel for
10 Mr Gigaba or if he is here and for Mr Gigaba if they are here.

So we will take a short adjournment of 15 minutes and then we will resume after that and I will indicate what will happen. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Maybe I should just allow Mr Myburgh to say something to me about the work stream that was supposed to start with the application.

20 **ADV MYBURGH SC:** Yes thank you Chairperson. This relates to the application SEQ18 of 2021 Mr Gigaba's application. I have spoken to his Counsel Mr Solomon. Mr Solomon has informed me that he is not available at seven o'clock tonight to move the application.

CHAIRPERSON: Well okay thank you, thank you. What was

going to – for the plan for today was that I was going to hear Mr Mahlobo's evidence and when he finished I was going to hear an application by Mr Gigaba for certain relief in relation to Ms Noma Gigaba's evidence and thereafter depending on the outcome of that application I could hear Ms Gigaba's evidence.

Due to the technical – the problems of technology that happened this morning we have not been able to finish Mr Mahlobo's evidence within the time that we thought we
10 would finish it. The arrangement that has been made is that we are not going to interrupt Mr Mahlobo's evidence we will continue and try and finish his evidence and the hearing of Ms Gigaba's evidence is adjourned to Tuesday this coming week and will take place during the evening session so all concerned should be here at four o'clock we might be able to start at four or we might be able to start at five.

I understand that Mr Gigaba's Counsel is not able to move his application this evening. What they will do about that application I leave it to them but the evidence or hearing
20 of Ms Gigaba's evidence is scheduled for Tuesday evening if - they will decide and make an approach if they wish to in terms of their application but I will not strike it off as such maybe I should just adjourn it although it could be permissible but I will adjourn it without fixing any 00:04:09. Okay.

ADV MYBURGH SC: Thank you. May we be excused?

CHAIRPERSON: Yes.

ADV MYBURGH SC: Thank you.

CHAIRPERSON: Yes you are excused. Thank you. Counsel for Mr Mahlobo was not able to be with us during the discussion but I understood what happened but I think what we discussed has not prejudiced him or his time in any way.

ADV ADONISI: Yes thank you Chair may – let me take this opportunity to apologise I misunderstood the fifteen minutes
10 or whether it was outside that.

CHAIRPERSON: Oh okay.

ADV ADONISI: Yes but I have been briefed by my colleagues.

CHAIRPERSON: Ja okay.

ADV ADONISI: Yes (inaudible).

CHAIRPERSON: Alright. Thank you. Okay we – we will continue then – we are effectively continuing into the evening to try and finish. Okay alright. Mr Pretorius.

ADV PRETORIUS SC: Thank you Chair. Mr Mahlobo would
20 you please go to...

CHAIRPERSON: Oh I am sorry Mr Pretorius I forgot to mention something for the benefit of the public. I think the commission had announced a few days ago or maybe yesterday that Ms Lynne Brown former Minister of Public Enterprises was also going to give evidence today. It seems

that that could not happen because of certain challenges. So from her side I think she was not aware that she was requested for today so another date should be arranged. Okay alright.

ADV PRETORIUS SC: Thank you Chair. Mr Mahlobo would you look at Bundle SSA2 please? It is the other one – yes.

MINISTER MAHLOBO: I am going to break my arm – this thing is heavy.

CHAIRPERSON: Mr Mahlobo you are – are you learning to
10 refer to Bundles?

MINISTER MAHLOBO: Remember where I come from Bab Zondo they use different names. There is always a 00:06:47 for every place where we work.

CHAIRPERSON: Oh.

MINISTER MAHLOBO: It is like when I said assets it does not mean the financial assets you know.

CHAIRPERSON: Ja.

MINISTER MAHLOBO: I am on Bundle 02 now.

CHAIRPERSON: Hm.

20 **ADV PRETORIUS SC:** If you would go please to page 431 which is behind the divider YY12. If I might just place on record Chair whilst Mr Mahlobo is finding the page.

MINISTER MAHLOBO: I have got it now.

ADV PRETORIUS SC: You have. All the affidavits of Dorothy in our possession are in fact in the bundles before

you now and before Minister Mahlobo and with me. Page 431 is an affidavit of Dorothy in response to a request for an affidavit issued by the commission.

MINISTER MAHLOBO: 431 ne?

ADV PRETORIUS SC: Yes.

CHAIRPERSON: You said something about this affidavit Mr Pretorius and I am not sure if 00:08:31.

ADV PRETORIUS SC: It was issued or attested to and given to the commission in response to a request.

10 **CHAIRPERSON:** Yes.

ADV PRETORIUS SC: Made to her by the commission.

CHAIRPERSON: And I see it is dated 10 April 2019 it was deposed to on the 10 (inaudible).

ADV PRETORIUS SC: Page 431 of SSA02.

CHAIRPERSON: Okay no I am sorry I think I was looking at the last page of a different affidavit.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: The last page of her affidavit is what page?

20 **ADV PRETORIUS SC:** Page ...

CHAIRPERSON: 445?

ADV PRETORIUS SC: 445 yes.

CHAIRPERSON: Oh okay.

ADV PRETORIUS SC: 2nd of March 2021.

CHAIRPERSON: Yes. No, no I was looking at the last page

of another affidavit which I thought was the last page of her affidavit. Okay.

ADV PRETORIUS SC: Could you go please to page 441 Mr Mahlobo in fact we should start at page 440. 440 has several reference to documents and they are all tabulated or referenced to the documents is tabulated and at the bottom of page 440 is a reference to M19. A submission dated 29 November 2016 requesting authorisation to pay the related expenses for Project Mayibuye for the month of November
10 2016 and comments by Dorothy:

“This is one of the instances where I took R4.51 million in cash to Minister Mahlobo at his residence. I do not know how the invoice from Nyvasha was generated for the settlement or how it was provided by Lilly. It appears that I initially took R470 000.00 and then the balance later as sometimes there was insufficient cash available.”

Do you have any comment?

20 **MINISTER MAHLOBO:** Well Chairperson this is the part that we spoke earlier on if you recall and you asked Mr Pretorius, my team and the team for Dorothy to have that short discussion and I suppose to start to – to want me to start to engage on this document it is going to be problematic until we have actually sorted that particular point. That is my –

that is my comment.

And – but without actually trying to stop the interaction but you have made a ruling that there is a process because I have made a statement and the Counsel – Honour his learned – my learned friend here on behalf of Dorothy there are certain things you have said. Let them conclude that thing and if this will be the only outstanding matter in particular with Dorothy when we are able to clarify the existence or the non-existence as I was saying of that
10 other document.

I will be able to find a way to come either in a form of an affidavit or what – a supplementary one to clarify for you. But at this stage I think we are going to be having this up and downs on a matter that is on the table right now. That is my request.

ADV PRETORIUS SC: Chair if there is a relief whether correct or not correct that there is another affidavit which is relevant to what is contained in the affidavits and transcripts that are now wanted to put to Mr Mahlobo then in fairness he
20 should

- a. Be reassured that such an affidavit exists or does not exist and
- b. If it does exist to be entitled to refer to it insofar as it contradicts this evidence.

MINISTER MAHLOBO: But I will...

CHAIRPERSON: Hang on, hang on Mr Mahlobo let Mr Pretorius finish.

MINISTER MAHLOBO: Thank you.

ADV PRETORIUS SC: So it may be necessary for that exercise which we trust and hope will reassure Minister Mahlobo that there is no such affidavit but he should have an opportunity to reassure himself of that.

MINISTER MAHLOBO: Well I would also ask this Chair with your permission the comment that monies were – were sent
10 to my house that is not true and there is a process. You see one of the things we must deal with is that it is to create a different organisation just where it may be needed. And if there is any person who alleges that I took money and against the policy directive and the control measures that I have referred to in the Ministerial Payment Directive and in terms of the 00:15:05 they will give the specificity of the time, the date and the documentary evidence that this is where Minister Mahlobo actually gave the – take – took this money.

20 Because the system is clear those who go and take money and those who receive money they have to be able to actually those internal controls are there. You receive it, you sign for it, both who gave it and then the – and even that one and the – in any instance where those particular details are given here to say to this is the date, this is the proof that

you did it I will be able to help you.

CHAIRPERSON: But the – but what – part of what you have said is you say there was no such money that was brought to your residence.

MINISTER MAHLOBO: Yes,

CHAIRPERSON: Ja.

MINISTER MAHLOBO: And if there is such the person who alleges that they will give you the time, the date and there is always a document that those who receive it and those who
10 deliver it they all sign.

CHAIRPERSON: Mr Pretorius.

ADV PRETORIUS SC: So are you saying there is a procedure that is followed when cash is delivered to your residence?

MINISTER MAHLOBO: I have never said that way. I said any person who takes money from the agency the Ministerial Payment Directive was the process the OD is still. You cannot take cash without internal controls.

ADV PRETORIUS SC: Well I think the whole point of the
20 evidence is that there were no internal controls.

CHAIRPERSON: Oh Mr Pretorius let him finish.

MINISTER MAHLOBO: No I am on record Chair. There is no money given to me.

CHAIRPERSON: The controls that you talking about are controls that relate to taking money within SSA for purposes

of SSA's operations.

MINISTER MAHLOBO: It does not even matter whether it is operations.

CHAIRPERSON: Ja to take money.

MINISTER MAHLOBO: For every acquisition you made there are clear rules and processes and there is also an accountability mechanism and internal controls.

CHAIRPERSON: Mr Pretorius.

ADV PRETORIUS SC: If you could just bear with me a
10 moment please Chair. You will go please to another part of
the affidavit which is on page 437 of SSA2 please. There
the text reads:

“Hence the amount of R1.5 million expenses
related to SONA that is the State of Nation
Address I was deployed to Cape Town for the
State of Nation Address event. During my
deployment I was instructed by Mr Fraser to
receive a bag of money from one security
employer of SSA and to take the same to
20 Minister Mahlobo. I met the SSA member
and collected the bag of money as was
instructed from him. I then handed the
money to the Minister Mahlobo personally at
his official residence. I cannot recall if he
signed for it or not nor how the TA was

settled.”

Do you have any comment in relation to that?

MINISTER MAHLOBO: The affidavit is clear there is no evidence to say the money was delivered. There is no evidence to say the TA was signed or not. When you present a TA the TA is a temporary advance.

CHAIRPERSON: Yes but you see Mr Mahlobo do not place too much evidence or too much weight on whether there was a document or not that was signed because money can be
10 given without the person receiving it signing to say I have received it. So when you answer these I think it is important for you to deal with the allegation head on.

MINISTER MAHLOBO: I am dealing with it Chair.

CHAIRPERSON: Ja. Ja. So

MINISTER MAHLOBO: My answer ...

CHAIRPERSON: There was no – nothing in writing but was it – did you receive such money?

MINISTER MAHLOBO: There is no money I received.

CHAIRPERSON: Okay alright.

20 **ADV ADONISI:** Chair may I also get an opportunity on your clarity or what the direction Chair.

CHAIRPERSON: Yes.

ADV ADONISI: But I think you my – you might have to have listened to him because the question and how the statement is read it says:

“I am not sure whether the TA was signed or not.”

CHAIRPERSON: Oh yes.

ADV ADONISI: So it brings about whether or not there was a TA.

CHAIRPERSON: Yes.

ADV ADONISI: Which my client is now trying to explain the issue of the signing or not.

CHAIRPERSON: Ja.

10 **ADV ADONISI:** It is not placing too much weight I think the Chair should note.

CHAIRPERSON: Yes. No, no, no I think that may be fair enough. But I think what I wanted to emphasise to him was when there is an allegation that he was given money he should not think his answer is adequate if he says where is the receipt where I signed? He should be able to say if he says I did not receive any money he say I did not receive any money and he can go on if he wants to - to say whoever says he gave me money let them produce a receipt. I just
20 want to be (talking over one another.)

ADV ADONISI: We are helpful Chair the answer is no.

CHAIRPERSON: Ja, ja okay. Thank you. Mr Pretorius.

ADV PRETORIUS SC: And just to refer to M19 and I am going to ask you to take the other bundle – apologise SSA1 at page 504.

MINISTER MAHLOBO: It is M9?

ADV PRETORIUS SC: SSA1.

MINISTER MAHLOBO: And then on the cover?

ADV PRETORIUS SC: Do not worry about M19 for the moment it is SSA1 at page 504.

MINISTER MAHLOBO: Yes but you are spoiling our tea party.

CHAIRPERSON: I think I will help you Mr Mahlobo.

MINISTER MAHLOBO: He is spoiling our tea party now.

10 **CHAIRPERSON:** I will – I will help you because I understand what helps you – 504 you said Mr Pretorius?

ADV VUMBI: Chair.

CHAIRPERSON: 504 Mr...

ADV PRETORIUS SC: Behind Divider – behind Divider 3.

CHAIRPERSON: Ja. Somewhere close towards the – then end of that page – close to – to Divider 4. Yes.

ADV VUMBI: Thank you Chair. Chair I am having serious difficulties here.

CHAIRPERSON: Yes.

20 **ADV VUMBI:** Firstly we are dealing with my client which we found out on the last hours that my client will be dealt with today and we had...

CHAIRPERSON: Would be?

ADV VUMBI: Will be part of the – the proceedings of today. And then we had to take it upon ourselves to contact the

commission so that we must present. So I think right now Mr Pretorius is dealing with my client but I do not have a bundle or anything that I need to refer to right now. I am just working with the little knowledge that I have from consultation and from whatever that I can relate to which is in my file but I do not have a bundle from the commission and they are dealing with my client and I do not think that is...

CHAIRPERSON: And you have never received it before?

10 **ADV VUMBI:** No not even that they will be dealing with my client today was notified to us. We had to go an extra mile because of the media statement that came out that Minister will be appearing here today. So for some reason we felt that it means also my client might be implicated or somehow.

CHAIRPERSON: Ja it may be that you might not need to have the whole bundle but it seems certainly you ought to have any document that may refer to your client in one way or another. Mr Pretorius have you got something to say?

ADV PRETORIUS SC: Yes a 3.3 Notice was sent with
20 excerpts of this evidence on the 19th of March 2021. It was sent I think electronically but I am not sure about whether it was hard copy or electronically.

CHAIRPERSON: Was it sent to ...

ADV PRETORIUS SC: Yes the attorneys for Mahlobo.

CHAIRPERSON: It was sent to – was it sent to Ms – to

Dorothy's legal representatives?

ADV PRETORIUS SC: Oh not to Dorothy's.

CHAIRPERSON: Ja that – that is his concern. He says the evidence of Mr Mahlobo does affect his client Dorothy and there are references to bundles but he has not been given bundles – any bundle and I was saying well he was not given this bundle I think he says. I said to him it may be that he did not need to be given the whole bundle but certainly any affidavit or document that may have – may affect his client
10 should have been given.

ADV PRETORIUS SC: Well if you could just bear with me a moment.

CHAIRPERSON: Hm.

ADV PRETORIUS SC: Please.

CHAIRPERSON: If – if by any chance there is a spare bundle that can be lent to him to say the least we could continue while he uses that and then later on whatever the problem is can be sorted out.

ADV PRETORIUS SC: Yes I am – for the life of me I do not
20 understand why Dorothy's Counsel or attorney should not have the affidavit. I would have assumed that he did. I am not aware of the delivery.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: And passage of documents.

CHAIRPERSON: Ja. Ja. Maybe – should we take an

adjournment so that it is addressed because I think his concern is he is not able to follow the witness' evidence properly because he does not have documents that he should have.

ADV VUMBI: Chair if I can make this simple. I am communicating with the legal team here.

CHAIRPERSON: Yes.

ADV VUMBI: As they are talking.

CHAIRPERSON: Yes.

10 **ADV VUMBI:** If they can just maybe – because I think she is saying it is the affidavit that my client did provide to them.

CHAIRPERSON: Ja.

ADV VUMBI: So if it is that which they are going to be dealing with only.

CHAIRPERSON: Yes.

ADV VUMBI: I can just have that affidavit.

CHAIRPERSON: Yes.

ADV VUMBI: They can give me that document.

CHAIRPERSON: Ja.

20 **ADV VUMBI:** And then if it is the only thing that they will be touching on then I do not think there is any problem I can always just refer to the affidavit.

CHAIRPERSON: Yes. Okay.

ADV PRETORIUS SC: Chair I would like to sort this out.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: For the convenience of my learned friend.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: But I must point out that this affidavit came from his office.

CHAIRPERSON: Yes. Well it may well be that – well it – specify again what date the affidavit is so he can check in his file if he has got it.

ADV VUMBI: May I come with a suggestion?

10 **CHAIRPERSON:** Yes.

ADV VUMBI: And I think that is the proposition that the witness was trying to say.

CHAIRPERSON: Ja.

ADV VUMBI: Not 00:27:24 at this juncture. I think initially you wanted to propose that we take a five minutes break and I will propose that because...

CHAIRPERSON: Yes.

ADV VUMBI: It will – it will enhance the efficiency of this.

CHAIRPERSON: Ja.

20 **ADV VUMBI:** Hence we will also have to discuss all the affidavits that have been filed.

CHAIRPERSON: Ja.

ADV VUMBI: I think that is – at this juncture that we need to do that.

CHAIRPERSON: Ja.

ADV VUMBI: Thank you.

CHAIRPERSON: No maybe let us take a ten minutes break – five minutes might be too short. Mr Pretorius.

ADV PRETORIUS SC: No we have – we can try and provide a spare copy.

CHAIRPERSON: You have provided a spare copy.

ADV PRETORIUS SC: We do not have spare copies. These affidavit emanate from the attorneys for – for Dorothy.

CHAIRPERSON: Have you got a copy?

10 **ADV VUMBI:** Ja I have got a copy Chair and I understand the – it seems like they are not getting my point. My point is not that we did not submit the affidavit.

CHAIRPERSON: Ja.

ADV VUMBI: My point is what they are touching on right now I should have made – been made aware that we will dealing with his affidavit today so that I can be able to follow. So I am just getting a surprise as and when Mr Pretorius is talking.

CHAIRPERSON: Oh.

20 **ADV VUMBI:** So I am saying if my client will be part of the proceedings today I should have been notified and given only those parts of which they are going to be dealing with which includes my client not that we did not submit the affidavit. We did submit the affidavit but what you are dealing with I must be made aware. I think that is how the

commission operates.

CHAIRPERSON: Okay no I think let us take a ten minutes break. You can have a discussion with Mr Pretorius and Mr Pretorius can have a discussion with you to make sure that going forward when we resume there is clarity on your part as to which affidavits will be referred to that may affect your client.

ADV VUMBI: Correct.

CHAIRPERSON: So that when we – when we resume then
10 the way forward is clear.

ADV VUMBI: That is correct Chair.

CHAIRPERSON: Okay. Let us adjourn for ten minutes. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Are we able to proceed?

ADV PRETORIUS SC: Yes, I am instructed that or I am told that we can proceed. That the thought that there was
20 a contradictory affidavit has also been sorted out but I will get proper instructions and placed them before you ...[intervenes]

CHAIRPERSON: Okay. No, that is fine.

ADV PRETORIUS SC: ...on record. It appears that it rested in a possible misreading but I do not want to half

the submission to you.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: I will put the whole – but all those issues related to the affidavits, even the missing affidavit.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: ...resolve that... [Speaker not clear]

CHAIRPERSON: Okay alright.

ADV PRETORIUS SC: But Mr Mahlobo, would you go to
10 SSA-1 at 505? The only reason I put this document before
is the document request for authorisation for funds signed
by Dorothy on page 508 for funds for Project Mayibuye in
the sum of R 4 510 000,00. I want to put it before you if
you wish to comment on it. Only if you want.

MINISTER MAHLOBO: I have no comment.

ADV PRETORIUS SC: And then, on page – if I can ask
you, please, to go to SSA-2 again?

CHAIRPERSON: You spoke away from your mic,
Mr Pretorius.

20 **ADV PRETORIUS SC:** If I can ask you to go to SSA-2
again, page 441?

MINISTER MAHLOBO: Four hundred and...?

ADV PRETORIUS SC: 41.

CHAIRPERSON: 441?

ADV PRETORIUS SC: 441. After the divider YY-12. You

had before you. I would just like to refer you to paragraph 13 there, 13.1.

CHAIRPERSON: And it is Bundle 2?

ADV PRETORIUS SC: Bundle 2, Chair.

CHAIRPERSON: Are we back ...[intervenes]

ADV PRETORIUS SC: Yes, it is 13 ...[intervenes]

CHAIRPERSON: ...Ms Dorothy's affidavit?

ADV PRETORIUS SC: Yes, Chair. Page 441, 13.1. The affidavit reads:

10 "I confirm that I have on three occasions
 withdrew R 4.5 million by instruction of
 Mr Darryl to hand the money over to
 Mr Mahlobo..."

Do you have any comment?

MINISTER MAHLOBO: 3-18.1-39?

CHAIRPERSON: Have you got the page Mr Mahlobo, page 441?

MINISTER MAHLOBO: No, no. I am there. It is sub-paragraph 13.

20 **CHAIRPERSON:** Yes.

MINISTER MAHLOBO: Where my name is referred to.

CHAIRPERSON: Yes, yes.

MINISTER MAHLOBO: And my answer. It is a denial.

CHAIRPERSON: Okay alright. Well, I guess you cannot deny that Mr Darryl gave instructions but what you can

deny is that money was handed over to you.

MINISTER MAHLOBO: Thank you.

CHAIRPERSON: Ja, okay.

ADV PRETORIUS SC: Then if I can ask you, please, to go to SSA-2, page 460?

MINISTER MAHLOBO: Yes, I am there.

ADV PRETORIUS SC: This is an affidavit of Dorothy in response to 3.3. Notice issued in relation to the evidence of Lloyd Mhlanga.

10 **MINISTER MAHLOBO**: Yes, I can see.

ADV PRETORIUS SC: It does say in paragraph 2.2:

“I have never told Mr Mhlanga that I have given the alleged cash withdrawals to Mr Mahlobo...”

But she does go over the page to say the following and I am going to read on page 461 and 462, paragraphs 2.3 to 2.2.1:

“In absence of schedules of the cash withdrawals of R 4.5 million, I am only able to recall having done so on three occasions...”

20

MINISTER MAHLOBO: What is the number, again?

ADV PRETORIUS SC: You have it? Page 461 of 2.

MINISTER MAHLOBO: No, no. Yes, the subparagraph.

ADV PRETORIUS SC: Paragraph 2.3.

MINISTER MAHLOBO: 2.3.

CHAIRPERSON: Right-hand top.

ADV PRETORIUS SC: And I am going to read these paragraphs and then you can comment.

CHAIRPERSON: Right at the top. Can you see ...[intervenes]

MINISTER MAHLOBO: No, no. I am onboard. I see them.

CHAIRPERSON: Oh.

MINISTER MAHLOBO: And I have given on the other
10 page.

CHAIRPERSON: Oh.

MINISTER MAHLOBO: If he can just refer to the numbers, then I will respond.

CHAIRPERSON: H'm.

ADV PRETORIUS SC: Alright. 2.4:

“At all material times, I made the temporal advance in my name.

2.5 The documents for settlement and preparation for settlement of each temporal
20 advance was done my colleague, known as Lilly, in the State Capture Commission.

2.6 I would sign off - it should read - the request for temporal advancement in my name. They are prepared by Lilly and also signed off, the settlement documents in my name that are

prepared by Lilly.

2.7 I would then go to the finance section with Lilly and the cashier will count the money in front of me and Lilly.

2.8 Lilly always brought the bag where the money would be packed by myself and Lilly.

2.9 The money would then be taken to the official residence in Waterkloof of the former Minister Mahlobo.

10

2.10 On the first occasion I delivered it alone, on the second and third occasions I was accompanied by Lilly.

2.11 I got involved in the cash withdrawals because I was told by Mr Darryl that I should do so because I am acting in his position and he used to do the same and take money to former Minister Mahlobo.

2.12 I was acting in the position of Mr Darryl because he was acting in another senior position.

20

2.13 I was made to inherit all that he used to do and continue to do it.

2.14 I was specifically instructed by Darryl to agree that my name be used and also to

collect and deliver to Minister Mahlobo.

2.15 At no stage did Darryl or Mr Mahlobo informed me of the purpose and objective of the withdrawals and the delivery of cash.

2.16 At no stage did Mr Mahlobo ask me to make the temporal advance a clause(?).

2.17 At no stage did Darryl of Minister Mahlobo informed (I am reading literally) me of the objective of the objective and ultimate destination of the cash I delivered.

2.18 As an Intelligence Officer, one of the cornerstone values of Intelligence is always “work on a basis of need to know” principle.

2.19 The environment in which I was working is in his covert operations and the officers were unknown to many SSA members.

2.20 On delivery of the money, I would be ushered by Minister Mahlobo to his home office where I would remove the money and count it.

2.21 Having counted it in front of him and having satisfied himself that it is R 4.5 million, I would leave the money and the suitcase with him...”

Do you have a comment on that evidence?

MINISTER MAHLOBO: Well, where specifically my name is mentioned, my answer, it is a no.

ADV PRETORIUS SC: Dorothy also conducted an interview with the investigations under Operation Veza, the Internal SSA Investigation. The transcript together with certain other affidavits of Dorothy were supplied to the Commission by the SSA under certain conditions.

The conditions were that they could not be made
10 public but could be used in evidence. I interpreted that to mean that – and I have instructed that that means, if that to be used in evidence, Dorothy can obviously have sight of them as can Dorothy's counsel but they should not go on the website in due course.

The transcript of Dorothy's evidence with the SSA investigators has been declassified and it is in the paper bundle before you, the plastic bundle and it is in...

MINISTER MAHLOBO: You know. Sorry, can I interject here?

20 **ADV PRETORIUS SC:** Sorry, you have a plastic folder Chair.

CHAIRPERSON: Yes.

ADV ADONISI: Chair, I think we have made the point and we came grudgingly on this issue of discovery and prejudice recorded. I think it has been cleared.

CHAIRPERSON: H'm?

ADV ADONISI: We have tried in attempted to, at least, clarity to ourselves as the counsel the administrative issue how it happened that my client had to testify on a deliberation(?), new evidence that...

Chair, it has also now become apparent that, his other affidavits and/or documents, which now also relates to us and these are not in our possession. These are not even discovered and that is worrisome because we have
10 had on several occasions.

And you will see if you go through the affidavit that has been placed with the constraints that we have raised that it cannot be correct Chair that we are subjected to this and in particular when my learned colleagues have in their possession, whether it is extra stipulations or otherwise.

At least for the relevant – where it is relevant to us, it should have been provided. Worse when it has now since testified. So we have had engagements until the
20 early hours of the morning. We were promised that in actual fact there would be some documents that are classified, not into the way my learned colleague is proposing now before you.

That we will be provided with copies for the relevance of us following the proceedings this morning and

that is how we accepted and subjected ourselves to it even because we wanted to but it has become apparent that there is – and this is probably where the issues of concealment and otherwise but I will use it in context...

That there are further documents and affidavits that mention us and deposed by this relevant person that are not in our possession and that is worrisome because as to why they are not in our possession, in particular, when they have made reference.

10 And we have been given 3.3. Notice in particular with this witness and the extracts that are relevant to us but it seems like there is over and above what has met our eye in deliberation that has been discovered and I do not want to cast suspicions by doing so but it is clear that there is more.

 The worse now, even records. And you will have noted, Chair, and you will see as we progress, there is also correspondence to the effect, be it on difference of opinion of how we interpreted discovery but one thing is,
20 essentially is that, we griped and we have written to the SSA itself on declassify and providing information for us to be able to submit in either in any election of whether oral or...

 That has not been done until we are here. So. And this is a situation and that will be an injustice.

Although we are not in court, Chair, but we still have to respect the framework of the legal, the framework that is of principles of discovering, principles of ...[indistinct] and otherwise. That is my submission Chair.

CHAIRPERSON: Yes.

ADV ADONISI: I am not trying to be obstructive.

CHAIRPERSON: Ja.

ADV ADONISI: And you have realised that we have kept quiet and my client has also said that: Look, to the extent
10 that I would participate with – despite the fact that there were late discoveries.

CHAIRPERSON: H'm.

ADV ADONISI: But it cannot correct that my learned colleague now has declassified information and it is relevant to their own understanding as stipulated what they think is relevant but now when you are leading evidence, it seems like now these other paragraphs that they were not provided to us of the same document even.

CHAIRPERSON: H'm. Okay.

20 **MINISTER MAHLOBO:** Maybe Chair I can also add ...[intervenes]

CHAIRPERSON: Hang on Mr Mahlobo. Hang on Mr Mahlobo. Your counsel has raised a certain point and I would like to hear what Mr Pretorius has to say about that point before we go further. Mr Pretorius.

ADV PRETORIUS SC: Yes, these are the documents that were declassified on the 25th of March this year and were declassified on the condition that they should not be given to anyone else but could be used in evidence.

CHAIRPERSON: H'm?

ADV PRETORIUS SC: And it is on that basis that they have been used. They were all – these documents were supplied to Mr Mahlobo and Mr Mahlobo's attorneys past few days. That is the factual position.

10 **CHAIRPERSON:** H'm. Well, I do not know whether you have that mister ...[intervenes]

MINISTER MAHLOBO: I want to come in, Chair.

CHAIRPERSON: Well, hang on. Let me first hear from your counsel.

MINISTER MAHLOBO: Chair ...[intervenes]

CHAIRPERSON: ...represents you Mr Mahlobo. Let me hear him.

ADV ADONISI: Chair, I can see my learned colleague is constraint to accept and to an extent he is, with respect, to
20 say that they have not discovered and this declassification has happened on the 25th of March.

CHAIRPERSON: Ja, let me just make sure that you and I are on the same page in terms of what we understand him to say. My understanding of what he is saying is that the documents to which he wants to refer the witness were

supplied to you on the 25th of March. That is what my – I understand him to say. Is that your understanding as well?

ADV ADONISI: No, Chair.

CHAIRPERSON: That is not your understanding?

ADV ADONISI: No – yes ...[intervenes]

CHAIRPERSON: Before you proceed, let me clarify with Mr Pretorius. Is my understanding ...[intervenes]

ADV PRETORIUS SC: Sorry, I have been corrected Chair.

CHAIRPERSON: H'm? You have been in – corrected?

10 **ADV PRETORIUS SC**: These documents originated from the SSA. They were documents given to the SSA or testified to before the SSA in terms and in relation to the transcript and all classified. We requested those documents and we were given then under condition that they were not to be given to anyone. That was the condition. But could be used in evidence.

Now, obviously, if it can be used in evidence, we can disclose them, deal with them in evidence. That is my interpretation and that is the instruction I have been given.

20 But the Legal Team, apparently prior to that, did not give them. So these documents were not given over the last few days. They were given now.

MINISTER MAHLOBO: Chair, I want to come in because it is my reputation here.

CHAIRPERSON: H'm?

MINISTER MAHLOBO: You see, Chairperson. I repeat. I have utmost respect.

CHAIRPERSON: H'm?

MINISTER MAHLOBO: I never wanted to deal with some of the things happening in your office for a particular cause.

CHAIRPERSON: H'm?

MINISTER MAHLOBO: This document was brought by the investigators this morning. Even my lawyer does not have
10 this document. They brought this document in the morning.

CHAIRPERSON: H'm.

MINISTER MAHLOBO: What I have done, Chair, to assist the Commission. The issues referred to on 3.3, I have furnished the affidavit. I will not comment on this document that was given this morning and I have not read it.

But those guys, when they came this morning, I know it is coming from Project Veza. These documents that I have allowed myself, even under constraint, to speak
20 to, they were sent, even this bundle. Late hours, yesterday in the evening. I went through this document until two a.m.

CHAIRPERSON: H'm, h'm.

MINISTER MAHLOBO: That this one that he says from SSA, it has been declassified. I was not given but the

instance of the accusation made about me, not the consideration of other people, I have responded to that issue, like I am dealing with the question of the... But I am not, Chair, going to get into the document that was given this morning.

CHAIRPERSON: No, no, no. You may remember – well, one, let me deal with the – what your counsel raised now. I think it is common cause now that the documents were not given to you. I think that is common cause. Okay.

10 Just to go to deal with what you have just said Mr Mahlobo.

You will recall that I have said before lunch, at some stage, that any documents that you may have received late, we would – I would be happy if you say: These ones I am able to deal with them even if I have received them late.

But if there are others where you say you are not able to deal with them or answer questions on them because you have received them late, that would be acceptable.

20 **MINISTER MAHLOBO:** If we are assisting us(?), Chair. These document written Exhibit YY-13 ...[intervenes]

CHAIRPERSON: Ja, h'm?

MINISTER MAHLOBO: ...of an internal discussion between people in SSA. I was not given to and I am not going to deal with it. And also on record, Chair, because

one of the things that we must not allow is to create perception because ...[indistinct] strong. In politics, they mean a lot.

CHAIRPERSON: H'm, h'm.

MINISTER MAHLOBO: The people of SSA they came here. Ms K who was running the project, they have told you this Project Veza is incomplete. Someone is bringing a conversation of other people of an incomplete document.

CHAIRPERSON: H'm.

10 **MINISTER MAHLOBO:** But to save time and reserving my right, I am not going to comment on Exhibit YY-13. And I am prepared, Chair, despite the constraints I have been subject to, because I am of the view there was no malice from the Secretariat. I will deal with issues on Bundle 1 and Bundle 2.

CHAIRPERSON: H'm.

MINISTER MAHLOBO: Okay.

CHAIRPERSON: Mister ...[intervenes]

ADV PRETORIUS SC: Well, we can always recall
20 Mr Mahlobo's notice.

CHAIRPERSON: Yes. No, no I am satisfied.

ADV PRETORIUS SC: Until he has had a chance to look at the document.

CHAIRPERSON: Ja, ja. Let him not be questioned on the document that he has not had chance to look at. Okay

alright. I think that covers your concern?

ADV ADONISI: Ja, Chair, your intelligence has given me light(?), because otherwise, there is a secondary argument to this but I think your summary has been embrative and we will think – we take queue from that.

CHAIRPERSON: Okay alright. Thank you, Mr Pretorius.

ADV PRETORIUS SC: I must just place on record, Chair, that it is not as if the State Security Agency opened their doors to the Commission and allowed us to obtain any
10 documents we wish. It has been a continuous investigative process that has taken place over a long period of time. So that it explains the fact that not everything was obtained at one time and certain requests ...[intervenes]

MINISTER MAHLOBO: For that ...[intervenes]

ADV PRETORIUS SC: ...or a request had to be made ...[intervenes]

CHAIRPERSON: Hang on, Mr Mahlobo.

ADV PRETORIUS SC: ...over a period of time.

CHAIRPERSON: Yes.

20 **MINISTER MAHLOBO:** Thank you, Chair. But let it also be on record, this one so that South Africans know what are we dealing with. SSA, the acting Director General then, has a lot of correspondence from my legal team, requesting documentation. These correspondence was also copied to your offices and I hope you had sight of

them. Not a document has been given to date by them.

And I do not want to deal with the motive that they continued to politicise and weaponize using this platform. That is why I am happy with your ruling but where I am uncomfortable, like I have told you about the exhibit that they have just given.

CHAIRPERSON: Ja.

MINISTER MAHLOBO: I am not venturing. But that is why the Commission has been caused problems.

10 **CHAIRPERSON:** H'm?

MINISTER MAHLOBO: We are even in court now because other people that are implicated by people in SSA, they are refusing to give them documents.

CHAIRPERSON: H'm, h'm.

MINISTER MAHLOBO: And the instruction that was given by His Excellency when the then President and our current President was that we should do whatever it is to support the Commission.

CHAIRPERSON: H'm, h'm.

20 **MINISTER MAHLOBO:** But there are certain institutions and SSA in particular, not the whole institution, the then Acting Director General, who is deliberately ensuring that we do not receive documents so that the objective that we wanted to paint here can actually fly. But I am happy. You have called us here now. We are able to have the right to

reply to certain things.

CHAIRPERSON: H'm.

MINISTER MAHLOBO: But let us just put it on record.

CHAIRPERSON: Ja. No, no that is fine. Well, I am not aware whether I have seen or the correspondence you may have addressed to or your legal team may have addressed to SSA and copied the Commission. It might have gone to the Secretariat and the Legal Team because such matters only comes to me when it is really necessary.

10 But I do know that in terms of the Terms of Reference of this Commission that we have published in 2018, there was a specific provision saying all organs of state must cooperate with this Commission and all organs of state need to bear that in mind. Mr Pretorius.

ADV PRETORIUS SC: Thank you, Chair. If you would go, please, on the understanding that we can put to you statements or affidavits in Bundle SSA-1 and SSA-2 but not the additional bundle to SSA-2, page 145, please.

MINISTER MAHLOBO: [No audible reply]

20 **ADV PRETORIUS SC:** Yes, Bundle 2, SSA-2, 145.

MINISTER MAHLOBO: [No audible reply]

ADV PRETORIUS SC: YY-5.

MINISTER MAHLOBO: I am there.

ADV PRETORIUS SC: This the affidavit of one Darryl and I would like to take you to his statement at paragraph 50.

MINISTER MAHLOBO: Paragraph 15?

ADV PRETORIUS SC: 50, five zero on page 160. At the time, I understand, that Darryl was the General Manager of the CDSO but if you go to paragraph 50 under the heading, Minister Mahlobo's involvement in Operational Activities. Paragraph 50 reads:

10 "An added challenge I faced as GM of the CDSO was that Minister Mahlobo was closely involved in the operational activities of the CDSO.

Given Minister Mahlobo's personal interest and direct involvement in CDSO operations, I did not feel like I could question his priorities and instructions.

Minister Mahlobo had given me a very warm welcome to the SSA and had made it clear that he wanted to work closely with me.

20 I became concerned about this direct involvement in the CDSO as I did not consider it appropriate for the political head of the agency to be involved in operational activities. In particular, Minister Mahlobo boasted about having his own sources and would report directly to President Zuma..."

Paragraph 51 reads:

“I raised my concerns with Minister Mahlobo on more than one occasion, warning him that he could be relaying unreliable intelligence to the President as this information has not been verified with formal SSA channels.

I felt that the Minister was overly friendly for the reason that he had hoped to ensure my cooperation and my facilitating his active involvement in CDSO operations.

10 Being wary of this, however, I tried to distance myself from Minister Mahlobo...”

Do you have any comment?

MINISTER MAHLOBO: These statements are false and I deny them.

ADV PRETORIUS SC: Paragraphs 80 to 82 on page 168. We will come back to this affidavit in another context, later. Paragraph 80 in page 168 reads under the heading, Cash Delivered to Minister Mahlobo:

20 “I became aware that Minister Mahlobo would request money from the CDSO for his own projects although I did not know what these projects were.

This did not sit well with me as I did not think the Minister should be handling cash from the CDSO...”

Paragraph 81:

“There was one occasion where I was required to deliver cash to Minister Mahlobo.

I was aware that SSA members, such as Frank, were drawing large amounts of cash on a monthly basis.

I wanted to establish what the money was for.

I became aware that Frank had collected cash from the SSA headquarters.

10 So I asked him on his return to come to my office and explain to me what the money was for.

I asked him what amount of cash was contained in the suitcase he had with him and who the intended recipient was for a project and he proceeded to divide the money into various groupings, counting out the bundles on the table indicating how much was to be allocated to each operation on the project.

20 After he had allocated the money to each operation, I noted that a certain amount of money was left over, although I cannot recall the exact amount I subsequently put the outstanding money in the safe in my office.

I presume that Frank told Minister Mahlobo

about the surplus money as I subsequently received a call from the minister, requesting the money as he had required it for the ANC woman's league. On Minister Mahlobo's instruction I subsequently handed this money to his chief of staff, Jay who was in the company of [indistinct] at the OR Tambo airport. I did not make them sign any acknowledgement for the receipt of the funds, because this was at Minister Mahlobo's instruction."

Do you have any comment in that regard?

MINISTER MAHLOBO: Well, on 80 I was not involved in projects as we spoke earlier on, on those day to day. It is in my affidavit, I will not be able to refer you to. On 81, on the first paragraph, I deny that he came to deliver cash as he is stating there.

On 82, I denied that I gave him the instruction to go to the airport and give the money to the ANC women's league.

ADV ADONISI SC: I do not want to interrupt as I would do, but as I normally say Chair, it is to protect the rights of my client. We have made a qualified affidavit. I think it is prudent of me now to say that this individual affidavit, despite the fact that my client has already somehow

commented, this is a person who has not testified once.

We, if you have reference to paragraph 50 of our affidavit, we deal briefly with it to say we cannot at this stage deal extensively with the expert of statement ...[intervenes]

CHAIRPERSON: I am sorry, your voice is going down. Not at this stage ...[intervenes]

ADV ADONISI SC: I was told to take of this mic.

CHAIRPERSON: Ja.

10 **ADV ADONISI SC:** I have been exposed before Chair, so that is why ...[intervenes]

CHAIRPERSON: As long as I can hear because obviously it is important that I should hear what you say.

ADV ADONISI SC: Okay. Chair, I was merely making a point that we should not for the record that this individual despite my client because he has already commented on some, that we deal specifically because we have already qualified our, paragraph 50, if you were to be directed, we cannot deal extensively with the extracts and statements of
20 people that, who have not testified.

But in view of the fact that the notice and the rule says you can comment or otherwise you have tried to an extent, unlimited. But there is also a great concern of this particular paragraph or affidavit Chair. You will see, and I will understand the ...[intervenes]

CHAIRPERSON: Well, it may be so that we can dispose of some of the issues. Let us start with the first one. The mere fact that a witness has not yet testified, would not be a ground to say the witness cannot be questioned on that. so if there is already an affidavit in the possession of the commission, even if that person has not been, has not testified, it can be put to the witness to say so and so who has not testified or who would not be testifying, but he has signed an affidavit and this is what he says about you,
10 what do you have to say.

ADV ADONISI SC: Yes, correct Chair and I take wisdom from the Chair.

CHAIRPERSON: Yes, yes.

ADV ADONISI SC: However, I have other further legal arguments to seek your guidance. Maybe let me put it that way. The discovery of these documents, you will see that the very same affidavit that is being read out to the witness, I just unfortunately cannot locate with the pagination that was done.

20 **CHAIRPERSON:** Yes.

ADV ADONISI SC: But I am taking it from the discovered notice. You will see that it is not even signed.

CHAIRPERSON: The page I am looking at, the page I am looking at is initialled in terms of pages, so I will have to go to the end of the ...[intervenes]

ADV ADONISI SC: Maybe just to guide you Chair, because the numbers at the bottom will remain.

CHAIRPERSON: Ja.

ADV ADONISI SC: Despite the pagination that we use in this commission.

CHAIRPERSON: Ja.

ADV ADONISI SC: It is page 46 where the signature of the deponent had to appear. If you look at the number at the bottom.

10 **CHAIRPERSON:** Okay. My understanding ...[intervenes]

ADV ADONISI SC: Yes.

CHAIRPERSON: You will see that the name Barry Roux appears there, which would be a student pseudonym name. My understanding is that the, if you put in the signature there, the signature might reveal the identity of the person. So then they put just the pseudonym name.

So for all intents and purposes, it is taken to be deposed to.

20 **ADV ADONISI SC:** Yes, thank you Chair for that and hence I stood up. It was not objecting, it is just to seek clarity.

CHAIRPERSON: Yes, yes.

ADV ADONISI SC: Not only that Chair, the last point if I may. If one has regard to the whole affidavit you will see that the font changes.

CHAIRPERSON: Okay, just to complete what I
...[intervenes]

ADV ADONISI SC: If one has regard to the whole affidavit
...[intervenes]

CHAIRPERSON: I am sorry, I am sorry. Mr Adonisi, just to
complete the point I was making. You will see at page 191,
that is the next page where the commissioner of oaths has
signed, that part of what he certifies, is that the deponent
has signed.

10 So just to complete that point but you were onto
another point.

ADV ADONISI SC: Correct Chair.

CHAIRPERSON: Ja.

ADV ADONISI SC: Thanks, and hence I said Chair I then,
I understand the difficulty of extrapolating and all that
Chair, because then you will be tampering with the but I
need to protect my client to not to comment to things that
are not proper.

20 Chair, one of the things that I have noted with this
affidavit probably because they had to extract on it, the
font changes. You will see if I were to guide you to
paragraph 32 for instance, which I in the document that I
am using, is page 11 Chairperson.

 You will see if we were to compare it, quickly
glancing Chair with paragraph 50 that the fonts are

different. Moving on to the highlighted version. So I am not sure whether Chair will be technically acute then to guide me on that one, what will be the discrepancy and how does that happen to a document.

CHAIRPERSON: Well, I would say that as far as the facts that there might be a different font from one page to another, or from certain page onwards, maybe you might just wish to place that on record, what you make of it. You can decide later on.

10 **ADV ADONISI SC:** Thank you Chair, thank you for the indulgence.

CHAIRPERSON: Okay, alright. Mr Pretorius?

ADV PRETORIUS: I see that each page is initialled but I do not know what my learned friend wishes to make of a change in font, but be that as it may, if I may continue please to the next affidavit. That is Exhibit YY7, in Bundle SSA2.

MINISTER MAHLOBO: It is still the same one we are using?

20 **CHAIRPERSON:** Ja, I think it is the same affidavit on which he was.

MINISTER MAHLOBO: Okay, where there is zero to 300.

ADV PRETORIUS: Page 300, yes.

CHAIRPERSON: You are still on bundle 2.

ADV PRETORIUS: This appears to be the affidavit of a

person with the pseudonym Steven. If I could refer you please to paragraphs 48 to 51. I will give you the page now.

MINISTER MAHLOBO: I am there.

CHAIRPERSON: What page Mr Pretorius?

ADV PRETORIUS: 310. Three one zero, SSA2.

CHAIRPERSON: Okay.

MINISTER MAHLOBO: You said 48 to 51?

ADV PRETORIUS: Yes. I confirm the typing is not very
10 good.

CHAIRPERSON: 48 looks like 4B I guess.

ADV PRETORIUS: It looks like 4B. 49, 50 looks like SO
and 51 looks like S1.

MINISTER MAHLOBO: I see the content.

ADV PRETORIUS: But paragraph 4B or 48 reads, under
the heading further information regarding the payment of
judges by Minister Mahlobo from SSA covert funds. 48
reads:

20 “I was subsequently informed by the director of
the domestic branch of the SSA, Doctor Bheki
Langa, and also saw records that Doctor
Langa had authorised the drawing of 12 million
rand cash from the special operations budget.
This money Doctor Langa said was packed into
paper bags and was received by SSA special

operator Frank for a delivery to Minister Mahlobo for payment to judges to influence the judiciary.”

Now I must emphasise right away that this is a hearsay statement, but I would ask you to comment on that.

MINISTER MAHLOBO: Well Chair, I did comment on this statement earlier on if you recall and they claim some of these malicious statement that have been made and
10 putting the judiciary in disrepute. My affidavit is clear. No payment, no direction was actually ever made to judges and I have actually indicated to you Chair and I am very serious, this is the pack.

You know [indistinct], they are found outside but they are also found in intelligence. Where certain people even give one information, and even lies. This is the same person, I am on record, who actually accused certain politician and the head of a chapter 9 institution and he continues to do so here.

20 At the end of this affidavit, on the 3.3 that you sent me, this same person agrees that he has no knowledge of this thing and I am repeating it with heavy heart, because not all men and women intelligence are good. There are many of them who are working hard to keep our country safe, but this one, those actions I hope the leadership at a

particular point will deal with it.

But the reality as 48 says, there was no money delivered to me and as it speaks about me on 59, and I deny, it is 50 of these numbers. It is 50, I also deny it, including 51.

ADV PRETORIUS: I am not going to put the other paragraphs to you because there is one name, pseudonym that should have been changed and if necessary I will put in more detail to you at a later stage, but I would first like
10 to have the names in paragraph 51 changed Chair.

MINISTER MAHLOBO: Yes, I do see it and it is the very same omission that we made earlier on when I was testifying at home and I would gently accept that Mr Pretorius and your team including our team will do that.

ADV PRETORIUS: Alright.

MINISTER MAHLOBO: Then next paragraph I would like to refer you to, is paragraph 12 of the same affidavit.

MINISTER MAHLOBO: Paragraph 12?

ADV PRETORIUS: 12.

20 **MINISTER MAHLOBO:** I am there, Chair.

ADV PRETORIUS: This deals with the state of nation address in 2015 and from paragraph 12 to paragraph 32, the circumstances which are public knowledge because they have been dealt with in several court cases, giving the background to the state of nation address are deal with

but I would like to take you to, unless you want to go into the background I would like to take you to paragraph 23.

MINISTER MAHLOBO: No, I do not want to do that.

ADV PRETORIUS: “Soon after 12 February 2015 and arising out of the public outcry and the legal challenge by the South African National Editor’s Forum, SANEF, over the incident the then minister of the SSA, Mr David Mahlobo, Minister Mahlobo, instructed me to meet with him at his official residence. My driver drove me to his residence and remained in the car, while I went inside the house. On entry into the house I went through to the lounge where I found Minister Mahlobo and no one else was present at the time.”

CHAIRPERSON: Hang on Mr Pretorius, I think I lost you somewhere. What paragraph are you on now?

ADV PRETORIUS: 23.

CHAIRPERSON: 23?

20 **ADV PRETORIUS:** Page 305 of SSA2.

CHAIRPERSON: Okay, I have got it.

ADV PRETORIUS: Paragraph 24 reads:

“On entry into the house I went through to the lounge where I found Minister Mahlobo. No one else was present at the time.”

25:

“Minister Mahlobo explained that I was there to discuss the response to the legal challenge by SANEF to the jamming of the signal at SONA. He went on to tell me that two judges would be joining us who worked for him as operatives and would assist in influencing the case against the SSA brought by SANEF. Furthermore I was told that although they were attached to the Gauteng bench, they would be able to influence the court in Cape Town where the matter was to be heard.”

26:

“I enjoyed a cordial relationship with Minister Mahlobo and knew that he ran intelligence operations and paid operatives. I knew this, because this was an open secret at SSA and was often a topic of discussion amongst SSA managers. Furthermore, as already seen below, this is an issue I discussed personally with Minister Mahlobo. I knew from discussions at SSA amongst managers, that he had demanded and received a budget from SSA to allow him to pay his operatives. It was of course completely irregular for a minister to

run SSA operations as I had previously spoken to him about this and I had previously spoken to him about this. Minister Mahlobo [indistinct] regard to what I said about this, however and he simply replied that he knew far more about running operations than me. I knew that the DG during this period, Ambassador Kudjoe, had come under pressure from Minister Mahlobo for a budget and that she had eventually agreed to provide this. I knew too from talks at SSA that the chief financial officer Matthew had succumbed to this political pressure and routinely paid out large amounts of cash with no regard to SSA financial prescript. Minister Mahlobo spoke openly to me about the operations he ran. It was not out of the ordinary for him to receive large amounts of cash from SSA for the special operations project he ran. This was well known at SSA.”

Paragraph 27:

“Shortly after my arrival two other men arrived and joined us in the lounge. I believe these men to be the two judges that the minister had told me about. The one was a black man and

the other a white man.”

Paragraph 28:

10 “The black judge who was introduced as Mr Ngwenya wore khaki shorts, while the white judge was dressed smart casual with long khaki pants. The white man was balding, although he was introduced, I cannot recall his name. Both appeared respectable middle aged men. I did not note any other particular features of the men. Ngwenya is a Zulu surname, however Mr Ngwenya spoke in an accent that sounded as if he came from one of the provinces in the north of South Africa rather than being a Zulu. Being Zulu myself I was not convinced judging from his accent that Mr Ngwenya was actually Zulu or that Ngwenya was his correct surname. A conversation then occurred between the two judges and Minister Mahlobo. I was present

20 during this conversation and participated in explaining the circumstances of the jamming case, having been placed in parliament. Minister Mahlobo expressly instructed the judges to take steps to influence the judges who were to hear the jamming case, to render

a favourable finding for the minister. The white judge seemed uncomfortable about the directness of the conversation and appeared hesitant to participate in the conversation, while the black judge seemed at ease with the situation and engaged Minister Mahlobo in the discussion.”

Paragraph 30 reads:

10 “I was told at the meeting that an advocate who was a senior counsel, had already been appointed to represent SSA but that there was a concern about the ability of this advocate. It was decided that an additional senior counsel should be appointed by the state attorney. Ultimately the minister as the fourth respondent had separate counsel. Advocate F van Zyl SC and DJ Jacobs SC who were briefed by the state attorney. The first two
20 third respondents were the speaker of the national assembly, the Chairperson of the national Council of provinces and the secretary to parliament and they were all represented by Advocate Jeremy Gauntlet SC.”

Paragraph 31:

“I was instructed to travel to Cape Town and

remain in attendance to brief counsel on every aspect of the jamming device and to give sound reasons as to why it was deployed.”

32:

“Having received my instructions, I departed from the meeting.”

Do you have any comment?

MINISTER MAHLOBO: Chairperson, you will have to assist us here, before I comment Mr Pretorius, whether you
10 want to keep us long because these things you are reading, they are not part of the Rule 3.3 notice. They are extracts. I am going to comment, but if we go this route Chair, with respect there are specific things.

I will comment on this one, but I will want us to find a more productive way because I was not given the full affidavit but the extracts, because here the just of the matter is that this person alleges that I introduced him to judges, and the answer is no.

I never introduced him to judges and I never issued
20 any instruction or by any directive that the judges must be paid, and it is an important issue that we are clarifying for the nation. So that these kind of people do not come here, when you hear someone say no, no, no his relationship went bad and so forth.

I am not here to do that. I am more of a leader to

get into that level, but let me help you Chair so that we can disperse with this matter, as I have denied this thing. I am not saying I am denying a meeting or what because I cannot recall.

If you want to go to that part. Go to paragraph 33 and 34, under SSA 02, 307. This same guide Chair, he cannot even say who are these people and this is the kind of an evidence that must be presented to the nation and create innuendos on a hard fought constitutional
10 democracy we fought.

I will not undermine it and I will never be party to that, where judges are actually insulted. This guy on his own words, he says he will not be in the position to do that, even despite the operation that they are running with Mr Jaftha, the then acting DG, just to try to prove their weaponisation, that is the word they use here.

Weaponisation and politicisation. They are trying to find a judge to make a scapegoat. Even if one day they can come to you or anybody and insult that judge, because
20 now I even have an idea which judge are they trying to actually insult, when an affidavit is written that he has no kind of a recollection.

I will help that particular judge, because you will actually even have to do those method of telephone extrapolations and so forth, but these are some of the kind

of people. This one the main issue I actually made an instruction.

I introduce judges, answer is no. I instructed them to actually bribe judges or pay judges, the answer is no and the own affidavit of this person, self-explanatory. Thank you.

CHAIRPERSON: Okay. Yes, Mr Pretorius?

ADV PRETORIUS: Apologies Chair, I am just looking at the 3.3 notice sent to Mr Mahlobo and it does include the
10 passages that I am referring to.

CHAIRPERSON: It does or it does not?

ADV PRETORIUS: It does.

CHAIRPERSON: Okay, but as I ...[intervenes]

ADV PRETORIUS: For the sake of complete, I am sorry Chair.

CHAIRPERSON: As I indicated, where Mr Mahlobo needs more time to look at documents that he has not looked at, I am sure that we will make sure that when he is ready, he can address them.

20 **MINISTER MAHLOBO:** This one Chair, I am dispersing with this one.

CHAIRPERSON: No, no I understand that. I am just saying in general because you made the point and Mr Pretorius is responding to say those documents where you say you have not had time to look at, and you are not able

to deal with, arrangements will be made for ...[intervenes]

MINISTER MAHLOBO: [Vernacular – 00:25:24]

CHAIRPERSON: Ja, that is right ja, but otherwise where you are able to respond, that is fine. Okay, Mr Pretorius.

ADV PRETORIUS: Thank you Chair. Just from our own point of view, these are quite serious allegations and therefore obviously any time that is required ...[intervenes]

CHAIRPERSON: Ja, well I think ...[intervenes]

ADV PRETORIUS: In addition to that Chair, my learned
10 friend I might point out to him, has the ability to re-examine ...[intervenes]

CHAIRPERSON: Yes. No, no that is fine, but I am ... I just want to say that it is important that whatever allegations are being made about judges that this commission while on the one hand not necessarily wanting to elevate anything that does not deserve to be elevated, on the other hand should not be seen not to look into those allegations.

ADV PRETORIUS: Yes.

20 **CHAIRPERSON:** Because I have already been accused of sweeping under the carpet allegations of corruption by judges. So that evidence or allegations that were made here, I have already been accused of sweeping those under the carpet.

But for what it is worth, if there is any sector of

society that I would really want us to make sure if the allegations and the substance that we look at certainly would be those against judges, because it is so important that the integrity of the judiciary is not impacted adversely, unnecessarily, but I accept that also when there may be people who for their own reasons throw around allegations that have no substance, one also has to be alive to that.

But certainly there will be no attempt by me or this commission to say A, you are saying that about judges, we
 10 will sweep it under the carpet. That will not happen. Anyway ...[intervenes]

ADV PRETORIUS: One way or the other Chair, and I am sure Mr Mahlobo would agree.

MINISTER MAHLOBO: No, this is very profound. You know certain actions we do either by omission or commission. We have a security risk to this democracy we enjoy and this thing I refuted with the content it deserve. That is why I was actually even, sometimes I have a feeling well lawyers are lawyers, you studied your own profession,
 20 I studied mine, you need to follow certain things.

But you have something self-explanatory at the end. You know what, I do not have evidence and I was hurt because you know, you actually was involved when I took my oath the last time and you sit here this man is taking an oath with me here.

Probably he thinks I am in his pay roll. No, they can criticise judges like any other person but it should not be an easy thing to make inferences without proof. Well, judges and all of us, we are mere mortal. We do certain things.

That is why there are balancing checks. That is why we are having that particular structure and chain.

CHAIRPERSON: Ja.

MINISTER MAHLOBO: And I am happy for public interest,
10 on this specific matter. I am very clear on this specific matter. No introduction, no instruction and I am just saying please be on alert because intelligence is good but it can also be dangerous.

And people who know how to play around depending on issues of, you know certain people are paranoid. If you hear something about you, you become paranoid. Intelligence must be evidence based.

CHAIRPERSON: No, that is fine but sir, just for the sake of completeness about this, the one thing which the nation
20 must be reminded of is that on a number of occasions the Chief Justice has gone public to say if anybody has evidence of any wrongdoing or corruption on the part of any judge they must come forward and to the best of my knowledge nobody has come forward with evidence other than what I have heard here and various witnesses

including you, Mr Mahlobo, have said what you think of some of these allegations and I believe I have also said the same thing to say, you know, it is unacceptable for people to be making all kinds of allegations about judges and when they are invited to come forward with evidence, they do not come forward, they do not want to be subjected to questioning and cross-examination to see whether what they are talking about is true but they keep on making allegations away from fora where their allegations can be
 10 tested so it is very important. The leadership of the judiciary has been very clear over a long time that anybody who has got evidence of any corruption or any wrongdoing on the part of judges must come forward. There are structures that are there. They can go to the police, they can go to the Judicial Conduct Committee but as far as I know, I do not know of any case where evidence has been placed before those structures. Okay, let us continue.

ADV PRETORIUS SC: For the sake of completeness, Mr Mahlobo, you have referred to it in passing, paragraphs 33
 20 and 34, the last two paragraphs that deal with the topic. 33 reads:

“Some three years later when discussing this incident with Mr Loyiso Jafta, the present Acting DG of the SSA encouraged me to look at photographs of judges that appeared on the internet to see if I was

able to identify the two judges I had met at Minister Mahlobo's home in 2015. I must point out that in 2015 I did not take particular note of the two judges that I met. I was in their company for a short period only, about fifteen minutes, and did not make a point of memorising their facial and other features."

34:

"Despite this I carried out an internet search for the images of South African judges but was unable to find a photograph that closely resembled either the white or the black judge that I met. Having done this exercise I now know that I am not in a position to reliably identify either of the judges."

MINISTER MAHLOBO: I have dealt with that, Mr Pretorius, but very interesting that you should do as an observation, if you read 33 and 34 and take into account Mr Jafta's testimony, of another allegation despite this affidavit, Chair, I have circumstantial evidence of a particular judge. These things are serious and they must not be done in our name, people must bring this information and I hope you will not allow them to get away and I am happy that you are clarifying the position of the judiciary as headed by His Excellency, the Chief Justice Mogoeng-Mogoeng.

ADV PRETORIUS SC: In the same affidavit at page 310

of SSA 2, the creation of a trade union to rival AMCU is dealt with, A-M-C-U.

CHAIRPERSON: You did not put on your mic.

MINISTER MAHLOBO: [Speaking in the vernacular]
Okay, I am there, Mr Pretorius, from page 52. We can proceed.

ADV PRETORIUS SC: Paragraph 52 reads:

“I recall that during 2015 I was called to meet with Minister Mahlobo on at least three other occasions.
10 I am not able to place these meetings in the correct chronological order with any certainty but they all occurred during 2015, neither am I able to say with confidence whether they occurred before or after the meeting with the judges which I have described above.”

53 reads:

“The one meeting which took place at the minister’s home and was attended by the minister, Daryl and myself concerned a
20 person by the name of Yokani Mondl Gadine(?) whose wife Ms Nesewe Gadini(?) worked as a lawyer in the office of the ...[intervenes]

MINISTER MAHLOBO: Chairperson, can I ...[intervenes]

ADV PRETORIUS SC: “She is now deceased.”

MINISTER MAHLOBO: Chairperson – just a sec, Mr Pretorius, you by omission or commission, I have a very serious problem with this affidavit now especially when Mr Pretorius is reading. One, if these people worked for intelligence, these people that have been mentioned – let me finish it, there is a very problematic issue, you cannot – you cannot at any stage – I know it is not your affidavit, Mr Pretorius, because certain people decided to do their job to say declassification and classification. Now we are
10 being made unintentionally to speak about people's names. You always respect that cardinal principle and this that is actually appearing here is a problem and but I also do not want to fall into a trap just to disclose indirectly or directly any secret entrusted to me in terms of the oath you gave me. But [speaking in the vernacular] it does not get to be done because I am seeking from the point of vantage(?) I know certain names and I know their status whether what is their role, they should have actually done certain things but you do not do it. Probably uBaba Pretorius just going
20 forward, he can refer to us, probably omit certain names. It is the biggest risk that while I am trained on this thing, uBaba Zondo, I do not want to accuse at a particular point.

CHAIRPERSON: Well, my understanding from what Mr Pretorius said, I think, when the SSA evidence was led is that there had been cooperation between the Commission's

legal team and SSA to make sure that names that were not supposed to be disclosed were not disclosed and my understanding was that – I do not know whether it includes this affidavit but at least at that time, my understanding was that the affidavits that were being used then, the SSA had satisfied themselves that everything was in order.

MINISTER MAHLOBO: What I will prefer, Chair, there is always a misstep, certain things they will fall through the cracks. This doctrine inasmuch as how we feel about
 10 certain people, it must be respected. I made an earlier comment that is unprecedented in the intelligence environment to disclose certain information, methodology, body, mean, whatever structure that is being used that could unintentionally reveal certain names.

I made an example for you, that there is a reference of a name in what we call it Project Lock and then there is no reference of a name on a project called Eewee(?). When the two individuals are prominent names you do not do that. Then there is a same mistake that I pick it here, I
 20 do not have a problem, Mr Pretorius must continue to ask me but where he sees a name of a problem, let us not do this while I am sitting here so that I just – that is my instruction to assist you.

CHAIRPERSON: Ja. No, that is fine. Mr Pretorius?

MINISTER MAHLOBO: But because I have it you will see

the name is in the document where people's names. Unless the name of a person is about the title or the responsibility but immediately it becomes an operational matter which is a covert operation, where you see a name, you do not call it. But if it is about policy, about titles and all these other, anyway, you can do it.

CHAIRPERSON: Mr Pretorius?

MINISTER MAHLOBO: I do not want to be...

CHAIRPERSON: Ja, you are just expressing a concern.

10 **MINISTER MAHLOBO**: Ja, I am – my English word is running, you know, being complicit.

CHAIRPERSON: Ja.

MINISTER MAHLOBO: Ja.

ADV PRETORIUS SC: By way of background, Chair, you are correct that ...[intervenes]

MINISTER MAHLOBO: Remind me where we were? We are on page...?

CHAIRPERSON: Page 311.

MINISTER MAHLOBO: Thank you, I am there.

20 **ADV PRETORIUS SC**: 311. If I may just respond, Mr Mahlobo? All the redactions were indeed checked with the SSA's attorneys and my belief is that what has been put now is in accordance with those arrangements. I am not sure about the first name mentioned and I am quite happy not to mention it in response to ...[intervenes]

MINISTER MAHLOBO: We are on page – on 53?

ADV PRETORIUS SC: 311, para 53.

MINISTER MAHLOBO: Yes, I can see the name.

ADV PRETORIUS SC: So that the first name I need not mention nor the name of the wife anymore.

MINISTER MAHLOBO: Thank you.

ADV PRETORIUS SC: But the other name, the principal agent, he actually sued in his own name and set out all the circumstances in a court application of this series of
10 incidents, so I do not think there is any reason why that having been made the subject matter of a court case which was settled but I am happy to be guided by your Chair. If I do not mention that name I am not sure that in public – it is before Mr Mahlobo, he knows who it is, should know who it is.

MINISTER MAHLOBO: No, no, no, I am familiar what you are speaking about but the cardinal principle, Chair, anything that is covert-related whether it happens to get into the public domain, the authority, which is this case,
20 the authority in law, which is intelligence services even if the name is there, you do not do what people have already done. Will be able to go to this but I have given my advice so that we do not waste time.

ADV PRETORIUS SC: Yes. Well, the Commission is obliged to deal with matters in open and we will follow that

unless there are lawful reasons rather than reasons of practice to operate otherwise, but I am going to read on at your invitation.

“At this meeting...”

And I am at paragraph 54.

10 “...with Minister Mahlobo, I was informed by the minister that Mr Blank had been deployed together with principal agent Blank to start a rival union to the association of mineworkers and construction union, AMCRU. He told me that this project ran into trouble and Mr Blank was kidnapped and threatened. Mr Blank now feared for his life. Minister Mahlobo required me to arrange for funds to be paid to Mr...for him see to his protection.”

Paragraph 55:

“I arranged the four monthly payments of R120 000 were paid to Mr Blank so that he could secure private security and protection services.”

Paragraph 56:

20 “Unknown to Mr Blank I also placed him under counter surveillance by using our SSA surveillance team to determine whether there were indeed threats on his life. I monitored the surveillance reports based on a threat assessment, which we conducted based mainly on the surveillance reports,

it was concluded that there was no threat against Mr Blank and I stopped the monthly protection money being paid to him.”

I am not sure whether that is entirely relevant to our terms of reference but what does follow may well be. Paragraph 57:

10 “I also met Mr Mahlobo at his residence in order to discuss a problem that had arisen with the principal agent and the project to create a rival union to AMCRU. Minister Mahlobo informed me that Mr (blank) had been hired by special operations as a principal agent for the project at one of the project meetings former President Zuma was also present.”

CHAIRPERSON: I am sorry, Mr Pretorius, you have used Mr Blank for different people, somebody who reads the transcript will think it is the same person that you ...[intervenes]

20 **ADV PRETORIUS SC:** Yes, well I am now dealing with Mr Blank 2.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: The principal agent.

CHAIRPERSON: Ja, okay. I was just wanting to alert you that somebody who reads the transcript will think it is the same person because you say Mr Blank all the time.

ADV PRETORIUS SC: Yes. No, fair comment, Chair.

CHAIRPERSON: Yes, continue? Or shall we say – because each time you read you did say which paragraph you are reading from.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: Do you want to simply say in paragraph 53 – there is only one Mr Blank, there is Blank 1 ...[intervenes]

ADV PRETORIUS SC: Mr and Mrs Blank.

10 **CHAIRPERSON:** Ja and then continue under paragraph 54 and the next two of ...[intervenes]

ADV PRETORIUS SC: 54 and the first blank is Blank 1 and the second Blank is Blank 2.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: And the third and fourth Blanks are Blank 1. Para 55 is Blank 1, 56 is Blank 1 throughout and 57 – let me read it again.

20 “I also met Minister Mahlobo at his residence in order to discuss a problem that had arisen with the principal agent and the project to create a rival union to AMCRU, Mr Blank 2.”

CHAIRPERSON: No, is it not Blank 3?

ADV PRETORIUS SC: “Minister Mahlobo informed me that Blank 2 had been hired by special operations as a principal agent for the project at one of the

project meetings. Former President Zuma was also present.”

CHAIRPERSON: No, is it not Blank 3, that paragraph?

ADV PRETORIUS SC: No.

CHAIRPERSON: Blank 1, the one at paragraph 53, is it just Mr Blank or is it Mr Blank 1?

ADV PRETORIUS SC: Paragraph 53 is Blank 1.

CHAIRPERSON: Okay, then you go to 54.

ADV PRETORIUS SC: And Mrs Blank.

10 **CHAIRPERSON:** Yes, then you go to 54 in the second line at the end ...[intervenes]

ADV PRETORIUS SC: Blank 1 and Blank 2.

CHAIRPERSON: Blank 1 and Blank 2, okay.

ADV PRETORIUS SC: And then later on Blank 1.

CHAIRPERSON: Okay, okay.

ADV PRETORIUS SC: 55, Blank 1, 56 Blank 1 throughout.

CHAIRPERSON: Okay, ja.

ADV PRETORIUS SC: 57, Blank 2.

CHAIRPERSON: Ja, okay. No, that is fine.

20 **ADV PRETORIUS SC:** Okay? 58:

“The assignment went ahead as planned but Mr Blank 2 became dissatisfied over remuneration and threatened to disclose the details of his assignment including the role of the President and Minister Mahlobo unless he was paid an amount of R6

million.”

59:

“Minister Mahlobo wanted me to arrange the withdrawal of R6 million in cash in order to pay Mr Blank 2. I found myself in an impossible position as I was not able to legally arrange this amount of money from SSA. Furthermore, I was against the payment of extortion money and was also against Minister Mahlobo involving himself with operational issues. I explained my position to Minister Mahlobo and warned that if Mr Blank 2 was paid the amount he would return for more money once he had depleted the initial amount paid to him.”

Paragraph 60:

“My advice to Minister Mahlobo and my inability to raise R6 million caused me to fall out of favour with the minister.”

Paragraph 61:

“I have subsequently been told by the current Acting DG, Mr Jafta, that Mr Blank 2 did demand a further amount of money from Minister Mahlobo by launching a civil claim against him. I do not know the details of this litigation.”

Do you have comment on that?

MINISTER MAHLOBO: Chairperson, I will need the help

from my legal team. There are certain things that I am going to say here that I want them to pay attention so that they can assist me. There were certain documents that I received last night on a WeTransfer – I do not know whether that is the platform you use – and certain things I saw and there are certain things that these allegations are made. I might not go on each point in the paragraph but there are certain things I want to put on record. This is one matter that was brought to my attention about difficulty
10 of an intelligence operation going wrong and people they come here to you, they make affidavit, they have been into the papers. I am speaking about Blank – this Blank 2, Mr Pretorius, and it has been very difficult, very difficult because in intelligence you always have to safeguard the secret nature of operations. But when something goes wrong and the complaint comes to you, in this case a complaint came to me and when this complaint comes to me, already they are legal papers. Legal papers are being taken to court. Not an opinion, it is a fact, they are taken
20 to court and I am the respondent in some of these documents, Mr Pretorius, you see here. But some of this evidence, without getting into that operation, one, people so confident Mahlobo creates a union and I have chosen not to defend myself in public. The documents in your possession, the alleged union – I will use this word

because I am trying not to indirectly or directly divulge secrets – the alleged union. The documentation in your possession and the affidavits that are here, they allege that this incident happened around 2013. Even the documents that are coming from the Department of Labour in your possession. But people have been saying this minister, my apology, is meddling on matters of rights for workers to belong and the dates are not corresponding. When did this guy become a minister? 25 May 2014. And
10 someone has the audacity “This minister creates union.” It is here, on this 3.3. Just check the documents. You know, I like evidence because it is factual. I will not speak about that thing, Deputy Chief Justice and Chair, but do not incriminate me on things that there is no correlation. Those dates that are there are not correlating.

CHAIRPERSON: They are 2013 dates?

MINISTER MAHLOBO: No, I am saying that someone says here on record “Mahlobo created the union”, a fact. And I am saying your own documents at your disposal, the
20 alleged union created was not from the 25 May of 2014, the documents in your possession, they are showing you otherwise. I went through them last night.

Number two, I do not want to deny that this person did actually took us to court and then this person, the responsible managers whose operation had a misstep, had

to actually correct this thing and it is the manner it was corrected but there is no instruction that I say you know what, every time you receive a problem, you cannot say people must deal with it, they had to deal with it but there was no instruction to say give money, do this, I say solve the problem because the problem was brought to my attention. But to lie and say that because I had to get better involved to say that that agent, the matters of the agent must be attended. They attended the matter the way
10 they deem it fit. Then they insinuate in another paragraph here now, Mr Pretorius, is to sign off an involvement in operation.

We will go to the others now and I am happy to give you this information. In as far as these others you will come to, indeed there were complaints and my affidavit from time to time, complaints from public, from parliamentarians including assets for agents and this is one case. Thank you.

ADV PRETORIUS SC: Alright. Well, that could cut the
20 questioning short, given your response. As I understand your evidence was that you played no part in the establishment of the operation.

MINISTER MAHLOBO: Thank you, it is correct.

ADV PRETORIUS SC: But that where problems arose and particularly where there was a lawsuit including a lawsuit

against you as one of the defendants, I think it is, you could legitimately become involved, is that correct?

MINISTER MAHLOBO: It is correct.

ADV PRETORIUS SC: And just for the record, the particulars of claim in the matter appear at SSA1, page 186, where you are cited as the 3rd Defendant. Do you recall that?

MINISTER MAHLOBO: That one is correct, you have it there.

10 **ADV PRETORIUS SC:** Yes. I do not think it is necessary to it, I mean, it is common cause ...[intervenes]

MINISTER MAHLOBO: But this one think that Baba [indistinct], certain operation can go wrong and you will not be a bystander under the circumstances that you are talking about and it should never and ever be construed as running an operation and fortunately here your Commission has assisted, you have put dates here, you have put documents, I am fine.

ADV PRETORIUS SC: The claim was for actually an
20 amount of R120 million under a number of what might be termed – may I be so bold as to comment, dubious claims. But be that as it may, it was finally settled, is that correct?

MINISTER MAHLOBO: Ja, it was finally settled.

ADV PRETORIUS SC: On your instruction?

MINISTER MAHLOBO: No instruction.

ADV PRETORIUS SC: Did you know of the settlement?

MINISTER MAHLOBO: I know the settlement but ministers do not get into contracts. I never signed any settlement agreement.

ADV PRETORIUS SC: Right, it was settled in an amount of R7 million our investigators tell us.

MINISTER MAHLOBO: Well, that is what I am told because I had never had sight of the settlement agreement but the responsible managers manage – who manage the
10 problem that has often intelligence, operational failure(?).
Chair may I...?

CHAIRPERSON: Yes.

MINISTER MAHLOBO: I am not sure for – because I have had to look at the evidence leader, he has been standing the whole day and I am a youngster, I should in actual fact be the longevity and together with the Chair, I am battling to understand now where you get this energy. Can we have about five to ten minutes and also that will allow me to go to the bathroom, Chairperson.

20 **CHAIRPERSON:** Okay, well I guess it shows Mr Pretorius' resilience.

MINISTER MAHLOBO: He has done a very good job, it is not easy to stand there for all the time unlike us who are seated.

ADV PRETORIUS SC: The only one standing.

MINISTER MAHLOBO: And I am on your corner, you can hire me to be your shop steward.

CHAIRPERSON: Ja.

MINISTER MAHLOBO: And then you will be the employer – I will carry some black cards that will not [indistinct].

CHAIRPERSON: Ja, let us take an adjournment, 10 minutes adjournment.

MINISTER MAHLOBO: Thank you, Chair.

CHAIRPERSON: We adjourn.

10 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV PRETORIUS SC: Thank you Chair. Just to finish off on the Trade Union matter Mr Mahlobo can I refer you please to Bundle SSA2 at page 165. This is the affidavit of Daryl which begins at ...[intervenes]

MINISTER MAHLOBO: Are we still on the same page we were before?

ADV PRETORIUS SC: No, a different one, YY5.

20 **CHAIRPERSON:** YY5.

MINISTER MAHLOBO: Okay.

CHAIRPERSON: Bundle 2, SSA2, page 165.

MINISTER MAHLOBO: Y5, okay.

CHAIRPERSON: Then page 165.

MINISTER MAHLOBO: 165, okay.

ADV PRETORIUS SC: There Daryl deals with the Workers Association Union project and in the establishment of the project he does not mention your name, but he does mention your name in paragraph 69 in relation to the summons issued under the Gauteng High Court jurisdiction on 12 December 2017 to which we have referred and he says in paragraph 69:

10 “Minister Mahlobo told me to meet with Mr Maswabi to negotiate an out of court settlement. Given the risk of exposure to President Zuma I made an appointment to meet with President Zuma at the Union Buildings to determine whether he was aware of – I am sorry – I mentioned the name – of the Court action. President Zuma informed me that he was aware of the formation of the Union and that he had tasked Mr Dlomo to work with Mr Blank 2 on this project.”

He then goes on to say that, in paragraph 72:

20 ” He initially wanted – that is Blank 2, initially wanted about R30million to withdraw the matter. I discussed it with Minister Mahlobo who informed me that I should negotiate a settlement which could not exceed R10million.”

73:

“I set up another meeting with Blank 2. After some

discussion I managed to negotiate him down to R7million. I took this proposal back to Mr Mahlobo who agreed to the amount, on the amount to be paid. Mr Mahlobo said that he would arrange the money through SSA.”

What do you say about those allegations?

MINISTER MAHLOBO: Well as I have indicated the issue that when the problem came to me I did ask the responsible project managers who handled the matter, and
10 indicated that matters of intelligence if they go to Court they become so damning and I never gave him to say this is the amount this you must be able to pay. I only said we do not have the hundred and something million that is required, find a way to deal with the matter because it was their operational failure, but the quantum’s I deny them, I agree that I asked them to actually engage with this asset that had problems, that had already been brought to my attention.

ADV PRETORIUS SC: Then in relation to Project Lock,
20 there is in Bundle SSA2 at page 317, the affidavit of Shadow, and if I may refer you to ...[intervenes]

MINISTER MAHLOBO: We are running too fast now, my cover page?

ADV PRETORIUS SC: YY8.

MINISTER MAHLOBO: YY8, of?

ADV PRETORIUS SC: At page 317.

MINISTER MAHLOBO: I am there Chair.

ADV PRETORIUS SC: Did you have any involvement in Project Lock, the operation Project Lock?

MINISTER MAHLOBO: Firstly let us start with this person, this affidavit, because I want to address it. I do not know this person, and in the very same affidavit this person is actually when I read your Rule 3.3 notices Chair, [speaking in vernacular], it is hearsay, he alleges that he
10 came to my house with one of the senior managers who was driving and he says that this senior manager I made him to account why this asset mentioned here is not being paid. I have never met with Shadow, and I have never discussed this issues. All the issues that Shadow refers to here, because I do not want to waste your time, I deny them.

ADV PRETORIUS SC: He says in brief that there was a visit made to your house in Pretoria in the presence of Mr de Kock, he also says that there was a complaint made to
20 you about the breach of the arrangement SSA had with him, that is Mr de Kock.

MINISTER MAHLOBO: Let us deal with Mr Shadow, so that we do not deal with a – what do you call it, smoke and mirrors, this guy Shadow never brought this person or interacted with me, and I deny the things that he is saying

here, because I am going to be speculating of even of a person that never set foot into my house, and he is one funny character, even if you look at his profile here.

Look at the profile of this guy and that said inasmuch as we do have good men and women this guy that I have never even met, even on a single day, comes and tells stories that no, so and so said about this or said about something else, that cannot be the work of the Commission, but for completeness for this affidavit my
10 answer I refute it.

ADV PRETORIUS SC: Thank you. If we can go on then to YY14 in SSA2, right at the back of the file, the affidavit of Blaise, page 742, there is an extract from what has become known as the Boast Report...[intervene]

MINISTER MAHLOBO: What?

ADV PRETORIUS SC: There is an extract on page 742 of the Boast Report I would just like to put one paragraph to you.

MINISTER MAHLOBO: What kind of report?

20 **ADV PRETORIUS SC:** Boast, B-o-a-s-t, it has been referred to colloquially as the Boast Report. It is a report by an operative Blaise and this is his confirmatory affidavit on certain activities of the SSA.

It's been dealt with in evidence and the matter of record it's been read onto the record and I just like to

understand under the heading SONA Western Cape, February 2016 on page 742, the last paragraph reads:

“The collection efforts of the CDSO also provided alternative information regarding the Sesikhona movement. The CDSO team was directly tasked by the Minister of State Security to activate the Sesikhona agents to ensure a presence within the City of Cape Town during the SONA, State of Nation Address, this was done to great success.”

- 10 In other words, the allegation is that in relation to SONA, that you gave a direct instruction for certain activities to take place.

MINISTER MAHLOBO: Well, this affidavit is not explaining how SONA processes work and I do not want spend time here explaining how it works. I never got on operational matters of SONA, there is a structure there a Deputy Chief Justice you attend the very same structure, why we were taken to Court is called [indistinct] joins.

- Those are the people who run things and is
20 responsible Ministers, we get to be briefed and I did in my time as a Minister, when there is a SONA I will receive a security assessment report but to say I had a sitting with these people, what, what, what - the answer is no.

ADV PRETORIUS SC: Okay, there is evidence in the bundle about the monies allocated to the Sesikhona

Project but I do not then think it is necessary to put them to you. Lastly, at least for the moment, there are certain allegations that we have agreed not to put you at the stage because they are in the additional bundle and quite clearly you need time to acquaint yourself with the allegations.

But if I may deal with the document at SSA1 at page 235.

MINISTER MAHLOBO: It is under cover what?

CHAIRPERSON: Did you say 235, Mr Pretorius?

10 **ADV PRETORIUS SC:** Yes, Chair appropriately under cover, it is under P.

MINISTER MAHLOBO: We can proceed.

ADV PRETORIUS SC: Under the header background it reads:

“Murray.”

Now this is Murray’s affidavit or Murray’s report rather that has been classified as not an affidavit. The report reads:

20 “Murray was recruited to join the SSA in 2013 by J, former Head of Ministerial Services in the Ministry of State Security under Minister David Mahlobo. Murray resigned from the SSA in 2014 to pursue studies in the UK.”

Next paragraph reads:

“Upon return from the UK in 2015, he was approached by former Minister Mahlobo to discuss,

Fees Must Fall Protests, which had erupted in 2015. According to Murray, the reason for Minister Mahlobo to engage him was his background as the former SRC President at Wits. Murray went on to say that by then he had already written several articles.”

MINISTER MAHLOBO: Can I just with your permission Chair?

CHAIRPERSON: Yes.

10 **MINISTER MAHLOBO:** Mr Pretorius dealing with a next annexure P where is the affidavit because now I am just dealing with a report. I want affidavit so that I deal with people what they say to implicate me because this is one report I have not actually even read it, probably yesterday and I will not be able even to help you now.

ADV PRETORIUS SC: Alright, well there are two issues. The one is that I do not believe that it is untoward to put to you a report that is made to or under the auspices of the SSA whether it is an affidavit or not might go to the weight
20 to be attached to it, but in relation to your second point you need time to deal with it I understand that.

MINISTER MAHLOBO: My preference say through Chair is that I do not want to deal with Project Veza.

CHAIRPERSON: With project?

MINISTER MAHLOBO: Project Veza and internal SSA

investigation, I am not even party to that participation. If members of Project Veza or anybody who participate in Project Veza let them give you an affidavit Chair, then I will deal with it.

And I agree with Mr Pretorius on the other second part, but annexure P I need someone to - remember the people who came here were managing Project Veza, they were able to actually put this thing on an affidavit. But this document also Chair, with your indulgence I have not read
10 this one here, Mr Pretorius. You can find a way that probable if you want to come back, we can agree with the legal team of a way of how we handle it.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: Now perhaps there is a point to the fact that this document authenticity is not established, it simply says it is a report. If there was a covering affidavit, then I could validly argue that although it is a report, it is an authentic document, and therefore it should be dealt with but we could argue that at a later stage, because it
20 seems we agree on the fact that time is required.

CHAIRPERSON: Ja, no that is fine, between now and when Mr Mahlobo comes back or get to deal with it both sides will have thought about the concern that he has raised and then we can deal with it, then in terms of whether there is affidavit...[intervene]

MINISTER MAHLOBO: If there is an affidavit I will respond.

CHAIRPERSON: Ja.

MINISTER MAHLOBO: Someone taking ownership of what Honourable Pretorius is saying.

ADV PRETORIUS SC: Chair, in order to expedite matters if maybe before the next appearance without sending questions, because that is not the practice of the Commission but to highlight topics with the appropriate
10 references that will be dealt with we could be much quicker.

CHAIRPERSON: Ja, that is fine.

ADV PRETORIUS SC: Thank you, Chair that is all for now.

CHAIRPERSON: Okay.

MINISTER MAHLOBO: No, you have done all your questions?

ADV PRETORIUS SC: Well, apart from – yes for the moment apart from issues raised in that other bundle.

20 **MINISTER MAHLOBO:** No, I have an issue.

ADV PRETORIUS SC: And secondly, well just let me tell you what we have not dealt with. Secondly, any recommendations that you might have to assist the Chair in relation to regularisation of State Security.

MINISTER MAHLOBO: That one I have indicated even to

the leadership, the Head of the National Executive despite challenges we have gone through in the organisation we assigned to we will give some views and then it will be up to them to deal with those view.

But our experiences there, the good things we did and the missteps, they can be able to serve as a lesson.

CHAIRPERSON: But are you saying that your intention is to bring to the Commission such views as you may have on the recommendations through the organisation as opposed
10 to you at some stage dealing with them?

MINISTER MAHLOBO: Well what I will do because normally Chair, you give us an opportunity of concluding remarks.

CHAIRPERSON: Yes.

MINISTER MAHLOBO: I might not have to come and appear here but I will definitely put it through the Secretariat those certain things because I have views to, other than the other thing that people were implicating me on but I have views because they debate around the
20 intelligence services all over the world, it continues rage on. Even in the best of biggest the oldest democracies, let me not use the biggest the oldest democracy that I have we all have to grapple with it from time to time.

CHAIRPERSON: No, no, I think that is okay if you are able to share with the Commission the views that you have

in terms of what going forward you think should be done to address certain challenges that you experienced or that you are aware, were there or maybe are still there, and what may need to be strengthened, which was working. That would be most welcome.

MINISTER MAHLOBO: Thank you, Chair.

CHAIRPERSON: But what I think we have agreed upon is that there are still some documents that will need to be dealt with. What will remain is whether - I think preferably,
10 they should be dealt with Mr Mahlobo giving evidence rather than just sending documents.

But that does not prevent you from sending that document with your views on recommendations that you can still do. I have in mind these other these other documents.

MINISTER MAHLOBO: Yes, Chair Mr Pretorius and my legal team, they will have a discussion, even if it means I must come just for a shorter period if we can find time in your tight schedule, because only this document of which
20 we can give. But the other one will also even if depending their final agreement, will even by that time, I would have tried to do some write up.

CHAIRPERSON: Ja.

MINISTER MAHLOBO: It will already be furnished here and then depending on your ultimate decision, we will

decide how to handle it. But for your own completeness as well assisting this process to read of ourselves of the challenges experienced over time while still tending this democracy, I will clearly do it.

CHAIRPERSON: No, no, that is fine. What I must just say is also that if your legal team and they are listening, if your legal team would like to make written submissions on what I should find on the evidence that has been led in so far as it may relate to you that need - that should be done
10 reasonably soon, because we will not have oral argument.

There will be no oral argument, but written submissions will be acceptable. So where you can say, well, this was the evidence that affects my client. It is evidence from your - or whatever, whoever, whoever, and this is what they said. This is what my client said, in our submission. These are the findings that should be made you know against that one or in favour of that one, because then I will have regard to those written submissions in preparing the report.

20 There will not be time for oral arguments.

MINISTER MAHLOBO: No, we are very happy Chair, that our team needs to do where there is really, really concrete matters that has to be done, so that at least you have the completeness even despite your time constraints.

CHAIRPERSON: Ja, no, that is fine. I think your counsel

will speak to Mr Pretorius but I think those submissions, written submissions should be with the Commission not later than the end of April, those submissions.

MINISTER MAHLOBO: Sorry I think what I did earlier is an error that I misunderstood your 15 minutes and you see me in chambers. Maybe let me understand the directive from the Chair.

CHAIRPERSON: Ja.

MINISTER MAHLOBO: We would await a correspondence
10 from the Commission it is from us, we just have to file.

CHAIRPERSON: Yes, do not wait anything.

MINISTER MAHLOBO: Okay, we owe the Commission ourselves.

CHAIRPERSON: Ja, just from now, from tomorrow work on written submissions, have regard to all the evidence that might affect your client that has been led. Of course we know that he is still to come and deal with this other document, but you can start preparing.

So that by the end of April, at the latest, you can
20 submit your written submissions that tell me as far as you are concerned, these are the findings I should make. These are the findings I should not make insofar as it relate to your client.

MINISTER MAHLOBO: Noted Chair, thank you.

CHAIRPERSON: Okay alright.

MINISTER MAHLOBO: Chair, before you close I must thank you.

CHAIRPERSON: Yes.

MINISTER MAHLOBO: Thank you with your Commission for being patient and thank Mr Pretorius and the Secretariat, despite their issues with my learned representative, mistakes in the cause of duty they do happen.

CHAIRPERSON: Yes.

10 **MINISTER MAHLOBO:** On a lighter note, Mr Pretorius while you are getting into work, you must find time, we have agreed on a strong coffee, [speaking in vernacular]

ADV PRETORIUS SC: Not tea?

CHAIRPERSON: After the Commission?

MINISTER MAHLOBO: And you need to give him time, he has been working so hard.

CHAIRPERSON: Okay, no thank you very much to you, Mr Mahlobo and your legal team for all the cooperation so that we could have this session today and we could go into the
20 evening. Thank you to Mr Pretorius and his legal team. Thank you to the investigators, the technicians, the staff, everybody I really appreciate all the cooperation that everybody is showing to the Commission, to assist the Commission to finish its work within the time available.

We are going to adjourn now. For the benefit of the

public, I must just indicate that on Monday, the Commission will hear the evidence of Mr Anoj Singh being under the Eskom work stream because he has not finished his evidence so he will continue. Thank you very much, we adjourn.

INQUIRY ADJOURNS TO 12 APRIL 2021