

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

14 APRIL 2021

DAY 374



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DATE OF HEARING:

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 14 APRIL 2021

CHAIRPERSON: Good morning Mr Pretorius, good morning everybody.

ADV PRETORIUS SC: Morning Chair.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: Chair Mr Arthur Fraser has brought an application before the commission in which the Minister of State Security, the Director General State Security and the State Security Agency are the three respondents. In
10 essence he requests you Chair to direct in terms of the commission's powers under the Act and Regulations to order the respondents to provide documentation.

The first respondent abides; the second respondent and third respondent are opposing. There have been discussions between the parties but I am sure they will explain to you how these discussions have progressed but not yet reached finality and if I may Chair I will address you on the matter after the submissions have been made by the parties.

20 **CHAIRPERSON:** Okay that is fine. Who appears for who? You will have to put on your microphone or go to the podium if they sanitise it but if you can – if your microphone is working and you are happy to speak from there it is okay.

UNKNOWN COUNSEL: I – it is working Chairperson and I

rather speak from here.

CHAIRPERSON: Okay alright.

UNKNOWN COUNSEL: For the record I am on – in respect of Mr Fraser.

CHAIRPERSON: Yes. I think – I think they are indicating that you – they – you are not audible enough or there is – so it is better that you go to the podium.

ADV NDABELE: Chair I am for the second and third.

CHAIRPERSON: Second and?

10 **ADV NDABELE:** And the third respondent

CHAIRPERSON: Okay alright. Thank you. Well just for the record just put – place the names – your names on record again.

ADV NDABELE: Advocate Bheki Ndabele for the second and the third respondents.

CHAIRPERSON: Yes can they – they cannot hear I think maybe take off your mask for now – yes and then just speak up a bit. They need – if they hear then we know that it will be in the transcript – if they do not hear it will not be
20 in the transcripts.

ADV NDABELE: Thank you Chair. The name is Bheki Ndabele for the second and the third respondents.

CHAIRPERSON: Thank you that is the Director General of State Security Agency and as well as the State Security Agency. Okay alright. Yes.

UNKNOWN COUNSEL: For the record again Chairperson I am [indistinct].

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: On behalf of Mr Fraser ja in this matter and if I may address you on the events. It is common cause Chairperson that from as early as August last year the applicant sought the disclosure, the declassification and disclosure of certain documents from the respondents. The 00:03:40 Chairperson is that there
10 has been no compliance to that request forcing him to bring this application to yourself.

And for the first time in the respondent's answering affidavit do we get told that the respondents are willing to assist us with the documents that you require and subject to us providing them with the particularities for the documents that are required and owing perhaps to limitations of technology we could not file electronically our reply together with its annexures.

I beg leave of the commission to hand to the
20 Chairperson a copy of the reply. I provided my learned friend with a copy this morning.

CHAIRPERSON: It is the replying affidavit?

UNKNOWN COUNSEL: It is the replying affidavit.

CHAIRPERSON: Okay. No that is fine. Yes.

UNKNOWN COUNSEL: Thank you Chair. I suppose you

can never be too sure about these health issues you know.

CHAIRPERSON: Alright.

UNKNOWN COUNSEL: And perhaps the one thing that I forgot to do is to apologise on behalf of my – my senior counsel Musi Sikhakhane had an emergency and cannot appear.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: We tried to – ja.

CHAIRPERSON: No that is fine.

10 **UNKNOWN COUNSEL:** I assume I will struggle ahead.

CHAIRPERSON: Ja no that is fine.

UNKNOWN COUNSEL: But the reality Chairperson is that in our reply we then go to each and every document save for two but for some reason I – you know I skipped and explain why we require those documents.

CHAIRPERSON: Maybe before you go further I think what I thought you would address first is what discussions – what has come out of the discussions because it may be that we should proceed; it may be that we should not
20 proceed depending on what I am told about those discussions.

UNKNOWN COUNSEL: No that is fine. I was just giving you a background of the discussions.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: But the bottom line Chairperson is

that we have – following the undertaking by the respondents that they would provide us with those documents provided we give them the particularities.

We provided them in the answering affidavit which we emailed to them last night and also the – the annexures which we only provided them today.

The annexures is a statement of our client or the draft statement because those annexures would then inform that statement. But then we – our view then which
10 we indicated to our opponents is that to the extent that they undertook to provide us with the documents provided that we give them the particularities. We have done that. As far as you are concerned there is no matter to be argued anymore today.

They need to apply their minds to the documents that we provided them and – and if they are uncertain of what it is that we really need then we can – there can be further engagements. That Chairperson is my instruction and that is where the discussions went.

20 **CHAIRPERSON:** As it stands ja. Well it seems to me that because they have given that undertaking you are right in taking the attitude that you should give them time to apply their minds to the particulars that you have given so that they can give you the information you have asked for.

Or if they have reason not to give some of the

information that is they can tell you why. But it seems that there is no point in pursuing the application as of today. It may well be that the application should be postponed either to a specific date or sine die so that stays the one point. But the other point which I must say so that you and your client appreciate the situation is that as to what the commission can do at the time that your client will have received the documents that it is looking for in terms of the commission allocating any time for any evidence – I cannot
 10 give you any guarantee because of precisely where we are. The oral evidence should have been finalised by end of March.

We are in extra time and there is serious difficulty. You know April and May and June were supposed to be for the writing of the report. So I am just mentioning that for what it worth that as an when you reach a point where you have got your – the information you are asking for we are not guaranteeing anything. If at that stage you make a request to give evidence or whatever that will have to be
 20 looked at at that time against the constraints that will exist at that time. You appreciate that?

UNKNOWN COUNSEL: We appreciate that Chairperson.

CHAIRPERSON: Yes okay alright. Mr Pretorius have you got anything to say? Oh maybe I should hear what counsel for the second and third respondent has to say. Are you

able to speak from where you are? Or if the microphone is going to give us problems they can sanitise the podium and then you can come to the podium. Why does it look like it is unusually dark in this room today? Is there some light that is not as bright as it should be? Okay. Yes.

ADV NDABELE: Morning Chair.

CHAIRPERSON: Good morning.

ADV NDABELE: Chair maybe I must just cut to the chase.

CHAIRPERSON: Yes. Yes do so.

10 **ADV NDABELE:** Based on...

CHAIRPERSON: Yes.

ADV NDABELE: What my colleague has presented to the Chairperson.

CHAIRPERSON: Ja.

ADV NDABELE: Chair the second and the third respondents' attitude is that the applicant is all of a sudden at the last moment reverting to what he was supposed to do initially. As has been stated in the answering affidavit of the second and third respondent this
20 matter was brought before the issue of the disclosure of information.

The Agency was approached by the applicant as early as August 2020. The then acting Director General responded to the applicant inviting him to follow the correct procedures and also invited him to have a

consultation with him so that they can see how best the Agency can help him to expedite the issue of the disclosure of information. And that was the letter to the applicant was sent on the 21st of September 2021. And the applicant...

CHAIRPERSON: 2020.

ADV NDABELE: 2020 sorry thank you Chairperson – 2020 and six months – and the applicant did not respond to the invitation that was extended to him by the then Director General. And now six months down the line they decided
10 to approach the commission alleging that there is not – would have not been afforded opportunity to get the documents that they are looking for which is not true.

So what the second and third respondent is saying is that what the applicant is all of a sudden proposing is something that they should have done six months down the line.

That being the case we feel that the application was the waste of the commission's time or the abuse of the commission's processes and as such it is my instruction
20 that the matter should have been argued on merits in particular a stand point of the second and third respondent is the fact that the applicant in his application is requesting information that pertains to a lot of intelligence information that has – mainly has to do with the methods of collection, associates and identities of the operatives

knowing very well that a Director General is by law forbidden to do that or disclose that information.

And then with that understanding and knowledge the applicant should have not asked for the relief that they – that they sought to ask the commission to give a blanket approval for the release of information into the applicant's hands whereas that information mostly or if not all pertains to information that by law has to be protected.

Having done that then the respondent's feel that
10 that was the abuse of the commission towards them. The matter should just be dismissed and their parties must be allowed to deal with the matter the way it was supposed to be dealt with six months ago. That is in short I do not want to go to the details.

CHAIRPERSON: Yes, no, no, that is fine.

ADV NDABELE: Yes.

CHAIRPERSON: I am – I will tell you what – my attitude is that because the parties seem to have found each other even if late in terms of the process what needs to be done
20 I should allow that process. It may well be that as a result of that process your clients will say to him we can give you ABC but we cannot give you DE and F and there might still be a need for the applicant to pursue the application in regard to those matters that your clients might say we – we are not giving you this.

So rather than deal with the merits now it is better that – let us see what comes out of that process. It may well be that as a result of that process the parties will reach agreement that what he will have been given is reasonable, is sufficient, what the – your client's refuse to give there are good grounds in law for not giving that so therefore the application will not be pursued. So that is possible as well. Having said that I am – I must not be understood as if I am saying that the applicant's
10 application does not have hurdles or challenges.

There may be certain challenges but maybe if and when it is argued I may be persuaded but where parties have reached agreement on trying to sort the matter out I think let us give them that opportunity. So my attitude is to postpone it sine die but you have heard what I said to him that the fact that I am sitting here being prepared to listed to it or that I am maybe postponing it does not necessarily mean once he has got the documents he should say well why did you postpone it if you were going to tell me you
20 have no dates anymore? You know.

So we will see what the position is at the time that he has received the documents and has indicated once – what he wants to do with the documents. So that would – that – that is my attitude you – you are - you understand that?

ADV NDABELE: I follow Chair.

CHAIRPERSON: Yes okay alright. Unless you have something else I would like to hear Mr Pretorius. So my attitude would be to postpone it and maybe I will postpone it sine die and – but everybody understands there are time constraints so the parties would need to do whatever they need to do as expeditiously as possible.

ADV NDABELE: As it pleases the Chairperson.

CHAIRPERSON: Okay alright. Thank you.

10 **ADV NDABELE:** Thank you.

CHAIRPERSON: Mr Pretorius. Oh let them sanitise first.

ADV PRETORIUS SC: Thank you Chair I will be brief. It is perhaps important to contextualise this application within the work of the commission. There are really two approaches that can be adopted. Mr Fraser says in paragraph 34 of his founding affidavit

20 “I am more than eager to expose the machinations of these people who I believe are guilty of abusing their positions in government to favour and unlawfully enrich themselves, their friends and or associates to favour or disadvantage certain political parties and or factions of political parties, steal from the public purse and then there is an allegation that I am not going to deal

with.”

Chair there are two ways then that will deal with this issue. The commission's powers to order the production of documents are there for the commission to conduct its own investigations in terms of its own Terms of Reference.

Mr Fraser appears on his own statement to have evidence significant to the work of the commission and from the legal team's point of view of course and I am sure
10 that will be endorsed by the investigators we invite Mr Fraser to come and cooperate with the commission's investigators so that the commission can with Mr Fraser conduct an investigation.

What is happening here is that an investigation is being conducted outside the ambit of the commission's work.

So if Mr Fraser has evidence relevant to the commission of this nature and of a serious criminal nature it should have been brought before the commission long
20 ago but although it is late at the – we invite Mr Fraser to work with the commission in a commission investigation.

The other way is for the parties to sort it out themselves. I might just say in that regard the commission has been very cautious in presenting security – state security evidence to protect the identity of operatives, to

protect method and to deal only at least for the purposes of public evidence with declassified information and it seems that if the applicant and the second and third respondents are to come to any accommodation it must be in accordance with the legal prescript and it is not possible for you Chair to grant an order at this stage on that basis which would in effect override all those legal prescripts. Thank you Chair.

CHAIRPERSON: Thank you Mr Pretorius. This application
10 is postponed *sine die*. Ja okay. Thank you. We are going to adjourn and resume at ten o'clock for the hearing of the evidence of the witness scheduled for today. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES:

CHAIRPERSON: Good morning, Mr Freund. Good morning everybody.

ADV FREUND SC: Good morning, Chair.

MR MANTASHE: Good morning, Chair.

20 **CHAIRPERSON:** Good morning, Mr Mantashe.

MR MANTASHE: Good morning...

CHAIRPERSON: Thank you. Yes, Mr Freund.

ADV FREUND SC: Thank you, Chair. Chair, this is the resumption of the stream of evidence on the question of the adequacy or otherwise parliamentary oversight *vis-a-*

vis the allegations of state capture or corruption. You will recall that we have heard a number of witnesses who deposed to a series of affidavits which were furnished by the African National Congress and those affidavits as originally filed concluded with an affidavit of the Secretary General of the African National Congress, Mr Magashule.

So what originally been anticipated is that Mr Magashule would be testifying today. However, some time ago, a decision was taken that Mr Magashule will not
 10 testify and Mr Mantashe was asked, as I understand it, by the African National Congress to, as it were, appear in his place and essentially to talk to his affidavit.

So that was the primary and original purpose of today's hearing but Mr Magashule has gone further and has deposed to a fairly substantial affidavit.

CHAIRPERSON: Mr Mantashe, you mean?

ADV FREUND SC: Mr Mantashe. Did I say Mr Magashule?

CHAIRPERSON: Yes, you said Mr Magashule.

20 **ADV FREUND SC:** I apologise and if I do it again, please correct me again. It is an error I keep making.

CHAIRPERSON: [No audible reply]

ADV FREUND SC: Mr Mantashe... Ja, the word is written in front of me. Mr Mantashe has gone further and deposed to a substantial affidavit and that will be the second

primary purpose of the evidence today. But in the last week or so, as a consequence of correspondence between myself and Mr Mantashe's representative, what has come to my attention and which we will also need to deal with is certain material produced and furnished by Mr Mantashe back in 2018, really roundabout the time of the initial evidence of the Minister, former Minister Barbara Hogan.

There was an initial statement, there was a follow-up statement on deployment, which overlaps but it is
10 not identical to the present affidavit. So we will canvas all of that as well. And then in addition, Chair. I have put together a bundle of newspaper articles in some sort of chronological order and those were furnished some time ago to Mr Mantashe so that he is not taken by surprise and I will be exploring some but by no means all of those articles in the course of the day.

Now the consequence of what I have just described is that the administrative staff have had to make certain adjustments to the pagination. So the ANC
20 affidavit, set of affidavits – the set of ANC affidavits was and still is Exhibit ZZ-1 in File 1. And that set of affidavits, we have, really, already dealt with ZZ-1.2 and following or most of those and what we were going to be dealing with is ZZ-1.1, Mr Magashule.

But now we have had to add to that what is

going to be Mr Mantashe's affidavit which will be ZZ-11 and the consequence of the bulk of that is the need to split the original Bundle 1 into a Bundle 1A and Bundle 1B. So where we inserted, there is no longer space for what used to be in the rest of that Bundle 1A but that notwithstanding, the other material that was in Bundle 1 and now is in Bundle 1B will not be canvassed today. So we will really be dealing with Bundle 1A as it is.

So against that background, I would suggest that
10 perhaps it is opportune to swear Mr Mantashe in and I understand he wishes to make an opening statement but perhaps it might be convenient if I just indicate to you, Chair, where one finds that opening statement.

CHAIRPERSON: Before you do that. The relabeling of the bundles to – what – did you say 1A?

ADV FREUND SC: 1A and 1 B.

CHAIRPERSON: And 1B. One understands the reasons why you had to split them. I am concerned about the fact that in the transcript after today, there will be a reference
20 to a certain label and not the amended label. And so I wonder whether we could not keep the label that we used for – I do not know whether for the first half of the bundle and then make the next one 1A, rather, and 1B so that we always have one.

ADV FREUND SC: Right.

CHAIRPERSON: And when somebody goes to one, then maybe there could be a note to say at a certain stage they were split. Anything you do not find here, go and look at 1A or something like that.

ADV FREUND SC: Yes, yes.

CHAIRPERSON: Yes, ja.

ADV FREUND SC: There is no difficulty with that.

CHAIRPERSON: Ja.

ADV FREUND SC: We will deal – we will rearrange it.

10 **CHAIRPERSON:** Ja.

ADV FREUND SC: Make it 1 and 1A.

CHAIRPERSON: Ja.

ADV FREUND SC: And we will be dealing today with the continuation of Bundle 1.

CHAIRPERSON: Ja. No, no that is fine. You wanted to tell me where to find the statement.

ADV FREUND SC: Well, the opening statement of Mr Mantashe, as I understand it, is using, as it were, the top left-hand numbering, the POO-1 numbering.

20 **CHAIRPERSON:** The black page numbers?

ADV FREUND SC: Black numbers.

CHAIRPERSON: Ja.

ADV FREUND SC: That 100.419. So that is page 419 of this ...[intervenes]

CHAIRPERSON: Okay, okay. I see it, yes.

ADV FREUND SC: Of course, there will in due course also be reference to the original affidavit.

CHAIRPERSON: Ja.

ADV FREUND SC: I presume one would want to start with the ...[intervenes]

CHAIRPERSON: Yes. No, no that is fine. Before the oath or affirmation is administered to Mr Mantashe, I just want to take this opportunity to make an announcement that it is connected with the ANC, namely, that we
10 previously announced that the President of the ANC was scheduled to give evidence in his capacity as President of the ANC on the 22nd and 23rd of April and in his capacity as the President of the Republic on the 28th and 29th of April.

That has changed in part because the President made a request in connection with the dates of 22 and 23 April because of some commitments that had arisen. I ceded to the request to change those dates. So the present position is that the President of the ANC is not going to appear before the Commission on the 22nd and
20 23rd of April but he will still appear on the 28th and 29th of April.

Originally, on the 28th and the 29th of April, he was to appear in his capacity as President of the country but that has changed. On those two days, he will appear as the President of the ANC. As President of the country,

he will now appear before the Commission on the 18th and 14th of May. So I thought I must just make that announcement because it is important that the public knows.

And then secondly. I want to say I appreciate that the ruling party is taking part in the proceedings of the Commission and I am happy that they have sent a senior leader to take part in the proceedings of the Commission and give evidence.

10 I was quite concerned early last year after the Commission has sent invitations to all the political parties, representatives in Parliament including the majority party, inviting them to make submissions to the Commission on various issues, particularly of oversight, and there was no response for a number of months from a number of political parties including the majority party.

But ultimately, there was communication and we – I understand that somehow that implication might not have come to their attention of the right people in the ruling party. I was concerned because, particularly with
20 regard to issues of oversight, it is quite important that the majority party takes part and gives its own input on the challenges that might be there in Parliament but also on other matters that the Commission is investigating. It is quite important.

Many of the political parties represented in Parliament did not respond to those invitations that we sent out but today I think the DA did respond and some of its leaders have given evidence. You will remind me but I am not sure I remember any other political party that has taken part but the invitations were given to everybody, all political parties, except maybe those who only featured in Parliament after the 2019 elections but all those who were represented in the previous elections who might have had something, some role to play in terms of oversight were invited.

It is just unfortunate that they have not responded positively. So but I just wanted to say. I appreciate that the ruling party is taking part and will make its input and I am happy that they have sent one of its – of its senior leaders to give evidence and assist the Commission. Thank you, Mr Mantashe.

MR MANTASHE: [No audible reply]

ADV FREUND SC: Thank you, Chair. If I could just make one small point.

CHAIRPERSON: H'm?

ADV FREUND SC: It has been drawn to my attention. I referred you a moment ago to where one finds in the file the typed version of the opening statement you are about to hear.

CHAIRPERSON: H'm?

ADV FREUND SC: What has been drawn to my attention is that it is slightly different from a former version ...[intervenes]

CHAIRPERSON: Oh.

ADV FREUND SC: It is in the file.

CHAIRPERSON: Okay.

ADV FREUND SC: And that would be – I mean, the copy in front of you is the correct copy.

10 **CHAIRPERSON:** Ja.

ADV FREUND SC: But your files will be sorted out to ensure the one of some time ago that is here will be removed.

CHAIRPERSON: Alright. Okay.

ADV FREUND SC: And what will remain in your file is the correct one.

CHAIRPERSON: Okay. No, that is fine. That is fine.

ADV FREUND SC: As it pleases.

20 **CHAIRPERSON:** Okay. I think what you should have done is. Let us – please administer the oath or affirmation to Mr Mantashe and after that I will allow him to make his opening statement.

REGISTRAR: Please state your full names for the record.

WITNESS: [No audible reply]

REGISTRAR: Please state your full names for the record.

WITNESS: My name is Samson Gwede Mantashe.

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

WITNESS: I have no objections.

REGISTRAR: Do you consider the oath binding on your conscience?

WITNESS: [No audible reply]

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

WITNESS: So help me God.

SAMSON GWEDE MANTASHE: (d.s.s)

CHAIRPERSON: Thank you. I hope that you were audible Mr Mantashe to the – the technicians indicate that you could not be heard.

MR MANTASHE: Ja.

CHAIRPERSON: So I think I will ask you to speak up.
[laughs] And I think your mic needed to be raised a little
20 bit.

MR MANTASHE: [No audible reply]

CHAIRPERSON: Ja, okay.

MR MANTASHE: Okay. Is that better?

CHAIRPERSON: Is that – can you hear, Technicians?

TECHNICIANS: [No audible reply]

CHAIRPERSON: Okay they can hear. Okay let us start afresh.

REGISTRAR: Please state your full names for the record.

WITNESS: My name is Samson Gwede Mantashe.

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

WITNESS: I have no objections.

REGISTRAR: Do you consider the oath binding on your conscience?

10 **WITNESS:** I do.

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.

WITNESS: So help me God.

SAMSON GWEDE MANTASHE: (d.s.s)

CHAIRPERSON: Thank you, Mr Mantashe. I now give you an opportunity to make your opening statement or read your opening statement.

20 **MR MANTASHE:** Thank you very much, Chairperson. I am the National Chairperson of the ANC. In part, my election as National Chairperson, I served at the ANC between December 2007 and December 2017. That is ten years. I have deposed to an affidavit in which I deal with the following issues.

- New(?) party(?) system for proper(?) representation.
- The goal of goal of transformative constitutionalism, how ANC policies are formulated.
- The combination of the party candidate list.
- How the ANC chooses the president and cabinet members.
- ANC development and deployment policy.
- 10 - How the ANC Deployment Committee functions.
- The complexities of more than government, the lessons(?) from the UK
- Constitutional exploitation of the function of parliamentary oversight and accountability.
- The need for political wave(?) in parliamentary accountability.
- The relationship between Luthuli House and the ANC representatives in Parliament.
- 20 - Parliament 2009 Oversight and Accountability Model.
- Recommendations made by the ANC to enhance the model, response to evidence of Comrade Makhosi Khoza.
- The role of the ANC caucus and Study Group

and Parliament

- A lateral reform.
- And monitoring(?) ANC performance in Portfolio Committee.

In this opening statement, I highlight some of the key-issues dealt with in my affidavit. However, before doing so I wish to refer to a speech(?) delivered in June 1991 at Stafford University of the United States by the then General Secretariat of the National Mine Workers,
10 Matamela Cyril Ramaphosa in which he outlined the element of the new constitutional framework which was previously articulated by erstwhile President Oliver Reginald Tambo in 1987.

This includes:

- Reunification of the country including so-called homelands that the government has broken off from South Africa.
- One common citizenship for all people of the provinces.
- 20 - The democracy based on proportional representation at the national and local level.
- The Bill of Rights that protects human rights, specified in various related nations documents for reasons to guarantee that

their rights will be enforced and cannot be overruled by any newly elected body and interpreted(?) judiciary.

- The mechanisms for aiding regardless social and economic transformation in a democracy including provisions for affirmative action and not discrimination.

Not long after the Constitution Act was promulgated and Section 1 of the Constitution Act states
10 that the Republic of South Africa is a democratic state found on the following values.

- Human Dignity
- Non-racial and non-sexism
- Supremacy of the Constitution and the rule of law and universal adult suffrage.

I make a point to demonstrate that the value of the ANC Constitution and the Constitution of the country are aligned and the multi-party talks at the Convention for Democratic South Africa, CODESA, will resolve that the
20 electoral system shall be a closed party in this system of proportional representation, meaning that voters vote for a political party and the number of seats allocated to that party in Parliament is in proportion to the number of votes it is assigned(?) in a general election.

This averment was subsequently incorporated

into the legislation. On the issue of performative constitutionalism, I cite legal scholars in my affidavit to demonstrate that – to demonstrate what the ANC believes to be ...[indistinct] of our constitutional democracy and to locate the role of Parliament in the context because the ANC subscribes to the views that primarily – primary purpose for the adoption of the conclusion was not only to establish a society based on democratic values but fundamental human rights but also one based on social
10 justice. For that policy formation in the ANC starts with the development of concept paper which is sent to branches for discussion and inputs. The paper is discussed further at regional and provisional conferences.

Once every five years the policies of the organisation are consolidated at Policy Conference. At this conference, the view of the ANC and his partners, that is the Congress of South African Trade Unions, the South African Communist Party, the South African National Civil organisation are taking into consideration after which the
20 policies are adopted and a resolution taken and that is to be implemented.

The policies adopted become the manifesto of the ANC when it contest election because we do contest elections and therefore... Wait, wait, wait. Yes. And all comrades who are appraised on the National Provincial

Party can at least – are required to commit to the election manifesto of the ANC.

Now in compiling its list of candidates, the ANC takes into consideration demographics, gender equality(?) so that at least 50% of the candidates are women and that is in the Constitution of the ANC through service.

Representation from the youth sector, particular skills of candidates that could enhance the work of Parliament and returns(?) of experienced parliamentarians.

10 In line with the Constitution of the country, every elected member in Parliament shall be eligible to be a candidate for the Presidency of South Africa. Although the Constitution affords the President the prerogative to choose the Cabinet, the practise in the ANC is that the President chooses the Cabinet after consultation with the ANC and its alliance.

I want to emphasise consultation because it is not the ANC and the alliance that tells the President who should be in the Cabinet. It is the President who consults
20 the ANC and the alliance so that the unit is maintained.

In November 2018, I made a submission to the Commission to clarify the confusion that had arisen when the banking institution presented the evidence about their meetings with the ANC and to explain why there is ...[indistinct] banks and what internal processes were

followed thereafter. [Speaker is not clear.]

At the time, I raised the following issues with the Commission. All South Africans, both black and white, should embrace the Commission with open arms. We made the statement then, we repeat it today.

The ANC exhorts that all South Africans to persevere well to endure the pain and the emotional trauma for building a nation with a single identity out of the ashes of the racially divided and inhuman past and we
10 have to build a strong capable state for an exclusionary and illegitimate past.

Just as a matter of mentioning. In 1994, every director general of any state department was a white male and every judge was a white male. So that is what we are referring to. And the Truth and Reconciliation Commission fulfilled an important role in the post-apartheid nation building process as a young democracy.

We have achieved a relatively – in relatively short period a degree of consensus on the past cultural
20 traditions, customs, symbols, rituals and historic experiences of black and white people.

This proved to be a strong indicator of the willingness of the different racial groups in our country to come together for the common good to largely guard our victories and not allow anyone to drag us back to the

racially divided society where the rule of law was selectively used and with the majority of people, African, Coloureds and Indians existed as soulless dehumanised individuals. We should not go back there.

I have informed the Commission – I also informed the Commission that I would be submitting a statement about the ANC deployment. The details(?) of the ANC deployment policy was subsequently filed(?) with the Commission on 9th, 20th and 26th November 2018. So they
 10 were submitted to the Commission as appear from the annexures in the bundle of documents as submitted.

I want to emphasise the fact that in the ANC we do not have a policy called Cadres Develop Deployment with a deployment policy. That is a huge difference because it is not a Cadres Deployment. It is a deployment policy of the ANC. I addressed the issue of Cadres Deployment in my affidavit for two further reasons.

To give – you know, we are able because of Cadres Deployment. These are the reasons. To give the
 20 Commission an appreciation of the genesis of the ANC policy, development and deployment so that it can evaluate and pronounce on the validity of the request made by the leader of the opposition, Mr John Steenhuisen that on 10 February 2021 that the State Capture Commission should tackle and end the ANC policy of Cadres

Deployment. That is what the DA refers to our policy, Cadres Deployment for their own reason.

And to give the Commission an appreciation of the calibre of comrades and procedure followed for that deployment, between 1997 and 2017, the Cadres Deployment policy has been discussed, refined at National Committee meetings, Council(?) Executive(?) Committee meetings at National Conference.

An element of degree of the development policy
 10 can be traced back to ANC Conference in Zambia in 1985 where the ANC President Oliver Tambo called for the establishment of a political school.

Ironically, this was precisely at the same time when apartheid government placed our country under a state of emergency. There were formal and informal training taking place since the late 1990's to take over from the predominant white male civil services. Many as black males and females were deployed to undergo training. They will send them to various institutions. They were sent
 20 to Egypt where they received diplomatic training, the Northern countries, United Kingdom has specific value in civil service and the Kennedy School of Governance, Wharton Business School, [indistinct] 00.11 School of Governance and at which university where they took courses in public sector policy and development

management.

We are making this point so that it must not be seen as just taking people from the street, put them into public service, there was a conscious process of training people to prepare them for a role in the state.

The purpose of the ANC political school in South Africa which was received in April 2013 was to connect from political education and training, political education and training for all elected leadership structures to develop
10 the capabilities of cadres to undertake the task to which they were deployed and to develop the calibre of cadres to monitor and [indistinct] 01.06 policy efficiency of ANC campaigns and policy development.

Now in 2018 President Matemela Cyril Ramaphosa launched the OR Policy Leadership Institute and Dr David Masondo was appointed its president. That is [indistinct]
01.26.

The ANC used the first demo(?) government in 1994/'99 to perfect deployment system notable with
20 deployment framework, guidelines of the relationship between ANC structure and the government structure and this talks to party and state relationship.

Guidelines on the role and criteria for its premiers, guidelines on accountability and monitoring of a supportive(?) representative, guidelines on the deployment

of [indistinct] 02.07 mayors for local government election.

In practice the secretariat of the deployment committee monitors the media and government bulletins for advertisement for vacancies.

The committee takes a mere interest only in those vacancies which it considers strategic and which could advance the development agenda with the state, such for the post of Director General, board of directors and state owned enterprise.

10 The deployment committee does not deploy directors, deputy directors and all, the deployment does not enter there, it is limited to in the state to directors general and deputy directors general. That is it. Below that, it is normal.

Now the deployment committee maintains a pool of suitably qualified candidates for deployment. Sometimes the ANC would encourage comrades to apply for a position provided that they have already undergone psychometric testing and a comprehensive government-based selection
20 process. This is not an ANC process. The deployment committee does not appoint, it recommends. Government undertakes processes to select candidates for positions.

In the case of board position for state owned enterprises where public interviews are conducted, the ANC would encourage suitable comrades to apply. In cases

where the Minister has the final say in appointments, the role of the deployment committee is to comment on short list, usually three candidates presented by that minister.

The focus is not only on academic and professional expertise but the deployment committee also takes into account skills and expertise in connection with constituency work, working with the masses on the ground and our comrades deployed in whatever centre should take with them qualities and attributes that we hold dear as a
10 movement.

This includes putting service to the people first, an ethic of work and service levels, respect of the senior structures and cadres of the movement, responsiveness to the needs of the people and collective approach to the matters. And it is important, Chair, to emphasise the fact that this is what we aspire for.

A few days ago the Minister of Public Services and Administration said at the top level, up to now, 65% meet the requirements, there is a 35% that is questionable,
20 meaning that it is quantifying progress that has been made thus far.

In our deployment we consciously strive to dispel the notion that we will become a movement and leadership which has discharged from the people whom we have served in long struggle for liberation. We endeavour to be

true to our tradition of putting the interests of our people and our country first.

The national deployment committee consists of 15 members, primarily from the National Executive Committee. It is chaired by the deputy president of the ANC, currently Comrade Mabuza.

Moving to parliamentary accountability, the National Assembly is required in terms of Section 52(2) of the Constitution to do two things, hold the organs of state
10 accountable and exercise general oversight over national executive authority and organs of state.

Equally(?) important is the provision of Section 42(3) of the Constitution which requires members of parliament not only to oversee executive authority but to scrutinise the action of executives without fear, favour or prejudice and to take their oath of office very seriously, namely that they would be faithful to the Republic of South Africa and will obey, respect and uphold the constitution of the Republic and perform their function to the best of their
20 ability.

In essence, our [indistinct] 07.07 democracy adheres to norms and principles of separation of power, rule of law, democratic self-government, self-government, protection of human rights and existence of an independent judiciary and it is a non-negotiable condition that these

values are upheld in the oversight and accountability obligation of members of parliament. It follows the ANC will not tolerate any unlawful and unquestionable conduct by its members of parliament.

Echoing the sentiment of Secretary General Comrade Ace Magashule, I give an unconditional undertaking on behalf of the ANC that the organisation has the political will to make parliament work and to ensure effective oversight and accountability.

10 Secretary General, Deputy Secretary General of the ANC to visit parliament from time to time to liaise with ANC members of parliament in caucus meetings. The Secretary General and Deputy General Secretary do not go to parliamentary portfolio committees, they talk to ANC caucus, that is the end of their space in parliament.

The comrade in charge of ANC members in parliament is the Chief Whip of the party and decisions within parliament are made within the rules of the National Assembly and legislative framework specific to parliament.

20 The ANC recommends that to enhance oversight and accountability, parliament implements a number of the [indistinct] 09.03 referred to in the 209 oversight and accountability model but which are yet to be implemented.

These include the [indistinct] 09.14 mechanisms, amendment of rules of National Assembly, an oversight

[indistinct] 09.17 section, legislative reform to act as deterrent that deals corrupt activities, an early warning system to detect state capture and corruption, building our position on democracy and then seeing the oversight and accountability obligation of the Portfolio Committee, upgrading, training and increase research capacity.

Asset interest disclosure, asset interest disclosure laws and encouraging [indistinct] 09.55. More details of these recommendation are set out in the affidavit of the
10 Secretary General.

In the execution of their duties, members of parliament have to balance two opposing principles, their loyalty to the party, its manifesto and voters who voted for the party and remain faithful to their political moral principles and obligation to the constitution.

As the ANC, we have stressed to our MPs that in the execution of their parliamentary responsibility, they should apply their minds to the purpose of their task in parliament to announce our development and agenda and not adopt a
20 herd mentality by virtue of the ANC majority [indistinct – dropping voice]. In short, they should be thinking MPs. That is emphasised.

However, South Africa is a very young democracy and the ANC's view is that we should tread with caution when making majority decision, such as the removal of a

sitting president without having a full appreciation of the consequences that such decision could have on the country, the party and threaten democracy.

Recent events in the United States have really demonstrated how fragile democracy can be. I would elaborate on this because I have an experience of a party removing two of its sitting presidents. I can relate the stories of the consequences and one of those was the formation of Cope, you know, breakaway from the ANC and
 10 many people do not take that into account and the fact that when you remove a president, for all intents and purposes the cabinet is removed and I can tell you that when the president was removed we received a long list of ministers resigning, basically collapsing government.

And, therefore, when we deal with the removal of a president, it is not just a question of a vote of no confidence, whatever, we look into the consequences and take a party view on those issues.

Impulsive action, I believe, would [indistinct] 12.30
 20 certain of process which would have a detrimental impact on the democratic [indistinct – dropping voice] basically never take the sanction(?) [indistinct] 12.38 option.

The [indistinct] 12.42 option, Chairperson, is when you get into a room, you pull the pillars, you collapse the system on top of all of us. We do not take that option, we

think it is a dangerous option, it is a fatal option. This was their [indistinct] 12.59 comrade Jessie Duarte adopted in June 2017 when a motion of no confidence was proposed in President Zuma.

So I am explaining the logic that we took and say it should not be done, we tread - we cannot a [indistinct] 13.22 collapse the party, collapse the government and therefore create a crisis in the country.

The removal of a president is a matter of party
 10 organisation discipline which should best be dealt within the confines of the party. All South African political parties operate caucus system in all spheres of government, national, provincial and local and as a governing party the ANC will endeavour to re-orientate the public [indistinct] 13.52 to appreciate the distinction and be able to differentiate between participation in a caucus for a static rule which may include participation of ministers and their constitutional obligation in terms of their oath of office to hold the same minister accountable in the portfolio
 20 committee in which other political parties participate. Their participation both orally(?) have entirely different objectives, maintaining one, accountability to party and the public can be achieved by explaining to MPs that both roles are necessary to enhance the function of our democracy.

At the national general council meet and review later this year, the ANC will focus on two aspects of the [indistinct – dropping voice] where they will sit and produce elements of the constitution [indistinct] 14.53 electoral system at national and provincial level whether the national, provincial and local government election should be synchronised and take place at the centre and this follows a judgment.

There is a judgment that instructs us to have and
 10 undertake that decision and I am committing here, will undertake that decision and in terms of reference of the Commission, place specific emphasis on the Gupta family.

As Chairperson of the ANC I believe it is necessary to explain how relationship between the Gupta family and the ANC evolved. Very important because hindsight is an exact science but if we take how it evolved it will help to a great extent.

A few years after the arrival of [indistinct] 15.48 one of the Gupta brothers, Ajay Gupta, became a member of
 20 President Thabo Mbeki's economic advisory, [indistinct] 15.57 [dropping voice]. Around 2010 the family approached the ANC with a proposal to establish a newspaper and television channel. At the time the ANC had an interest in the diversification of the media in the country. On the basis the proposal was entertained, the

establishment of ANN7 and the New Age was, in our view, just such an opportunity. In fact, the name of the newspaper, New Age, was proposed by the ANC official after a well-known struggle newspaper of the 1950's.

Once established both newspapers and television channel gave much needed coverage to programmes of the ANC and I can tell you, if you looked into the newspaper and the media today, when I buy newspapers on a Sunday, if I buy them I know what to expect from Independent
10 Media, I know what to expect from the Sunday Times which is something I do not understand and that informed our view that we needed diversity in the media stream.

At this stage the ANC had no knowledge of other business interests of the Gupta family until much later. So what we know today, we did not know then.

Since 2013, after the Integrity Commission recommended that former President Zuma to step down, the ANC has been undergoing a period of instability.

A substantial part of that instability can be
20 attributed to the allegation of involvement of the Gupta family in the ANC politics, in particular, the perceived hold of that family had over the former President.

Now any indication of this perceived hold arose when a private plane carrying guests to Gupta family wedding landed in Waterkloof Airforce base in 2013 and a

remark by Comrade Fikile Mbalula in a meeting of the NEC in June 2014 after the general election that he was told of his appointment to the executive by a member of the Gupta family. I have no doubt that during this period [indistinct] 18.32, many MPs felt leaderless(?) and this probably explains their [indistinct] 18.37 in the portfolio committee.

However, no ANC member of parliament was told to stop thinking or not to execute their responsibility in parliament.

10 In my affidavit I deal with the complexities of modern(?) government and the lessons we can draw from the United Kingdom. I am of the view that the manner in which parliamentary portfolio committee [indistinct] 19.03 and support structure around them, is an urgent need of reform so that when we assess their performance, we are comparing apples and apples.

 Finally, I have been requested to comment on 55 press reports which relate to former President Zuma's relationship with the Gupta family, by the [indistinct] 19.31
 20 Gupta family plane saga issue of irregularity and trust that parliament's [indistinct] 19.40 with Gupta family, claims by Mr Mcebisi Jonas that Gupta family wanted to bribe him, evidence of Comrade Vytjie Mentor and Barbara Hogan and [indistinct] 19.57 of the [indistinct] 19.57, I will endeavour to comment on matters arising from these press reports

sincerely and to the best of my ability.

Thank you very much, Chairperson, we thought that we should give this context to our [indistinct – dropping voice]. Thank you very much.

CHAIRPERSON: No, thank you very much, Mr Mantashe. There are a number of points that you have made in your opening statement which I have no doubt will be dealt with as you continue with your evidence. I am particularly encouraged about – by some of the points made which
10 commit the majority party in parliament to, as I understand it, doing what it can to ensure that there is proper and effective oversight and accountability in the context of the parliamentary function. So but I am sure that these points will be dealt with as we go along. Thank you. Mr Freund, you want to start?

ADV FREUND SC: Yes, thank you, Chair, I am in your hands as to time.

CHAIRPERSON: Yes.

ADV FREUND SC: There is a lot to get through today so
20 [inaudible – speaking simultaneously]

CHAIRPERSON: Yes. No, no, that is fine. I must just indicate so that everyone knows what my thinking is and if anyone has a different thinking they can indicate in due course. I have in mind that if by normal closing time, four o'clock, we are not done, we should continue with Mr

Mantashe's evidence and try and finish today but maybe we will finish before then.

ADV FREUND SC: Yes, certainly.

CHAIRPERSON: But I just mention because I think there are lot of issues that might require proper discussion and ventilation so I just mention that if everybody – if nobody has a problem with that, then we can proceed on that basis and if there is a problem we can know in advance so that we pace ourselves appropriately.

10 **ADV FREUND SC:** Yes, thank you, Chair. Chair, I will obviously endeavour to complete before four o'clock.

CHAIRPERSON: Yes, yes.

ADV FREUND SC: But I do have concerns that we may not achieve that and we will have a better sense in that by mid afternoon.

CHAIRPERSON: Yes. No, no, that is fine, I mean, I think it is very important that the issues that need to be dealt with be dealt with properly because it is the majority party that is here and it commits itself to fully cooperating and
20 being party to solutions, to challenges that we have been looking at and therefore the opportunity must be seized and used optimally.

ADV FREUND SC: As you please.

CHAIRPERSON: Ja, okay, alright.

ADV FREUND SC: Mr Mantashe, if I could just start with the formalities. Can you please turn to page 100.2 where you will find an index?

MR MANTASHE: Page?

ADV FREUND SC: 100.2, which should be very early in your papers. So on the top left you will see numbers with PO 01 and then 100.2.

MR MANTASHE: So you want me to open...

ADV FREUND SC: It will be very near the very beginning
10 of your file but...

CHAIRPERSON: It is the index just before your affidavit.

MR MANTASHE: Okay.

ADV FREUND SC: Just turn the page. Maybe just give it a ...[intervenes]

CHAIRPERSON: 100.2.

ADV FREUND SC: If you go back one page, go back two pages from where you are. Go backwards two pages.

CHAIRPERSON: Oh no, I think he is going beyond.

ADV FREUND SC: Can you just over that page? Is there
20 not another page after that page please? No, no. No, no, just turn it over this way, ja. Is there not a page in between? Yes, you missed that page. That is the page I wanted to take you to. I am sorry...

CHAIRPERSON: Just before you proceed, Mr Freund, I do not know whether the lighting there where Mr Mantashe is

is normal or whether it can be improved. I know that we always do not have the best lighting there. If the technicians can look into that? But you are able to read from there, Mr Mantashe? Mr Mantashe, are you able to read? The lighting is fine?

MR MANTASHE: Yes, [indistinct – dropping voice]

CHAIRPERSON: Okay, alright.

ADV FREUND SC: Mr Mantashe, the page that is now open in front of you at the top left, does it end with the
10 number 100.2?

MR MANTASHE: Yes.

ADV FREUND SC: Yes, thank you. Now that is an index which helps us to get our bearings on all the different papers that are related to your evidence and you will see that firstly it refers to an affidavit by yourself dated the 12 March 2021 and if you keep your finger there and go please to page 100.6, is that the beginning of your affidavit?

MR MANTASHE: Yes.

20 **ADV FREUND SC:** Yes. And then if you turn to page 100.44, is that the end of your affidavit with your signature?

MR MANTASHE: 144?

ADV FREUND SC: 100.44.

MR MANTASHE: Yes.

ADV FREUND SC: Right. So I take it that that is the affidavit you had deposed and presented to the Commission and you can confirm that that is your affidavit?

MR MANTASHE: I confirm.

ADV FREUND SC: Thank you. Now secondly, if you can go back to that index page, at page 100.2 you will see that item 2 is a set of media articles starting at page 100.45 and running all the way through down to on page 6 of that document, all the way through to page 100.418 and all I
10 want to ask you is that you can confirm that you have received those articles, you are aware of those articles.

MR MANTASHE: Yes, I did see them.

ADV FREUND SC: Alright. And then thirdly, if you go in the index to page 100.5.2 you will see there is an item 3. It is paginated at the bottom of the page, page 6.

CHAIRPERSON: I am sorry, what page, Mr Freund?

ADV FREUND SC: 100.5.2 and I have said to Mr Mantashe at the foot of that same page you will see the number 6 and you will see ...[intervenes]

20 **CHAIRPERSON:** I have got 100.5, that is still the index.

ADV FREUND SC: Yes, still in the index, then after .5 it goes 5.1 and then 5.2.

CHAIRPERSON: Well, after 100.5 I have got 100.6.

ADV FREUND SC: Ja, well then your file is not in order and I apologise.

MR MANTASHE: I have got 1.5.2.

CHAIRPERSON: Oh.

ADV FREUND SC: yes, so Mr Mantashe's file is the same as mine.

CHAIRPERSON: It means I was discriminated against.

ADV FREUND SC: You were discriminated against and we can only apologise for that. But with your leave, if I may do this, Mr Chair, we can sort this out in the tea break shortly.

10 **CHAIRPERSON:** Tea break, ja, that is fine.

ADV FREUND SC: Because it is just a formality that I am trying to deal with.

CHAIRPERSON: Ja, that is fine.

ADV FREUND SC: And the witness has the correct papers. I just want to confirm with you, Mr Mantashe, that what then is indexed and it is the documents that we find in the file from page 100.419 all the way through to the end are a set of documents that you, through Mr Naidoo, have furnished to the Commission and they have now been
20 incorporated into this bundle, is that correct?

MR MANTASHE: Yes.

ADV FREUND SC: Right. Now on that basis, Chair, may I move that the entirety of the affidavit, articles and further documents that I have just referred to, be admitted as evidence and they together form EXHIBIT ZZ1.10.

CHAIRPERSON: Well, firstly, the bundle we are using at the moment is Parliamentary Oversight bundle 1A.

ADV FREUND SC: That is correct, as you have just said Chair it is going to be numbered one.

CHAIRPERSON: Yes, yes, and then you have – then the first document under the index, after the index is Mr Magashule's affidavit and thereafter the affidavits ...[intervenes]

ADV FREUND SC: The first document ought to be not Mr
10 Magashule but Mr Mantashe's affidavit.

CHAIRPERSON: Sorry? Well on mine the first affidavit is Mr Magashule's one. Mr Mantashe's one comes later on mine.

ADV FREUND SC: Yes indeed.

CHAIRPERSON: Is that correct?

ADV FREUND SC: That is correct, for the moment I haven't moved the admission of Mr Magashule's affidavit.

CHAIRPERSON: Yes, yes.

ADV FREUND SC: For the moment I am leading the
20 admission of Mr Mantashe's affidavit.

CHAIRPERSON: Yes, so what I am doing is try and establish which documents fall under what you refer to, you want me to admit as Exhibit ZZ1, so let's start with Mr Mantashe's affidavit and then the annexures plus ...[intervenes]

ADV FREUND SC: Based on Mr Mantashe's affidavit.

CHAIRPERSON: Yes.

ADV FREUND SC: To which I think there are no annexures.

CHAIRPERSON: Okay.

ADV FREUND SC: They then continue with a set of fresh reports, but to find the – if I take you Chair to page 100.6 as the beginning of the affidavit

CHAIRPERSON: Ja.

10 **ADV FREUND SC:** We established all the rest of it, and it runs all the way through to page 100.613.

CHAIRPERSON: Yes.

ADV FREUND SC: That is what I have covered with the witness and that is what I am for the moment moving the admission.

CHAIRPERSON: Yes, now let's start with the issue of whether there are any annexures to Mr Mantashe's affidavit? Now you have said that you think there are not, I know that he refers to some papers in his affidavit but
20 does he not attach them?

ADV FREUND SC: He does not attach them and that is precisely the reason why Chair in follow-up I have requested and was subsequently furnished with some of those papers.

CHAIRPERSON: Yes.

ADV FREUND SC: And those fall into the third category.

CHAIRPERSON: Yes.

ADV FREUND SC: To documents recently furnished by Mr Mantashe.

CHAIRPERSON: Yes, now from page 100.45, which is the page immediately after Mr Mantashe's affidavit, are there documents that Mr Mantashe provided and then are there documents that you provided?

ADV FREUND SC: Yes, that is correct.

10 **CHAIRPERSON:** Shouldn't we separate the two and maybe have one exhibit for those that he provided and another one for those that you provided?

ADV FREUND SC: Well that is indeed what we are proposing.

CHAIRPERSON: Okay.

ADV FREUND SC: But all those has sub-sections so Mr Mantashe's affidavit ...[intervenes]

CHAIRPERSON: Let's start with Mr Mantashe's affidavit.

20 **ADV FREUND SC:** If we regard Mr Mantashe's evidence in totality as being Exhibit ZZ1.10 then we can divide that exhibit ZZ1.10 into three parts.

CHAIRPERSON: Yes.

ADV FREUND SC: The first part is his affidavit.

CHAIRPERSON: Ja.

ADV FREUND SC: The second part is the press

statements.

CHAIRPERSON: Yes.

ADV FREUND SC: And the third part is the additional documentation furnished.

CHAIRPERSON: Okay, no that is fine.

ADV FREUND SC: And that is already covered on the record with the witness.

CHAIRPERSON: That is fine, that is fine. Okay let's start with his affidavit, you asked me to admit it as an
10 Exhibit and to mark it as Exhibit what?

ADV FREUND SC: ZZ1.10.1 will be the affidavit.

CHAIRPERSON: The affidavit of Mr Sampson Gwede Mantashe starting at page 100.6 is admitted as an exhibit and will be marked as Exhibit ZZ1.10.10, okay.

**AFFIDAVIT BY MR SAMPSON GWEDE MANTASHE
HANDED UP AS EXHIBIT ZZ1.10.1**

ADV FREUND SC: Then from page 100.45 is the beginning of the press statements, and if that could be, that bundle of press statements could be admitted as
20 ZZ1.10.2.

CHAIRPERSON: That would be from page 100.45 up to what page?

ADV FREUND SC: I will give you the page. It will be up to 100.418.

CHAIRPERSON: 100.418, is that right?

ADV FREUND SC: That is correct.

CHAIRPERSON: Maybe for convenience there could be a divider between the two sets of documents, between the affidavit and this one.

ADV FREUND SC: Indeed.

CHAIRPERSON: So that Exhibit ZZ10.2 would basically be the document supplied by Mr Mantashe, is that right?

ADV FREUND SC: No, ZZ1.10.2.

CHAIRPERSON: Oh is there a one before ten?

10 **ADV FREUND SC:** There is one before it yes.

CHAIRPERSON: Okay I am sorry, that is starting from Mr Mantashe's affidavit?

ADV FREUND SC: Yes.

CHAIRPERSON: I think I just said 10.

ADV FREUND SC: It is 1.10 because it is all part of the ANC affidavit which is ZZ1.

CHAIRPERSON: Okay, I am going to do a correction in relation to Mr Mantashe's affidavit, it is not Exhibit ZZ10.1 but it is Exhibit ZZ1.10.1.

20 **ADV FREUND SC:** That is correct, thank you Chair.

CHAIRPERSON: And then we move to ...[intervenes]

ADV FREUND SC: The press statements would be – I am going to the page, it is at page ...[intervenes]

CHAIRPERSON: Then at page 100.45 that will not be Exhibit 10.2 but Exhibit ZZ1.10.2.

ADV FREUND SC: And that runs through Chair to 100.418, I could tell you that that very page 100.418 is a special character but we will deal with that in the evidence in the course of the day.

CHAIRPERSON: Yes but just for my own understanding, are those documents then from page 100.45 to page 100.418, are those the documents supplied by Mr Mantashe?

ADV FREUND SC: No those are the documents supplied
10 by the Commission to Mr Mantashe.

CHAIRPERSON: Okay.

ADV FREUND SC: In order for him to be given an opportunity to comment on that.

CHAIRPERSON: Okay and the ones we haven't dealt with are those that he provided?

ADV FREUND SC: Yes which I will take you to very shortly.

CHAIRPERSON: No, no that is fine, so I think therefore we could take these, namely from page 100.45 to page
20 100.418 as a batch.

ADV FREUND SC: As a batch yes.

CHAIRPERSON: As a batch ja.

ADV FREUND SC: Yes, and that will be in your file if I may suggest, separately divided, so that you can clearly see ...[intervenes]

CHAIRPERSON: Yes, ja, okay. So those documents therefore that start from page 100.45 to page 100.418 will be admitted and will be marked Exhibit ZZ1.10.2, but I am wondering whether you might end up with further page numbers for further documents or whether you would leave them like this and you have just referred to the overall pagination to identify which document.

ADV FREUND SC: Sorry, I don't understand Chair, but I think it is manageable as it is

10 **CHAIRPERSON:** It is manageable without further subdivisions, no that is fine.

ADV FREUND SC: Yes, manageable it is.

CHAIRPERSON: Then let's go to the next batch.

ADV FREUND SC: Then Chair from page 100.419 onwards, all the way through to 100.614 is what I propose should become Exhibit ZZ1.10.3, those are all documents recently furnished to the Commission by the Mr Mantashe, including you will see the very first one is the opening statement which you have just heard, but including many
20 other things that we will take you to in due course.

CHAIRPERSON: Okay, no that's fine. Then the batch of documents starting from page 100.419 up to page 100.614 will be admitted as Exhibit ZZ1.10.3.

ADV FREUND SC: Thank you Chair.

CHAIRPERSON: Okay alright. Yes?

ADV FREUND SC: And if I may then proceed, I want to start the examination.

CHAIRPERSON: Okay no that is fine, but I think let us take the tea break now so you can start when we come back. We are twenty past eleven, we will resume at twenty five to twelve.

Let us adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

10 **CHAIRPERSON:** Okay we can proceed now.

ADV FREUND SC: Thank you Chair. Mr Mantashe I want to start on dealing with the issue of deployment that you have referred to in your introductory address and I think it might be convenient if we start at – at page 100.450 I think that has been opened for you in the interval. Page 100.450 Chair.

CHAIRPERSON: Okay. Thank you.

ADV FREUND SC: You got that?

20 **CHAIRPERSON:** I do not know whether the – the noise of the aircon is going to interfere with the sound but they will adjust it if we indicate that it is interfering. Okay alright. I have got 450 – 100.450.

ADV FREUND SC: It should be headed Supplementary Statement.

CHAIRPERSON: Ja.

ADV FREUND SC: May I then proceed?

CHAIRPERSON: You may proceed.

ADV FREUND SC: Mr Mantashe is it correct that after Barbara Hogan testified you furnished a brief initial statement and then after furnishing that brief initial statement this was in 2018 you then furnished this document that we have in front of us as a supplementary statement, is that correct?

MR MANTASHE: Yes.

10 **ADV FREUND SC:** And this was in or about November of 2018. The original statement was the 11th of November and I think this supplementary statement came around about the end of November 2018, does that sound right to you?

MR MANTASHE: Yes there was – there was supplementary 00:02:09 statement.

ADV FREUND SC: Right. Now in this document you turn to paragraph 32

MR MANTASHE: Chairperson where are you?

ADV FREUND SC: Sorry just bear with me. 3.2 – 3.2

20 **MR MANTASHE:** Oh 2.12 yes.

MR MANTASHE: Perhaps just to set the – the context. Ms Hogan had made certain allegations which we will come back to – we will come back to much later today but they were allegations which raised the proper place of the ANC's deployment committee and in answer to her allegations you

put up a brief answer and then in this document you elaborated further on the question of the deployment committee. That was the purpose of this document as I understand it, is that correct?

MR MANTASHE: Yes.

ADV FREUND SC: And in that supplementary statement that you furnished in 2018 at paragraph 3.2 you said the following:

“Our immediate goal – the our is presumed the African
10 National Congress is it?

CHAIRPERSON: He is asking Mr Mantashe whether our immediate goal refers to the immediate goal of the ANC? Did you – can you hear me?

MR MANTASHE: Yes I do not understand the question.

CHAIRPERSON: Okay he is referring to paragraph 3.2.

MR MANTASHE: I see that.

CHAIRPERSON: Yes.

ADV FREUND SC: And in paragraph 3.2 you say:

“Our immediate goal.”

20 **MR MANTASHE:** Yes.

ADV FREUND SC:

“As set out in the Strategy and Tactics is to
do certain things.”

I am just trying to understand whose immediate goal is it? I am putting to you that I think it must be a reference to the

African National Congress.

MR MANTASHE: It is the ANC Policy document.

ADV FREUND SC: It is the ANC yes.

MR MANTASHE: Strategy and Tactics 00:04:23 support stream.

ADV FREUND SC: Yes. So the ANC immediate goal as set out in strategy and tactics. Now what is strategy and tactics?

MR MANTASHE: Sorry Chairperson a policy document of
10 the ANC.

ADV FREUND SC: It is an earlier policy document – when was it drawn up approximately?

MR MANTASHE: It is not earlier. The first formal strategy and tactics was adopted in Morogoro in 1967 and it was a white and 00:04:53.

ADV FREUND SC: It is – sorry I could not hear you. It was...

MR MANTASHE: It is revisited and revised.

ADV FREUND SC: It is revisited at every conference.

20 **MR MANTASHE:** Every conference.

ADV FREUND SC: So at every conference the original strategy and tactics document gets revised in accordance.

MR MANTASHE: Yes.

ADV FREUND SC: With provisions of presumably the resolutions of the Congress – of the conferences. And you

then continue.

“Our immediate goal is to deepen the hold of
the Liberation Movement over the levers of
the state.”

Now when you refer there to the levers of the state to what
are you referring?

MR MANTASHE: Every world state is the 00:05:39 of
unconstructed – every 00:05:42 where that is departments of
state owned enterprises 00:05:48. All of them 00:05:54 of
10 unconstitutionally.

ADV FREUND SC: And the strategy of the African National
Congress as I understand you is to deepen its hold over the
levers of state. Correct?

MR MANTASHE: Yes.

ADV FREUND SC: Now what does that mean to deepen its
hold?

MR MANTASHE: The unashamedly they is the one to govern
– what I – I do not understand too and therefore you cannot
govern without the state. That is why there is a distancing
20 between state and government. We are a government party
but they stayed with this continuous that state must be made
ready to exit programmes of a government department.

CHAIRPERSON: Can I ask this question? Is my
understanding of deepen the hold of the Liberation
Movement over the levers of the state correct if I say it

means to deepen the control of the Liberation Movement on the various levels of state and features of the state?

MR MANTASHE: Yes it is entrenched.

CHAIRPERSON: It is correct.

MR MANTASHE: Yes it is correct.

CHAIRPERSON: Okay.

ADV FREUND SC: And clearly when you refer here to the Liberation Movement you must be referring to the African National Congress and presumably its alliance as well?

10 **MR MANTASHE**: That is the Liberation Movement.

ADV FREUND SC: Yes. And when you talk about control over the leaders of state that presumably includes control over the Public Administration.

MR MANTASHE: Yes if you are government you must have that.

ADV FREUND SC: And it includes control over the public service which is part of the public administration, you agree?

MR MANTASHE: Yes.

ADV FREUND SC: And it includes control over the state
20 owned enterprises, agree?

MR MANTASHE: Yes. Those are tools in the hand of a government budget to execute.

ADV FREUND SC: Now do you accept the principle that the public service is required to be non-partisan?

MR MANTASHE: We accept that.

ADV FREUND SC: I beg your pardon.

MR MANTASHE: We accept that.

ADV FREUND SC: You accept that. And I furnished to you and Chair you may find on your desk just an extract from the – the constitutional principles which form schedule 4 to the interim constitution. They are numbered in roman numerals but if I can take you to the sixth...

CHAIRPERSON: Yes.

ADV FREUND SC: This sixth page of that.

10 **CHAIRPERSON:** Page 6?

ADV FREUND SC: Page 6 you will find Principle number 30 which is XXX.

CHAIRPERSON: Yes.

ADV FREUND SC: And I – I would assume Mr Mantashe please correct me if I am wrong but I would assume that you would be familiar with these principles that were principles that form part of the interim constitution, am I correct?

MR MANTASHE: Yes.

20 **ADV FREUND SC:** And you understand and know very well that the – the interim constitution provided for the – for the establishment of what we now refer to as the final constitution but the final constitution had to comply with certain principles and that is the principles at which we are looking at the moment. Is that correct?

MR MANTASHE: And we accept them.

ADV FREUND SC: Right. And one of those principles that has to be incorporated and was incorporated in my view in any event into the – the so called final constitution the constitution of 1996 is that there shall be an efficient non-partisan career orientated public service broadly representative of the South African Community functioning on the basis of fairness and shall serve all members of the public in an unbiased and impartial manner and it continues.

And I am assuming that as Chairperson of the African
10 National Congress you have no difficulty with this principle.
I think that is what you have already said to me, is that right?

MR MANTASHE: No 00:10:44.

ADV FREUND SC: Right. So the – one of the issues that I am going to be exploring with you in the course of the morning is what some might think is there is a tension between the principle that the Public Service being non-partisan and what you have already told the Chair which is that it is the express policy of the African National Congress
20 to control the Public Service.

Now do you see any tension or conflict there at all?

MR MANTASHE: No there is no tension the emphasis is on working with the Public Service that is not rebellious against the governing party that is the emphasis.

ADV FREUND SC: And I presume what you are referring to

but correct me if I am wrong. The African National Congress when it was first elected here in 1994 inherited as it were a state established by an apartheid government.

MR MANTASHE: Yes.

ADV FREUND SC: With racists laws, with a predominantly white Public Service and you would accept that what I put to you, correct?

MR MANTASHE: Yes.

ADV FREUND SC: So one of the challenges confronting the
10 African National Congress after winning at least a first election is to try to re-orientate the state structures so that they are no longer racist and so that the demographic makeup of that Public Service is more in line with the – with the demographic makeup of the country as a whole, is that correct?

MR MANTASHE: Apparently so.

ADV FREUND SC: Yes. But let me make clear that I have no difficulty with that I cannot imagine the commission can have any difficulty with that. That is not in dispute in this
20 matter. We take that for granted. We also take for granted – or let me put it to you I am sure you will agree with this that the goal of the constitution is expressly to be transformative. You see?

MR MANTASHE: Yes.

ADV FREUND SC: And that embraces many things but

amongst the things it embraces is a desire – a policy in fact an instruction to the nation to shake off the racist past and – and to firstly as it were create a non-racial society with no racial discrimination and – and providing for more equitable representation in organs of state on a racial basis. I am sure you would accept all of that.

MR MANTASHE: Yes. Yes.

ADV FREUND SC: And again let me make clear that again there is no controversy between us I think the constitution is
 10 very clear on that. And I think what you were referring to a moment ago was that the ANC confronted a problem which was on assuming office which was that it has inherited state structures which were reflective of the apartheid past and the ANC was resolved to change that in accordance with the principles that I have just been referring to. Am I correct there?

MR MANTASHE: Correct.

ADV FREUND SC: And again let me make clear that I can see no basis for criticising the ANC on that. But the
 20 difficulty comes as it were further down the line you go and I think that was one of the points that Ms Hogan was trying to make that there comes a stage at which the obligation to promote a non-partisan Public Service and a non-partisan set of state owned enterprises is intentionally with ANC deployment policy if the ANC deployment policy is to staff

those structures with personnel who are cadres of the ANC committed to and accountable to the ANC. Do you take the view there is no tension there?

MR MANTASHE: Now that is why I clarified Mr Chairperson that the ANC does not have a cadres deployment policy. It has a deployment committee. That deployment committee if you go through those documents will explain to you that deployment is a recommend – is a recommending structure but everybody who goes to the state goes through the
10 interviews and the selection process and gets elected on merit. That is why I reflect with the 65% as quantifying progress made up to now. So 00:16:29 is not trying to deploy the people loyal to the ANC 00:16:31 is deploying competent people in the ANC but will have a broader understanding of the need to transform society.

ADV FREUND SC: Now if I can take you back now for the first time to your own principle affidavit, your main affidavit before the commission. Can I take you to page 100.16?

MR MANTASHE: 100?

20 **ADV FREUND SC:** .16 – 16. It is very early in the file. Well perhaps it would be better if I take you back to page 100.6 just to get your bearing.

MR MANTASHE: 100.16?

ADV FREUND SC: 100 and then .6.

MR MANTASHE: Okay. I have got that.

ADV FREUND SC: Alright so .6 I just want to indicate to you so that you understand what document you looking at is your affidavit to the commission submitted in the last month or two. You understand what I am saying?

MR MANTASHE: Yes.

ADV FREUND SC: And in that affidavit you go to 100.16 and we look at paragraph 43.

MR MANTASHE: Point?

ADV FREUND SC: Paragraph 43 do you have it?

10 **MR MANTASHE:** 4.3?

ADV FREUND SC: No 43.

MR MANTASHE: What is here? I do not have it.

ADV FREUND SC: Page – page 100.

MR MANTASHE: I have 43 here.

ADV FREUND SC: You have got it. And you say this in your affidavit.

“Strategic deployment of ANC cadres played an important role in the ANC taking control of the post Liberations state.”

20 Now could you explain to us what you meant when you were referring in that sentence to the deployment of ANC cadres?

MR MANTASHE: Now you will have to move back in history and understand that here is the ANC walking into government. It inherit a state which is run by workmen, men of the masters. The ANC had a duty to deploy people who

understand the intention of the informative constitutionality and that is why I emphasise the point that people who were sent to school in various parts of the world to study and then brought back deployed to the state not out of the blue because they have gone to school, trained and therefore because of the 00:19:41 society was understood by both government and the state.

ADV FREUND SC: Now in your answer you said to me the ANC had to deploy persons to do certain things. What did
10 you mean the ANC had to deploy? What does that term deploy mean?

MR MANTASHE: Deploy means send people and give people responsibility. That is what deploy means (inaudible) like will be sending me to be Minister I am deployed to be Minister. It is not just being sent there I am given a responsibility to do the correct thing in that work.

ADV FREUND SC: Now I understand that answer so if you want...

CHAIRPERSON: Well before you proceed Mr Freund. Two
20 times Mr Mantashe you have emphasised that the ANC does not have a cadres deployment policy.

MR MANTASHE: Yes.

CHAIRPERSON: It has a deployment policy. Now I am trying to understand what the point – what the important point is that you wanted to drive home when you said that

and I do know that you referred to what the DA I think says. But now I am thinking if your own affidavit talks about deployment of the ANC cadres in the context of deployment policy whether there is not much point to make because your own statement is talking about the deployment of ANC cadres. Is there something I am missing.

MR MANTASHE: No the point that you will miss is that in that deployment it is not focussing on cadres it is focussing of deploying capabilities and competence. Okay. But
 10 equally emphasise that people must understand the policy of a governing party. If you want to understand this you will go to a province that has not 00:22:03. That province will deploy people they have confidence in. But they do not call it cadre development – cadre deployment. But when they think to reconcile that and I must confess that because they do not look for cadres sometimes we will select a person that we think is competent and go to a responsibility and
 00:22:37 policy. That is the point I am trying to emphasise. But 00:22:40 is that you work with a person who works
 20 against the policies and those policies are 00:22:47 that you contested elections on.

CHAIRPERSON: But – but I think I – in substance there is nothing wrong with referring with saying the ANC deploys its cadres in terms of its deployment policy in substance there is nothing wrong but you are saying when one says that one

must not emphasise just the cadres one must look at the entire context.

MR MANTASHE: No. You will have to refer to the submission of the leader of the opposition party.

CHAIRPERSON: Yes.

MR MANTASHE: That submission 00:23:43 specifically cadre deployment.

CHAIRPERSON: Ja.

MR MANTASHE: Okay.

10 **CHAIRPERSON:** Okay.

MR MANTASHE: And because in its narrow interpretation the ANC does not look for competence.

CHAIRPERSON: Ja.

MR MANTASHE: It looks for cadres.

CHAIRPERSON: Yes, yes.

MR MANTASHE: That is the emphasis that I use.

CHAIRPERSON: Yes. No, no, no then I understand. I think what you – what you are saying is a term that on its own should not be objectionable it may be used in a certain
20 connotation negative connotation by other people and that is the negative connotation that you reject.

MR MANTASHE: We do not have a problem with the term cadres.

CHAIRPERSON: Yes, yes.

MR MANTASHE: Okay because there is a clear definition.

CHAIRPERSON: Yes.

MR MANTASHE: Of whom a cadre is. It is not just a member of the ANC.

CHAIRPERSON: Yes, yes.

MR MANTASHE: Chairperson was going through a process, developed, understand policies and can be trusted. That is a cadre. I have no problem with the term cadre.

CHAIRPERSON: Yes.

MR MANTASHE: But deployment to positions we are not
10 looking for cadres we would look for competence and people who are competent to execute the task at hand.

CHAIRPERSON: Ja. Okay.

ADV FREUND SC: So when you are talking about decisions and I am now not – I am now talking about decisions made by ANC structures. I am not talking about decisions made by Ministers or DG's or people appointing staff. I am focussing on decisions made by ANC structures and there are various ANC deployment committees, am I correct?

MR MANTASHE: Yes.

20 **ADV FREUND SC:** When those deployment committees are making their deployment decisions I want to put to you that it seems logical to assume that the people they are seeking to deploy are indeed their cadres not necessarily cadres who lack skill or competence or training but it is in the nature of the exercise that you talking about the deployment of your

cadres, are you not?

MR MANTASHE: You are cleaning me out of my affidavit because in the affidavit I emphasise the fact that a deployment committee does not employ it recommends. Sometimes a person who is recommended fails the selection process and that is where the big deal in the selection process a better candidate is found and that candidate is appointed.

ADV FREUND SC: Now you just said that the deployment
10 committees do not deploy, did I hear that correctly?

MR MANTASHE: They do not employ.

ADV FREUND SC: They do not employ?

MR MANTASHE: Yes.

ADV FREUND SC: But do they deploy?

MR MANTASHE: They deploy, they recommend.

ADV FREUND SC: And so that was going to be my next question. By deploy you say that should be understood to mean recommend.

MR MANTASHE: No. You are taking me to an English class.
20 I am going finish it.

CHAIRPERSON: But remember that it is important that the ANC's position be made clear.

MR MANTASHE: Yes, yes.

CHAIRPERSON: Ja.

MR MANTASHE: Yes. Deployment is a collective effort to

send people to tasks and give them tasks. Employment is the actual process that takes place in government not in the ANC. In the ANC we employ our people obviously they will employ cadre we will not employ prisoners and non-ANC members in the ANC but in government the government selection process is controlled by a department in government Public Service and Administration he has this policy therefore recommendation of the deployment committee are not automatic and I will give you example of
 10 many who were recommended and failed dismally. The reason for that 00:27:51 is that I am trying – I am a cadre of the ANC, I am recommended. I assume that this is my position and...

CHAIRPERSON: And you do not prepare?

MR MANTASHE: I do not prepare I go there I become a disaster. I do not get appointed, simple.

ADV FREUND SC: Alright let us now focus more clearly on the most significant documents of relevance to this debate. Can I take you to page 100.486 – 100.486.

20 **MR MANTASHE:** 400?

ADV FREUND SC: 486. It should be the beginning of the 50th National Conference Resolution.

MR MANTASHE: 480.

ADV FREUND SC: 486.

CHAIRPERSON: Use the black numbers.

MR MANTASHE: I have got it.

CHAIRPERSON: Looking at the black numbers not the red numbers.

MR MANTASHE: I am there 480.

CHAIRPERSON: 6.

MR MANTASHE: 6.

ADV FREUND SC: Right and that document runs through as you can see it is all marked up in yellow for some pages and can you confirm that this is the set of resolutions adopted by
10 the ANC's 50th National Conference?

MR MANTASHE: Yes.

ADV FREUND SC: And that 50th National Conference if I am correct took place in 1997 it was the Mafikeng conference. It was the conference really in the first administration of an ANC government, is that correct?

MR MANTASHE: Yes.

CHAIRPERSON: Just make sure Mr Mantashe that you speak closer to the microphone so that your answer will be recorded.

20 **MR MANTASHE:** Yes I – it was the conference which is towards the end of the first administration.

ADV FREUND SC: Of the first administration.

MR MANTASHE: It was not the ANC administration unit. It was government of national unit. [Speaker not clear]

ADV FREUND SC: Yes.

ADV FREUND SC: This was under the Mandela presidency.

MR MANTASHE: Yes.

ADV FREUND SC: Yes.

MR MANTASHE: That was the Cabinet(?) ...[intervenes]

ADV FREUND SC: And as you say, towards the end of that?

MR MANTASHE: Yes.

ADV FREUND SC: Yes. And if we can turn to page 491,
10 we find the policy which was adopted. And would it be correct to say that this policy that were are going to look at now, it is over the next – over this page and the next page. This, really, is the foundation of the ANC's deployment policy to this day?

MR MANTASHE: I would say yes and no because we should avoid mixing the ANC work and government work because if we are going to do that we are going cause confusion. The ANC as a party and as an organisation has a responsibility to prepare itself to have capacity to
20 govern. Okay? So this policy talks to the ANC internal processes of preparing his people to have capacity to govern.

ADV FREUND SC: Yes, but the question is whether this policy as adopted at this conference really stood as the dead-rock of the ANC's own deployment policies to this

day?

MR MANTASHE: I am worried about this. Of what? To locate a deployment to cadre. I am worried about that. The ANC prepares it cadres.

ADV FREUND SC: Yes.

MR MANTASHE: Government of school. I come back to ...[indistinct] and I go back, go back to school.

CHAIRPERSON: H'm.

MR MANTASHE: That is an internal ANC process.

10 **CHAIRPERSON**: H'm.

MR MANTASHE: So that if I am given a responsibility, I must have acquired the competence to execute.

CHAIRPERSON: Well, let me ask this – ask the question this way. I am not sure that you are – the two of you are on the same page. You remember you said earlier on the ANC has a deployment policy?

MR MANTASHE: Yes.

CHAIRPERSON: And as I understood you, you said that deployment policy was started by the ANC some years ago.

20 I cannot remember what year you have indicated. And you said every – at every conference that policy is revised. Is that correct?

MR MANTASHE: [No audible reply]

CHAIRPERSON: Or is revisited.

MR MANTASHE: The Deployment Committee gets divided

in the WC and NEC ...[intervenes]

CHAIRPERSON: Yes.

MR MANTASHE: ...on an ongoing basis.

CHAIRPERSON: Yes, okay. Now Mr Freund's question is whether this document that we are looking at which includes at page 100.491 a section that says Cadre Policy.

MR MANTASHE: Yes.

CHAIRPERSON: He is asking whether this document contains still the foundation of the ANC Cadre Policy that
10 has evolved over the years?

MR MANTASHE: No, Cadre Policy, it is about developing of individual cadres of the ANC.

CHAIRPERSON: Oh, okay. So you see Cadre Policy is not necessarily the Deployment Policy?

MR MANTASHE: It is not Deployment Policy.

CHAIRPERSON: Yes.

MR MANTASHE: It is the silencing of cadres
...[intervenes]

CHAIRPERSON: Yes.

20 **MR MANTASHE:** ...to be ready. If you do well and comply with the prescriptions of the Cadre Policy, you would be ready for deployment.

CHAIRPERSON: Okay.

MR MANTASHE: Because you would have had acquired the skills.

CHAIRPERSON: Okay, okay. I hope that has clarified, Mr Freund?

ADV FREUND SC: I think it will become clearer as we go along, Chair.

CHAIRPERSON: Ja.

ADV FREUND SC: There is a lot more to canvas.

CHAIRPERSON: Ja, okay.

ADV FREUND SC: Now if we look at that Cadre Policy, that conferencing notes the importance of the process of
10 transformation and the mass character of the ANC of having – and these are the words I focus on – of having an army of conscious committed and properly deployed cadres. That is fundamental policy that was then the fundamental policy of the ANC and the question I want to ask you is. Does that remain the fundamental policy of the ANC?

MR MANTASHE: Yes, it remains fundamental(?). [Speaker is not clear.]

ADV FREUND SC: And if we look at the fourth bullet
20 point, this is under Conference Notes, the critical role of political leadership in the transition period and the need to deploy cadres to various organs of the state including the public service and to other centres of power in society, that remains the position of the African National Congress to this day. Am I right?

MR MANTASHE: Yes. Yes, it remains.

ADV FREUND SC: So it would not be correct to say that Cadre Policy is purely about framing and enhancing the political skills and the political education cadres because, although that is correct, there is a second part to it. And the second part to it is the policy of deploying those cadres. Correct?

MR MANTASHE: The Cadre Policy prepares people for ...[intervenes]

10 **CHAIRPERSON:** For deployment?

MR MANTASHE: ...for deployment.

CHAIRPERSON: H'm.

MR MANTASHE: Yes. It is like – even if you call it or you do not call it deployment policy, you have kids, you send them to school, you are preparing them for bigger responsibilities in society. The ANC give that responsibility on its cadres. That is why it is not an exception in the ANC to send an old person send back to school and he goes and study and come back because
20 there is an ongoing process of preparing people to take bigger responsibilities. And therefore deployment, yes.

ADV FREUND SC: Alright. Let us move on to the next page. After dealing with the topic of the development about cadres. That is the foot of 491. The resolution moves on to the question of its deployment and the

redeployment of cadres.

MR MANTASHE: Yes.

ADV FREUND SC: And I think the question I keep coming back to is, what does this mean? But in this context, in the context of this policy, when it says that conference resolves to put in place a deployment strategy. What is meant by or that term a deployment strategy?

MR MANTASHE: A strategy to deploy people to resume(?) responsibility [Speaker is not clear.]

10 **ADV FREUND SC:** And does the – ordinary meaning of the word deploy not denote, I think you used the word sending. Sending your cadres to occupy positions that are the subject – that are the target of the Deployment Policy?

MR MANTASHE: No. You deploy people to areas of responsibility and they are not targeted. We want to have people who understand in all centres of the state. So there is no specific jobs that are targeted. We want them to be ready to take up responsibility in the state.

CHAIRPERSON: So is deploy in that context – does
20 deploy in that context means having prepared people for rendering service to the country in different sectors? You say now they are ready ...[intervenes]

MR MANTASHE: Yes.

CHAIRPERSON: ...whenever opportunities arise
...[intervenes]

MR MANTASHE: Yes.

CHAIRPERSON: ...they must either make themselves available to be considered or we as the party through whatever structure will recommend that those in government who have the power to appoint should consider them. Would that fact ...[intervenes]

MR MANTASHE: They are ...[intervenes]

CHAIRPERSON: ...you say?

MR MANTASHE: They are deployed(?) and encouraged to
10 apply.

CHAIRPERSON: They are encouraged to apply?

MR MANTASHE: They are encouraged to apply.

CHAIRPERSON: H'm?

MR MANTASHE: So that they go through the comprehensive selection process of this thing(?).

CHAIRPERSON: H'm, h'm. So are you saying that they are deployment, as it were, is subject to the overriding processes of government in the sense that in the end the processes of government relating to selection and
20 appointment or employment must prevail ...[intervenes]

MR MANTASHE: Yes.

CHAIRPERSON: ...as to who get appointed?

MR MANTASHE: Agree.

CHAIRPERSON: That is what you say?

MR MANTASHE: I agree.

CHAIRPERSON: But as a party, you prepare them and make them ready and you satisfy yourself that they understand your policies and if given an opportunity they will make sure that the policies of the governing party are implemented.

MR MANTASHE: Probably(?). That is what I am saying. Okay alright. I do not know if that has clarified, Mr Freund but do what you need to do to make sure you understand what this meant.

10 **ADV FREUND SC:** Can we take it back Mr Mantashe to the previous page to 491? You will see there, we got a whole section, there is a whole resolution.

“Conference resolves on the development of our cadres to do various things...”

I think one could paraphrase it to say to train, to educate, inculcate the values. That is the development of cadres. That is part of the focus of this resolution.

MR MANTASHE: Yes.

20 **ADV FREUND SC:** I have no difficulty with that at all but what I am focussing on is the second part. The second part that says:

“Under deployment and redeployment of our cadres...”

And I am putting to you that just reading the document, there is a difference between that part of the

ANC's policy which is aimed at developing cadres and that part of the ANC's policy which is aimed at actually effecting deployment of cadres. If that was not the case, we would not have these two separate paragraphs.

CHAIRPERSON: Hang on Mr Freund. Before Mr Mantashe responds. What page are you on?

ADV FREUND SC: Can I take you back to 100.491?

CHAIRPERSON: Okay I am there. Yes?

ADV FREUND SC: And there you will see, Chair, on the
10 deployment of our cadres.

CHAIRPERSON: Under Cadre Policy?

ADV FREUND SC: Well, at the bottom of the page.

CHAIRPERSON: Oh, at the bottom of the page.

ADV FREUND SC: Conference resolves. So, Chair, you will see what happens here. Conference notes, further notes ...[intervenes]

CHAIRPERSON: Yes.

ADV FREUND SC: And then ...[intervenes]

CHAIRPERSON: Yes.

20 **ADV FREUND SC:** ...Conference Results.

CHAIRPERSON: Yes, I see that.

ADV FREUND SC: And the first thing that Conference Results relates to the deployment – on the development of our cadres.

CHAIRPERSON: Yes, yes.

ADV FREUND SC: That is the point I am stressing.

CHAIRPERSON: Yes.

ADV FREUND SC: And I am not going to read into the record the next half page.

CHAIRPERSON: Yes, yes.

ADV FREUND SC: But that next half page is all about developing cadres ...[intervenes]

CHAIRPERSON: Yes.

ADV FREUND SC: ...in the manner which I accepts
10 Mr Mantashe has described.

CHAIRPERSON: Ja, yes.

ADV FREUND SC: What I am putting to Mr Mantashe and I will put it again is that this very policy makes clear that the distinction has to be drawn between, on the one hand the development of the cadres, and on the other hand, the deployment of cadres.

MR MANTASHE: Yes.

ADV FREUND SC: Decisions on the deployment of cadres is a different thing to the process of training and preparing
20 of cadres. I think you accept that?

MR MANTASHE: No. You see, if you read that proposition on deployment and redeployment.

CHAIRPERSON: H'm?

MR MANTASHE: It says, such discretion of deployment of individual comrades they are dealt with a proper

consultation with the cadre consignment. In other words, you do not impose a deployment on a person.

CHAIRPERSON: Ja, but ...[intervenes]

MR MANTASHE: No, let me just finish.

CHAIRPERSON: Ja, ja.

MR MANTASHE: Let me just finish, it then goes further to say and so capacity building to prepare comrades for deployment and redeployment in various fields. That is the centre point of deployment that you deploy and you
10 develop capacity. Any consult you do, you do probative tax in all developments and in general on appointment of them. So read that thing in totality because if you just read phrases you are going to be start with the policy.

ADV FREUND SC: But Mantashe, my question is simply this. Is it not correct that we have to distinction between, on the one hand, the policy on the development of cadres and on the other hand, the policy under deployment and redeployment of cadres.

MR MANTASHE: Yes.

20 **ADV FREUND SC:** They are two different things. You agree?

MR MANTASHE: Yes, that would right.

ADV FREUND SC: Right. So now what we are trying to engage what is the meaning of the second thing.

MR MANTASHE: Yes.

ADV FREUND SC: Because the meaning of the second thing cannot be the saw me was the first thing. The first thing is the training process. The second issue is the deployment process. So I am now trying to understand this deployment process.

MR MANTASHE: No, the first thing is about preparation of people. The second one is to – deployment is about given them responsibility having gone through preparation. So if you see them as separate policies or as one, that is not
10 the issue. The issue is. You do not just take a person because he is cadre who to deploy. You prepare that person, you sent that person to school and you must be ready for deployment. Then you give that person responsibility.

ADV FREUND SC: Alright. I understand. So the word you used is deployment is really giving them the responsibilities.

MR MANTASHE: Yes.

ADV FREUND SC: Now those responsibilities are the
20 responsibilities associated with the post to which they are to be deployed.

MR MANTASHE: Yes.

ADV FREUND SC: So you, as the ANC, have a policy of giving cadres responsibilities in the various sector to which you wish to deploy them.

MR MANTASHE: Can I help you understand this?

ADV FREUND SC: [No audible reply]

MR MANTASHE: At one point, Minister Trevor Manuel, the Minister of Finance, one of the things that we credited him for. He sent all the MEC's in the provinces to the London School of Economics. That is why all the MEC's of that time has master's in economics today. That is the essence of preparation for responsibility. I am giving that just as an example of preparing the cadre for a responsibility so that
10 you do not take a person to a responsibility that does not fit.

CHAIRPERSON: Well, the example you give suggest to me that in that context you are talking about giving responsibilities to somebody who is already in a position or maybe preparing or training or enhancing their ability to perform their responsibilities better when they are already in positions when you take about MEC's that were sent at the time.

MR MANTASHE: The difficult with government and state,
20 okay, is that the selection in the state is done at the end of [indistinct].

CHAIRPERSON: H'm.

MR MANTASHE: In government you elect a party and the party put their cabinet. And even – you saw that this process of developing a person does not at the point of

appointment. If you appoint this person to be an MEC or a minister for this and you see gaps, the value of that of the skills and capabilities continue. That is the point I am making.

So I am trying to emphasise the fact that deployment of cadres should not be reduced to just dealing *with anything that you just put there(?)*. [Speaker is not clear.] That is not. There is a whole lot of ...[indistinct] on the development of the capacity and culpabilities of the
10 capacity and capabilities of the individual.

CHAIRPERSON: H'm.

ADV FREUND SC: As I understand this and I do not think that any reasonable person could have any objection to that. So the ANC is a party with a programme in a democracy wanting to explain and to educate and to enhance the skills of its members of its cadres or whatever term you want to use. It is not a controversy as far as I can see.

The controversy that we are starting to explore
20 is the next step and the next step is what you have described as being a process by which the Deployment Committee make recommendations to cadres as the positions for which they could apply and then it is left to somebody else to decide whether that application will be successful. Do I understand that that is what you are

telling us?

MR MANTASHE: Yes, to commence and the preparing the individual to apply.

ADV FREUND SC: Alright. Now let us look at what the policy actually says. Not the policy, the resolution. You say that – and this is the first bullet point under the heading, On the Deployment and Redeployment of our Cadres. So this under the heading, Resolves.

10 “Put in place a deployment strategy which focuses on the short, medium and long term challenges, identifying the key-centres of power, our strategy to transform these centres and the attributes and skills we require from our cadres to be so effectively...”

So we are going to come, shortly, to what happened three years after this in 1999, the development of a strategy but conferences resolving what you need to put in place a deployment strategy. Correct?

MR MANTASHE: [No audible reply]

20 **ADV FREUND SC:** Then it continues.

“Conference Resolves:

The establishment of Deployment Committee in the NEC, PEC, REC and BEC...”

That is the National, the Provincial, the Regional and the Branch Executive Committees. Is that correct?

MR MANTASHE: Yes, yes.

ADV FREUND SC: Yes.

“...in which implementing – which in the implementing the above strategy should:

- Discuss the deployment of comrades to areas of work on behalf of the movement including the public service, parastatals, structures of the movement and the private sector...:

10 Now the policy that was mandated by this conference, as I understand it from what I read here, is that comrades once deployed are expected to work on behalf of the movement inter alia in the public service and in the parastatals. Is that correct?

MR MANTASHE: That is right, Chair...

ADV FREUND SC: But what has happened to our non-partisan public service? Surely, a non-partisan public service is not there to work on behalf of the party. And let me call it by saying this. Clearly, every member of the
20 public service is under a duty to loyally execute the policies of the governing party. There is no difficulty about that but the question is about accountability. And is it accountability to the government or is it accountability to the party? This seems to suggest that the party is one of the accountability to the party.

MR MANTASHE: Your question assumes that there is no political system. That is your assumption that there is no political system and because there is no political system – parties that are involved in government must go home, sleep and assume that things will happen... That is your assumption. It is a wrong assumption.

Any party that is involved in government prepares to be involved in government meaningfully and that is what the ANC is doing. Now your assumption that
10 non-partisanship means no ANC. It is a wrong assumption...

Again, the ANC member and a cadre but once they are deployed to a responsibility I – well, first I understand the fact that I fail(?) to be a party person. I become a public representative. That is where non-partisanship kicks in. Now this assumption that non-partisanship means absence of the ANC. It is a wrong assumption.

ADV FREUND SC: In fact, it is the contrary, is it not?
20 The expectation of the resolution of the African National Congress that we are examining is that those persons deployed, for example, to the public service, for example to public to parastatals must understand that they sit there on behalf of the movement of which I understand the ANC. Is that correct?

MR MANTASHE: Yes, yes. But that understanding is. I am deployed by the ANC by the minister. I am not a minister deployed on the basis(?) of non-partisanship. I am a minister deployed by the ANC but what once I assume the responsibility I am must be non-partisan in my approach. I must to society because I am a public representative.

I must elevate myself above the party. But I want to submit that there is nothing in me appraising my
 10 party when they have a breakaway or they have a conference of developments and instead when I come there and say we should improve these representatives when we read this report, we need to put a lot of emphasis on all of this. [Speaker is not clear.] There is nothing wrong with that. That does not make me partisan.

ADV FREUND SC: Now what this point of – we have already referred to this bullet – says is that the NEC, PEC, REC and BEC Deployment Committees should disclose the deployment of comrades with the affected individuals. But
 20 then it continues in the final bullet point as follows:

“Decisions of the organisation, after appropriate consultation with the individual cadres, are final and the breach of this policy shall constitute a serious offence to be considered by the appropriate structure...”

What does that mean?

MR MANTASHE: I have never been a member of another party. [laughs]

CHAIRPERSON: [laughs]

MR MANTASHE: I have never been a member of another party.

CHAIRPERSON: Ja.

MR MANTASHE: I am a member of the ANC.

CHAIRPERSON: H'm.

10 **MR MANTASHE**: *Neither should they regard to you they have another party, the continuance(?)*. [Speaker is not clear.]

CHAIRPERSON: H'm?

MR MANTASHE: Let me tell you my assumption. It is that everybody that is involved in governments will try to prepare its members to participate effectively in government and you expect them to come(?) to them what they are doing. Now I am not sure it is a correct assumption to make to say it is an ANC issue.

20 In the Conference Resolution of the African National Congress a close conference of the ANC will bring it here, to the Commission now. And as a result on how to make itself effective in government. Now that ability of the institution, you do not have to - apply its mind *when do we to find as partisan*.

Now it is – what is done by everybody. Everybody. One party will resolve that ...[indistinct]. We will discuss that in this conference and execute consistently to stop *every at every city* if that is the province(?) but in the institutions of state, they should a formula(?) of dealing with that.

So the point I am making here is that we prepare our cadres, we train our members, we guide them, we sent them to school. As I have said to specific schools. In our
 10 submission, we talk of William(?) Phulani(?) from the UK. Okay. We will say.

But the lot(?) of the matter is that from time to time we will go and look into the China system, why is that in China corruption and socialism(?) are an exception? Okay.

We go and learn and come back and we will discuss that in the ANC conference. We will not take it to the state. When you come across those discussions, they are going to ask us: Are you trained in China? Then you
 20 should be partisan. If our internal arrangements will be prepare our cadres to meet the standards required of the task concerned.

ADV FREUND SC: Now Mr Mantashe, I can see no basis upon which anybody could object to be ANC making its own decisions on the training and selection of what I might call

political office bearers. People who are to be selected to go to Parliament and who will be selected to be in the Cabinet and other comparable situations. But the focus of my examination is really very much on the public service and the SOE's. And as regard the public service and the SOE's.

I want to put to you that it is not correct, as you have said, that any party tries to place people on those structures, loyal to and accountable to them under a duty, as it were, to report to them, the party, rather than to the organisation in which they are employed. You disagree with that, do you?

MR MANTASHE: No, that assumption is very abstract. It assumes that people who were in the apartheid system are not in the state and people went to exile and they are in the camps of the – are not in the state. That assumption you are making. And I am saying it is a very, very abstract assumption that does not work in real life. And the reality of the matter is that Government, you also know that so and so and so and so and so and so was trained in other countries, in DDR, in the Soviet Union and UK, in the [indistinct – dropping voice]

They are trained to play a role in the public service and we deployed them to the public service.

If we did not give that that would not happened

automatically. They had to be managed to happen, that is why if you look at any research you find out that there is more progress in transformation giving space for black people to participate in such a position than it is in the private sector because government has control there and it is actively managing, it is slow in the private sector because the assumption is, you stick with what you know and trust and not move on and change does not happen that way and if we did not do that, I can tell you the state
10 will be looking different today.

ADV FREUND SC: Alright. Let us move on. What we have been discussing so far is a resolution of a national conference and the resolution was on the need to develop a policy. Can I now take you to 100.501?

MR MANTASHE: 501?

CHAIRPERSON: 100.501.

MR MANTASHE: The letter.

ADV FREUND SC: It should be ...[intervenes]

MR MANTASHE: Okay, I have it now.

20 **ADV FREUND SC:** Is that the document headed:

“ANC cadre deployment and development policy”

MR MANTASHE: Yes.

ADV FREUND SC: Incidentally, just in passing, I know it is cadre deployment, it is not just deployment, correct?

MR MANTASHE: Yes.

ADV FREUND SC: And is it correct that this is really the outcome, the product that emerged from the resolution we were discussing a moment ago?

MR MANTASHE: Yes.

ADV FREUND SC: There would have been some sort of process – this is at a time, I am not sure if you were already Secretary General, I do not think you were yet, or were you, the time of the development of this policy?

MR MANTASHE: What year was that?

10 **ADV FREUND SC:** This is in 1999.

MR MANTASHE: No.

ADV FREUND SC: No.

MR MANTASHE: 1999, Secretary General was [indistinct – dropping voice]

ADV FREUND SC: Yes and where were you in 1999, were you...?

MR MANTASHE: 1999 I was the General Secretary of [indistinct – dropping voice]

CHAIRPERSON: You were?

20 **MR MANTASHE:** I was the General Secretary of the National Union of Mineworkers.

CHAIRPERSON: Ja.

ADV FREUND SC: Right.

CHAIRPERSON: Another centre of development.

CHAIRPERSON: Ja, ja.

ADV FREUND SC: But in due course – and just please remind me when you became Secretary General?

MR MANTASHE: Come again?

ADV FREUND SC: Of the African National Congress?

CHAIRPERSON: December 2007.

ADV FREUND SC: December 2007. So when you assumed responsibilities of the office of Secretary General in 2007, was this document that we look at at page 501 through to 511 still the governing policy?

10 **MR MANTASHE:** Leadership is continuous, you do not respect(?) new policies every time you elect a new leader. If this policy was in place, I took ownership of it as my policy.

ADV FREUND SC: Yes, yes. I am just checking, as I believe to be the case.

MR MANTASHE: Yes.

ADV FREUND SC: That when you took office you assumed this as policy.

MR MANTASHE: Yes.

20 **ADV FREUND SC:** That is all I am trying to establish as a matter of fact because, as a matter of fact, there is other evidence to show that this was adopted in 2009 when, as you correctly say, you were not there but ...[intervenes]

MR MANTASHE: 2009?

CHAIRPERSON: 1999.

ADV FREUND SC: 1999, I am sorry, my mistake, 1999 when you were not there but nonetheless this was a policy that you assumed.

MR MANTASHE: I was there, I was not Secretary General.

ADV FREUND SC: Yes.

CHAIRPERSON: Yes. Well, I was thinking exactly about that. You may have been there but not as Secretary General.

10 **MR MANTASHE:** Okay, because you will go to [indistinct] 04.34, I was a delegate.

CHAIRPERSON: Ja.

ADV FREUND SC: Yes.

MR MANTASHE: Stellenbosch, I am a delegate.

ADV FREUND SC: Yes.

MR MANTASHE: You go to [indistinct] 04.39 1991, I am a delegate, I am not Secretary General.

ADV FREUND SC: Yes, I understand.

MR MANTASHE: So I am there.

20 **ADV FREUND SC:** Now we will talk about some further documents later in the course of this evidence but I am not aware of another document that looks like this. This looks to me like the only document that has been furnished to me as the ANC's cadre deployment and development policy. Now my question to you is, whether you accept to the best

of your knowledge that this remains the applicable policy or whether you believe there were subsequent policies adopted in writing on some later occasion?

MR MANTASHE: I would have to break and go through the document that [indistinct – dropping voice]

CHAIRPERSON: Oh, okay, you have not had a chance to see whether it is ...[intervenes]

MR MANTASHE: There are quite a number of documents submitted on the cadre deployment.

10 **ADV FREUND SC:** Alright, well ...[intervenes]

CHAIRPERSON: Oh, okay.

MR MANTASHE: On the deployment policy.

CHAIRPERSON: Yes.

MR MANTASHE: So I do not know whether this is the last of it.

ADV FREUND SC: Alright. Well, I understand that

MR MANTASHE: I will need a break for that.

ADV FREUND SC: Well, may I make the suggestion, that
20 there will be a lunch adjournment not long from now and
over that luncheon adjournment you can look into that
question, you can tell us immediately after the
adjournment. Would that be in order? Thanks, but
...[intervenes]

MR MANTASHE: But I can assure that even if they are related documents, they will not [indistinct] 06.05 this

document.

CHAIRPERSON: Ja, a bit on it.

MR MANTASHE: They will add.

ADV FREUND SC: They will add to it, alright.

MR MANTASHE: But this document in the main remain at the thrust of deployment.

ADV FREUND SC: Now what this document – if we look at paragraph 3 of this document, it says that:

10 “The ANC used the first term of government to perfect its deployment system notably with:

3.1 A deployments framework, and

3.2 Guidelines on the relationship between the
ANC constitutional structures and
government executives.”

It then talks about certain other issues which I am not going to focus on and then in paragraph 4 it deals with strategic deployment and then paragraph 5 it quotes what we have referred to, what happened at the 50th National Congress and at paragraph 8 we really find the beginning
20 of the meat of this document and this is the deployment framework, presumably, which is what is being referred to also in paragraph 3.1. Are you with me? If you look at 3.1, you look at paragraph 8, you find that here we are dealing with this document or instrument which is what we mean by the deployment framework. Do you agree? You

accept that I am understanding that what comes from paragraph 8 is the deployment framework?

MR MANTASHE: Yes.

ADV FREUND SC: Right. Now again here, in paragraph 9, we find a reference to a statement we had previously seen:

“Our immediate goal as set out in the strategy and tactics is to deepen the hold of the liberation movement over the levers of the state.”

10 And then in paragraph 10 the policy now identifies what are these levers of state that we are interested in and it says:

“The key centres of authority and responsibility within the stage that should be given priority are:

10.1 The cabinet.

10.2 The entire civil service but most importantly from director level upwards.”

And then certain other ones and I draw your attention to

10.6 Pararastals.

20 And

10.8 Which independent statutory commissions, agencies, boards and institutes.”

Now let us start with the entire civil service. Your evidence earlier was the focus is only on Directors General and Deputy Directors General whereas this policy seems to

indicate that it is from director level upwards. Has there been a change or what is the explanation?

MR MANTASHE: Practice is that deployment committee had its comments at DDG level and DG only.

ADV FREUND SC: I am sorry, I just did not hear you clearly?

MR MANTASHE: The deployment committee expressed views and comments only at the level of the Deputy Director General and Director General.

10 **ADV FREUND SC:** You are saying that that is a matter of fact that you have knowledge of because you presumably – I mean, have you sat on the deployment ...[intervenes]

MR MANTASHE: That is a point of fact, I am stating a fact.

ADV FREUND SC: Yes and I am just trying to understand how you know that fact. Have you sat on the National Deployment Committee?

MR MANTASHE: No, I have not. Actually the practice in the ANC is that Secretary General does not sit on the
20 deployment committee and the President does not sit in the deployment committee.

ADV FREUND SC: But, as I understand it, the Deputy President of the party and also of the country and the Deputy Secretary General ...[intervenes]

MR MANTASHE: That is right.

ADV FREUND SC: ...of the party and therefore the country – of the party serve as leader and secretariat to the national deployment committee, is that correct?

MR MANTASHE: Correct.

ADV FREUND SC: But, of course, there is more than one deployment committee. There are deployment committees, as I understand it, correct me if I am wrong, at provincial level, at regional level, at branch level, correct?

MR MANTASHE: Yes.

10 **ADV FREUND SC:** So the concerns of deployment committees are not limited to Directors General and above, they must be – they must focus on all sorts of offices at provincial, regional and municipal level, presumably.

MR MANTASHE: You must appreciate that there is something called provincial government. We are not going to send a national deployment committee to deal with that. The provincial deployment committee deal at that level. There are districts and metros. The regional deployment committees state ideas on that, okay? Local executive is
20 part of it, branches express a view. That is it. All that is captured here is that they are not [indistinct] 11.24 throughout. Deployment committees deal with levels of government. The national deployment committee deals with national government.

ADV FREUND SC: And the provincial deployment

committee deals with provincial government.

MR MANTASHE: Yes.

ADV FREUND SC: And in fact the whole of ...[intervenes]

MR MANTASHE: If there is a complication. Only in case of a complication can they refer a matter to a national level.

ADV FREUND SC: And the whole – the public service are employed at provincial level, correct?

MR MANTASHE: Not necessarily so, DGs are employed at
10 national level.

ADV FREUND SC: Well, I think if we look at the constitution we will find that the power to appoint the public service rests in provincial structures.

MR MANTASHE: No.

ADV FREUND SC: Not? Alright.

CHAIRPERSON: I think those that will fall under provincial governments would be appointed to provincially those who fall under national departments would be appointed nationally.

20 **ADV FREUND SC:** No having identified the focal points including the civil service, including parastatals, perhaps you could just explain to me, the reference to independent statutory commissions, agencies, boards and institutes, what do you understand that to be a reference to?

MR MANTASHE: There is a number of commissions that

are appointed from time to time, the agencies, boards and institutes.

ADV FREUND SC: I am interested in – in what are – these are independent commissions so what sort of commissions would be independent which nonetheless are the subject of this deployment policy?

MR MANTASHE: Now you see you have never been to a [indistinct – dropping voice]

CHAIRPERSON: I am sorry, I did not hear that.

10 **MR MANTASHE:** Yes. No, he has never been a member of a party. He is a lawyer.

ADV FREUND SC: Well, in fact you are wrong, I have been a member of the African National Congress, be that as it may.

MR MANTASHE: No, no, maybe in [indistinct – dropping voice]

CHAIRPERSON: Well, you cannot refute it, he says he has been a member of the African National Congress.

ADV FREUND SC: May I say a long time ago.

20 **MR MANTASHE:** But the reality of the matter is that he really does not appreciate the work in the party, that is the point I am making. If I am Secretary General for ten years, I was supposed to look in all these things and monitor where there is [indistinct – dropping voice] in all these issues. That is my duty as a party head. I am not in the

state, I am not in government, I must look into all these issues including internal organisation, I go to internal organisation I see [indistinct] 14.24 - I take an interest there, active interest there. And that is why this list is inclusive.

CHAIRPERSON: But his question was can you throw light on some of the so-called independent statutory commissions that the document is talking about? I do not know, is the Public Service Commission one of those?

10 **MR MANTASHE:** Yes.

CHAIRPERSON: Yes, okay. So would the Competition Commission be one of those?

MR MANTASHE: The...?

CHAIRPERSON: Competition Commission.

MR MANTASHE: Yes.

CHAIRPERSON: Yes, okay. Maybe that gives an example.

ADV FREUND SC: Yes, thank you. Thank you, I understand. And those ...[intervenes]

20 **MR MANTASHE:** And the reason that, Chairperson, we declared openly the support of this Commission is because we are interested in the work of this Commission, it must work well, we must resist it, we must stop it, we support it. We have declared that over and over. It is [indistinct – dropping voice]

ADV FREUND SC: But ...[intervenes]

CHAIRPERSON: Well, I must just say that – but I think I did say it.

ADV FREUND SC: You are not appointed by the deployment committee. But you are invested in ensuring that this Commission works.

CHAIRPERSON: Ja. No, no, no, I just wanted to say that the Commission has noted that the NEC of the governing party has repeatedly publicly made it clear that it supports
10 the work of the Commission and that is important.

MR MANTASHE: Yes, even when there are disagreements.

CHAIRPERSON: Yes, yes, yes.

MR MANTASHE: But these agreements or no disagreements, we support the work of the Commission.

CHAIRPERSON: Yes, yes.

MR MANTASHE: Because we are interested in the work.

CHAIRPERSON: Okay.

ADV FREUND SC: Now in paragraphs 13 of this policy at
20 page 504 we see that it says that:

“ANC structures should be responsible for final decisions with respect to deployment matters where possible.”

What kind of final decisions are referred to there?

MR MANTASHE: Deployment covers a range of areas that are interested(?) in the state. When we deploy a councillor, that councillor must go through the infrastructure [indistinct – dropping voice] because the councillor [indistinct].

CHAIRPERSON: Must go through?

MR MANTASHE: The structures of the ANC.

CHAIRPERSON: Ja.

MR MANTASHE: When you develop a list to parliament, it
10 goes through the structures of the ANC

CHAIRPERSON: Ja.

ADV FREUND SC: So if the question to be considered is who is suitable to be appointed as the Chairman of the board of an SOE, is that the sort of thing on which decisions of the ANC should be regarded as final decisions?

MR MANTASHE: The deployment committee will express a view on it. It will not necessarily appoint a Chairperson of a board. Half the time it gets it gets disappointed on
20 some [indistinct – dropping voice] and every time they get disappointed. Half the time, the [indistinct] 17.34 reflect that.

CHAIRPERSON: But I think, Mr Freund wants to establish what it means to say those decisions are final. In other words, I do not know what he has in mind but the question

that arises from me is whether they are binding on anybody.

MR MANTASHE: No.

CHAIRPERSON: And if so, who?

MR MANTASHE: That is why I saw on a range of areas. A decision of the ANC structures will not be binding on boards because those our creatures of [inaudible – background noise]. So it cannot be. But when we appoint our own councillors, our MPs and so forth ...[intervenes]

10 **CHAIRPERSON:** Oh, political members.

MR MANTASHE: Decisions on the ANC are final.

CHAIRPERSON: Political office bearers.

MR MANTASHE: Political office.

CHAIRPERSON: Okay.

ADV FREUND SC: But Mr Mantashe, if we can go back briefly to page 491.

MR MANTASHE: Page 491?

ADV FREUND SC: Sorry, 492. 100.492.

MR MANTASHE: Come again, come again, 4..?

20 **ADV FREUND SC:** 492.

MR MANTASHE: Okay.

ADV FREUND SC: Towards the second last bullet point on that page:

“Decisions of the organisation after appropriate consultation with individual cadres are final and a

breach of this policy shall constitute a serious offence.”

So I do not understand your last answer that these decision are not binding on anyone.

MR MANTASHE: Can I give you an example? I have experience of dealing with a situation where the ANC selects Mantashe to be a councillor, but those structures that break that and appoint Comrade Jessie Duarte as a councillor. That is what is ...[intervenes]

10 **CHAIRPERSON:** Oh, they say we do not want this one who has been ...[intervenes]

MR MANTASHE: Yes.

CHAIRPERSON: ...decided by a certain structure.

MR MANTASHE: [inaudible – speaking simultaneously]

ADV FREUND SC: So there is obviously no public interest outside of the ANC in how the ANC chooses its deployees in the sense that you are talking about.

MR MANTASHE: No.

ADV FREUND SC: In the sense of, for example, who is to
20 be the councillor to be selected.

MR MANTASHE: I ...[intervenes]

ADV FREUND SC: But the deployment policy goes far beyond that, does it not, goes to very heart of the appointment process that is the subject of this Commission.

MR MANTASHE: No, no, no, no. I hope you can give an example of a party that calls a referendum to selects its [indistinct – dropping voice]. If you do that I will be comfortable.

CHAIRPERSON: No, I think, Mr Mantashe, Mr Freund's question is directed more at whether this part of the document which says:

“Decisions of the organisation after appropriate consultation with the individual cadres are final and
10 a breach of the policy constitute a serious offence
are limited to the appointment of political officer
bearers.”

I think his question is ...[intervenes]

MR MANTASHE: That is the point I made.

CHAIRPERSON: Yes, are they limited to that?

MR MANTASHE: They are limited to that because it is not the ANC structures that appoint – let me give you one interesting point in a political office. The appointment of cabinet minister is not discussed and [indistinct] 21.22
20 decided, it is the prerogative of the president and he consults the officials and whatever structure but he takes that decision because by law he has an obligation to actually appoint a cabinet, it is his prerogative. But as a practice in a democratic organisation, he will say I have this [indistinct] 21.44. The organisation will say we do not

think that is a correct appointment, can you reconsider that? He changes his mind as he likes [indistinct – dropping voice]. So that is limited to particular structure.

CHAIRPERSON: Maybe the difficulty might simply be to anyone who reads it, who reads this part, that it seems to be wide. You are saying it is aimed at the appointment of political office bearers but when one reads here, on the face of it, it does not seem to have that limitation but you give your understanding of it.

10 **MR MANTASHE:** It is a policy of the party in a party conference. It is now a document before the Commission. Okay, that is the contradiction.

CHAIRPERSON: Yes, ja.

MR MANTASHE: Because the party in its conference is emphasising the importance of discipline among its cadres.

CHAIRPERSON: Okay.

MR MANTASHE: You see/

CHAIRPERSON: Okay.

20 **MR MANTASHE:** This is a conference document. It is now before the Commission and it will either to a great extent distort the essence of the document which is a party internal document discussed in a party conference.

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

ADV FREUND SC: Thank you. Now I just want to take you please to page 503, paragraph 10.2.

MR MANTASHE: 500?

ADV FREUND SC: 503.

MR MANTASHE: Okay.

ADV FREUND SC: Paragraph 10.2. You will remember we have looked at this before. This is the part that says that:

“The key centres of authority include the entire civil service but most importantly from the director level upwards.”

10 Remember we talked about that earlier.

MR MANTASHE: Ja.

ADV FREUND SC: Now if I can take you to page 505, paragraph 18.

CHAIRPERSON: Did you say 505?

ADV FREUND SC: 505, paragraph 18.

CHAIRPERSON: Okay.

ADV FREUND SC: There you say, you being the ANC:

20 “Our strategy should not only concentrate on deployment at the most senior level but at lateral entry levels as well.”

And it continues. So what I am suggesting to you is that the document creates the impression that the ambition of the policy is far broader than what you have been saying. Been saying it really aims to do a little more than to make recommendations as to candidates who might apply for

positions of DGs and DDGs. I am suggesting the document itself on its terms makes clear that as part of this strategy to control the levers of the state that we talked about before, the deployment policy is for the party to have powerful influence and impact on who populates the civil service.

MR MANTASHE: The reality of the matter is that you can go to the deployment committee, they will not know the six directors interdepartmentally, they will have no clue but the
10 point made in the document is to prevent situations where deployed capable comrades to position, only find that they were completely surrounded by and locked into structure dominated by forces that not only do not share the same strategic objective but also sometimes even actively work to undermine the goals of the national democratic [indistinct – dropping voice]. Okay, so it does not talk about actual deployment, it looks into now the broader perspective that you can deploy a capable person to a department and further surrounded by people who are
20 actually working against the policy. That is what the deployment started to say you must look for and avoid.

ADV FREUND SC: Chair, I see it is one o'clock. Is this a convenient time?

CHAIRPERSON: Yes, it is one o'clock. Okay, let us take the lunch adjournment and we will resume at two o'clock. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

MR MANTASHE: Okay, let's continue.

ADV FREUND SC: Thank you Chair. Mr Mantashe could I take you to page 587, it is 100.587.

MR MANTASHE: 587?

10 **ADV FREUND SC:** Yes.

MR MANTASHE: I have got it.

ADV FREUND SC: Incidentally just for the purposes of the Chair, we do have preceding in the preceding two pages, the conference resolution in December 2002 but it speaks for itself. I am not going to ask Mr Mantashe questions about it.

CHAIRPERSON: Okay.

ADV FREUND SC: And we are dealing now with the next one, at 587, which is the 52nd National Conference in
20 December of 2007. I think Mr Mantashe made the observation to me that this is the conferences which he was elected as the Secretary General, is that correct?

MR MANTASHE: Correct.

ADV FREUND SC: And the issue of deployment of traders that we have been discussing this morning, is addressed at

page 588 in paragraphs 55, 56 and 57, is that correct?

MR MANTASHE: Correct.

ADV FREUND SC: And in paragraph 56, the conference instructs the incoming NEC to ensure the implementation of the 1997 resolution on deployment and strengthen the National Deployment Committee, correct?

MR MANTASHE: Yes.

ADV FREUND SC: And then I want to focus on paragraph 57. It is the first bullet point, it provides that the
10 conference decided on the following specific approaches with regards to deployments, as discussed at the National Policy Conference, that would have been the National Policy Conference, presumably two to three years before this is General National Conference, is that right?

MR MANTASHE: No, the National Conferences sits every five years.

ADV FREUND SC: Yes, but we are looking at a National Conference and this is referring to a National Policy.

CHAIRPERSON: Policy conference.

20 **MR MANTASHE:** Oh, the National Policy Conference...[intervene]

ADV FREUND SC: Would have been two or three years.

MR MANTASHE: Or even less because Policy Conference precedes the National Conference, yes the NTC is halfway.

ADV FREUND SC: Right.

MR MANTASHE: So it is closer to the National Conference.

ADV FREUND SC: Right.

CHAIRPERSON: So would the Policy Conference between the NGC and the National Conference.

MR MANTASHE: Between the NGC and the National Conference.

CHAIRPERSON: Ja, thank you.

ADV FREUND SC: And what this paragraph of the
10 resolution of the conference reflects is at the local government level, the PEC should make recommendations of not more than three names of cadres in order of priority it should be considered for Mayorship and the PEC will make a final decision. Now, many Mayorship's are executive Mayorships', correct?

MR MANTASHE: Yes, many and others not.

ADV FREUND SC: Yes, and this resolution applies, whether they are executive or not executive.

MR MANTASHE: Yes.

20 **ADV FREUND SC:** In other words, what the resolution is requiring is that the PEC will have the power to decide on executive Mayorship's amongst others, agree?

MR MANTASHE: They decide on Mayors, yes.

ADV FREUND SC: Yes, and so effect was given to that resolution and although there is a whole statutory

procedure for the appointment of executive Mayors. The –
in the Amatole District Municipality, the process, which is
meant to be an objective process, weighing the candidates
resulted in a proposal for candidate A that the REC had
decided on candidate B, so candidate B was appointed and
that matter went to Court, are you aware of that?

MR MANTASHE: It is more than that in the case of
Amatole because district municipalities and metros this is
also discussed with the NEC because we take them very
10 seriously.

ADV FREUND SC: So, in fact it was an NEC decision.

MR MANTASHE: Amatole should have been decided at
NEC level.

ADV FREUND SC: Yes, and what the Court held is that
whole process was unlawful, that it was completely
unlawful for the counsellors, vested with the power under
the statute to make a decision as to who should be the
Executive Mayor, to act under the dictates of the PEC. Are
you not aware of that?

20 **MR MANTASHE:** No, not really.

ADV FREUND SC: Just for the record, Chair, the case to
which I am referring is Mlokoti v District Municipality for
Amatole 2009 Volume 6 of the South African Law Reports.
If I can read my own handwriting, I think it is P34 but it
might be 534.

MR MANTASHE: 2009?

ADV FREUND SC: 2009, yes, which is of course three years after this 2007 resolution that we are looking at.

CHAIRPERSON: Which Court is that?

ADV FREUND SC: It was the judgment of Pickering, J as I recall and I think in one of the Eastern Cape Courts.

CHAIRPERSON: In the Eastern Cape Courts.

ADV FREUND SC: And I cannot tell you Judge that I noted it up it's been cited with approval in the subsequent
10 decision in the Supreme Court of Appeal.

CHAIRPERSON: Yes.

ADV FREUND SC: But not directly on the same sort of facts.

CHAIRPERSON: Ja, okay.

ADV FREUND SC: Now, I want to put to you that that case, illustrates the problem of the conference resolutions and the policies we are talking about because there is a conflict between following the proper statutory appointment processes, which are essentially meant to be decisions
20 made by other functionaries on their merits.

And on the other hand, the inevitable pressure that must arise from the policies that we've been talking about in terms of which the ANC under its own policies, considers it is appropriate to make these types of decisions. Do you accept that or reject that?

MR MANTASHE: No, I reject that.

ADV FREUND SC: And could you explain why?

MR MANTASHE: That the ANC must have a right to take a decision, in its structures about people who will play a role on making decisions, I cannot agree not unless you explain the unlawful aspect but the ANC must take a decision. That is why, if you read that resolution, it still reads what happened at all levels but it still talks to the ANC taking decisions. So if what you are submitting is that it is
10 unlawful for the ANC to take a decision about people who serve in the structures of government on behalf of the ANC, I would not agree with you.

CHAIRPERSON: And maybe, Mr Freund, you might wish to briefly tell me and Mr Mantashe more about the judgements so that one can appreciate its relevance.

ADV FREUND SC: So the essence of the judgements...[intervene]

CHAIRPERSON: But also it is important to I guess to bear in mind or keep an eye on the decisions that Mr
20 Mantashe may be talking about, because in regard to certain deployments, we were talking about them before lunch.

He was saying that the Deployment Committee, for example, makes recommendations as opposed to making decisions and leaves decisions to be made by the relevant

government functionaries.

ADV FREUND SC: Indeed.

CHAIRPERSON: So it is important just to see, what are we talking about that was decided in the party and what are we talking about in terms of positions in government?

ADV FREUND SC: Yes, to be clear about that this was not a case of a recommendation or the findings of the Court was, this was not a case about a recommendation. But it was also not a case about the sort of positions of Mr
10 Mantashe has mainly been referring to...[intervene]

CHAIRPERSON: Political office bearers.

ADV FREUND SC: Yes, because although a Mayor might be seen as a political office bearer when it comes to Executive Mayors who are full time employees of councils, then there are certain statutory provisions about who has the power to make that decision, how it should be made.

And the evidence, which I do not even think was contested, but certainly as found by the Court was that the caucus at the municipal level, were instructed, presumably,
20 pursuant to the provision of the policy, we just looked at that that decision had been made at a higher level and they simply had to act under the dictates of that decision, and the Court held that to be unlawful.

So it is a special case in the sense that it is an employee rather than, say, a Cabinet Minister or a

municipal councillor, fulfilling a normal municipal council role. But that is why I was at pains to take it to that particular decision about the PEC and the conference. I do not know if there is anything that Mr Mantashe...[intervene]

CHAIRPERSON: You want to say anything Mr Mantashe?

MR MANTASHE: I think you should read that resolution but that resolution is clear that no PEC takes a decision on who should be a Mayor, that is the first thing.

10 **ADV FREUND SC:** So can you just refer to the page you are looking at?

MR MANTASHE: In 57 under 580.

ADV FREUND SC: The page number I do not have it in front of me.

MR MANTASHE: It is 100 not 588, five eight, eight.

CHAIRPERSON: 588, thank you I will go back to that now.

MR MANTASHE: That resolution explains that what goes to the PEC originates from the region. The region will
20 have a discussion and it selects three names and say to the PEC here are the three names, we think can be Mayor. The assumption that is taken all the time is that all of them are committed enough to be Mayor, then the PEC select a person.

In the case of the province for a Premier of the

province select three names go to the NEC, and then proposing for Premiership and the NEC selects one and the PEC goes back with one name among the three it selected. So - I do not want to talk to the Amatole case, because I have no insight to that case but the process is that there is no PEC that appoints a Mayor and impose on the caucus. It starts there and it goes to the PEC and the PEC says out of the three names this is the name we think will should be Mayor.

10 **MR MANTASHE:** Yes, but the problem Mr Mantashe is precisely that because the PEC under the resolution makes a final decision who will be a Mayor including an Executive Mayor, and the law prescribes otherwise.

MR MANTASHE: No, it is final in respect of ANC structure and they as a structure have a responsibility to go to the structures that are relevant to the caucus of the municipality...[intervene]

ADV FREUND SC: Exactly.

MR MANTASHE: ...and propose that they vote for it.

20 **ADV FREUND SC:** And that is precisely what the Court held to be unlawful. The Court held that it is unlawful for the councillors in the ANC caucus to act under the dictates of a party structure, a Deployment Committee, which would appear from what we read here must have been the PEC's Deployment Committee.

MR MANTASHE: What I am making it clear in this case, I have no insight of.

ADV FREUND SC: I understand, yes.

CHAIRPERSON: Ja.

MR MANTASHE: But the point I would like to understand is that the DA appointed the Mayor of Cape Town. Okay and there is no argument about that but then majority in Pretoria also go through - they get a Mayor. Is it unlawful for the ANC to appoint a Mayor but it is lawful for
10 everybody else to appoint Mayors where they are our government, I do not understand that.

ADV FREUND SC: Alright and as you say it is on facts that you are not aware about which appeared from the judgment in the interest of time I am going to move on. Can I take you now to page 450 just to get your bearings.

MR MANTASHE: 450?

ADV FREUND SC: Four, five, zero ja 100.450.

MR MANTASHE: I got that.

ADV FREUND SC: Do you remember this is your
20 supplementary statement that we referred to this morning, this is your 2018 supplementary statement.

MR MANTASHE: Yes.

ADV FREUND SC: And now can I take you to page 460, four, six, zero. So bear in mind what we are reading here is a statement that you drafted for consideration by this

Commission and from the middle of page 460, you start to address and to refer to what we have just been looking at, what was required to be done as a consequence of the 52nd National Conference, the NEC would need to attend to certain things.

And then what interests me is, is at the foot of page 460:

“Deployment within each of the five pillars requires its own set of strategic discussions, for example,
10 within the State sector, what principles.”

We talking about principles in relation to deployment and so forth.

“What principles should inform the deployment of tenders to institutions with judicial or investigative functions.”

So could you tell us, please, what type if any of deployment of cadres takes place to institutions with judicial functions?

MR MANTASHE: You are on page 460?

20 **ADV FREUND SC:** At the foot of 460 at the top of 461.

MR MANTASHE: And so what principle sort?

ADV FREUND SC: The question is, what knowledge do you have of any deployment of cadres, which is to say ANC cadres to institutions with judicial function?

MR MANTASHE: The Judges are appointed by the

Judicial Commission, ne'?

CHAIRPERSON: They are appointed by the President on the advice of the Judicial Service Commission, if it is High Court Judges and Supreme Court of Appeal Judges they appointed by the President on the recommendation of the Judicial Service Commission, if it is Constitutional Court Judge, it is Deputy Chief Justice, yes the first is different, ja.

MR MANTASHE: Yes, and the ANC does not interfere with
10 that process.

ADV FREUND SC: I beg your pardon?

MR MANTASHE: What it will do is that if there are vacancies advertised, and experienced lawyers, they will advise them to avail themselves for that.

That is why it is the role of the Deployment Committee in this case will not be mandated it will be said Deployment Committee you are experienced now, you are a senior counsel, you offer an advance of experience we thank you for applying to that committee, and then I get
20 submitted to the process that everybody is subject to.

CHAIRPERSON: So is that what this is talking to?

MR MANTASHE: Yes.

ADV FREUND SC: Well, I want to put to you that it just sounds inherently improbable that when an ANC - when the Secretary General of the African National Congress or the

former Secretary General submits to the Commission that the ANC Deployment Policy results in the deployment of cadres to institutions with judicial functions.

It does not look at face value as benign as merely encouraging people thought to have qualifications to apply for judicial appointment. The whole notion of deployment of cadres to institutions with judicial functions, carries with respect a far more sinister read that what you are suggesting.

10 **MR MANTASHE:** I think I am not sharing the analogy.

CHAIRPERSON: Sorry?

MR MANTASHE: I am not sharing the analogy to deployment. I am not allergic to deployment.

CHAIRPERSON: But I think what Mr...[intervene]

MR MANTASHE: The point – excuse me, sir.

CHAIRPERSON: Ja.

MR MANTASHE: The point I am making is that because we have an interest in the State, in the economy and organisation work, in a geological one that was the
20 parameters of areas that we have an interest in. Therefore, where it is political, we are directly involved.

Where is an institution now we recommend, and people go through the process. So we do not appoint Judges at any level, but we do encourage experience, legal practitioners to apply for position when vacancies appear

and that is the end of what we can do. We do not go and sit in the selection.

ADV FREUND SC: And when they do that, if they are cadres' loyal cadres are they not bound by the policies that we have read in the resolutions that we have read, that they are accountable to the party?

MR MANTASHE: I must confess that in my 10 years I have never seen that that took place, I have no experience of that.

10 **CHAIRPERSON:** Yes, but I think this is the context of Mr Freund's question. You remember, before lunch, you explained to me what we should understand when the ANC talks about deployment what is involved.

There is development of cadres, there is deployment of cadres. We talked about that, okay, preparing cadres of the ANC to be ready for various responsibilities in society and it is that, okay.

So I think what Mr Freund is saying is, if we are too attached to the word deployment as used in this sentence,
20 the same meaning that you told us before lunch, it would seem that it is more than just encouraging practitioners to apply who are senior enough and experienced enough.

I think that is what he is saying, Mr Freund, is that what you are saying?

ADV FREUND SC: Indeed.

CHAIRPERSON: So - and he is suggesting that there is some uneasiness about that if you talk about people who are going to be Judges. I think that is the suggestion I am reading.

ADV FREUND SC: Yes.

CHAIRPERSON: Ja.

MR MANTASHE: The root of the matter is that Judges are not born, Judge. They go through a particular career development, until at the apex of that process, they
10 become Judges. And the reason I am saying when I was there for ten years I have never seen Judges accounting to me. Actually I cannot remember a day where I had a discussion with a Judge on anything. I may be a client of a Judge for my sins in society, that is it.

But I have never seen Judges come to Luthuli House to account, because one of the things that the ANC appreciate and understand is the separation of power, we respect that, so we do not gamble with that, we do not get into that space but there is nothing that stops us to say, an
20 advocate acts and do not do things you have been practicing long enough to be a Judge, apply, because there are these vacancies that have emerged in the various Courts.

Please go and apply because you have gone through this process. It means that is at the tail end of a

proposal - to a young person to go into law and then say, you must go and practice and practice, why, and he grows in that process and there are vacancies, there is nothing that stops us to say that is a progressive child. That will be a progressive child, please apply.

Sometimes others do and they fail in the process and we have no recourse to deal with that because it is not our space, others succeed and they become Judges, others that are very progressive when we consider them become
 10 very harsh Judges in dealing with us and we do not hold that against them, the Judges they do their work and therefore, I do not know what is it that is peculiar about this.

CHAIRPERSON: Mr Freund.

ADV FREUND SC: Well, I get the impression from what you have just said that, as a matter of fact, and to your knowledge, ANC deployment structures have encouraged people to apply for judicial office, cadres apply for judicial office, is that is correct?

20 **MR MANTASHE:** Yes.

ADV FREUND SC: And you made the point that when it comes, for example, to the Judicial Services Commission, the decision lies there subject to provisions that involve the President as well.

The decision really lies there to a certain point, and

is it not a fact that the ANC representatives on the Judicial Services Commission have the power to bring about any decision they choose, the way the Judicial Services Commission is structured?

MR MANTASHE: I have never served for the Judicial Services, I do not know how it works, I know I have been a Premier but my understanding is that there are various divisions of the High Court in various provinces. The involvement of those Premiers is in respect of the
10 appointments in the division off their province, and therefore I do not think there is a block vote by an ANC representative in the Judicial Services Council. I do not think, I have no evidence of it, I have never served there, I cannot give evidence.

ADV FREUND SC: Now, can I take each of page 591
100.591.

MR MANTASHE: Five?

ADV FREUND SC: Nine, one.

MR MANTASHE: I have got that.

20 **ADV FREUND SC:** Thank you, just before I ask you about that, what I did not ask you about the last document was about the bodies with investigative functions. You – it refers to cadres, you would say, being encouraged to apply for appointment to investigative functions. What do you have in mind there, what sort of bodies?

MR MANTASHE: I know, in 2021, the talk of apartheid is seen as taboo.

ADV FREUND SC: Okay.

MR MANTASHE: What we forget is that from 1994 onwards all this including the investigators, you find that they were mainly dominated by investigators from the previous, it was in the interest of society, to deploy people to change the demographics of those institutions.

ADV FREUND SC: To change presuming not only the
10 demographics as I understand your evidence, but to change the political orientation to ensure that political orientation would include people who are loyal, disciplined, committed of the party.

MR MANTASHE: I do not know if you know that in the negotiations for this Constitution that we are having key on the Nationalist Party side was the intelligence service. So it means that we were dealing with an investigative institution, which has political orientation.

Therefore, you would not have just leave that like
20 that, and have that orientation continue. That is why it was important to actually change the demographics, change the orientation, the right, change the orientation so that it becomes a nonpartisan, investigative unit.

I do not know whether you are trying to be – on the first one, I do not know that. But I am seeing orientation of

those institutions was necessary, and it had to be effected that is why we had to integrate people with various backgrounds in the discipline to have a new [?]

ADV FREUND SC: Well the issue you raise is in fact raised by the next document which we wish to refer you can we go please to page 591.

MR MANTASHE: I am there.

ADV FREUND SC: This is a meeting of the NWC I see you were present at this meeting that was presumably chaired by
10 the then President, President Jacob Zuma and at page 592 there is a report – minutes from an NWC report.

MR MANTASHE: Page?

ADV FREUND SC: 592.

ADV FREUND SC: You see that?

MR MANTASHE: Yes.

ADV FREUND SC: The item on the minutes dealing with the NWC report which you presented and you reported amongst others it would appear on deployment, ANC cadres and then the minutes note the comments. And in the middle of page
20 592 we find the comment:

“Deploys of the ANC should always be loyal
to the organisation.”

Now that is a principle that you – that you stand by as I understand it.

MR MANTASHE: Loyalty to the organisation if you

remember of it is necessary why do we do this I am a member.

ADV FREUND SC: Yes so...

MR MANTASHE: All the 00:01:26.

ADV FREUND SC: All these institutions to which you are recommending that application should be made for appointment your intention if those persons are appointed is that once appointed they must always remain loyal to the organisation.

10 **MR MANTASHE:** Let me give you an example that is almost irrelevant. Now I am a mine worker okay when I went to the mines I just...

CHAIRPERSON: You used to be a mine worker Mr Mantashe.

MR MANTASHE: I am a mine worker.

CHAIRPERSON: On a light note – lighter note you used to be a mine worker.

MR MANTASHE: I am a mine worker.

CHAIRPERSON: You are – you are a Minister now.

20 **MR MANTASHE:** I am back to being a mine worker.

CHAIRPERSON: Okay.

MR MANTASHE: You know a blasting certificate was reserved for a scheduled blast – a blasting schedule meaning that blacks would not blast they are not allowed. When the system is open it cannot be a mistake to deploy

people who understand the actions of trainees to allow that. That applies to all the institutions in South Africa because all of them were from an apartheid system which regarded people as less of human and therefore to consciously in avail in that level and trained orientation cannot be a mistake.

ADV FREUND SC: But the problem is I want to put to you that there is a conflict between the principles of a non-partisan Public Service and a Public Service which as a
 10 matter of strategy is populated insofar as you can achieve that by persons whose loyalty is to the party. That is exact antithesis of non-partisan.

MR MANTASHE: We – we had cadres of our movement who went to London and studied. Others went to the United States and all of that. And they understand that when a Trump was kicked out of office and a Biden comes there there is no hesitation in changing all the 00:04:09 in question and replace them with people who 00:04:11 to a democratic party.

20 If you go to the British systems as a party's campaign the state dealt with the manifesto and developed programs that I talked to those manifestos. Once their party was they shred all theirs out and implement this 00: 04:30.

Now if I understand the question directed to me properly it says the non-partisanship means ANC is sleeping

and hold on for life and not have any interest in a person the direction of terms in society which will actually talk to the reconstitution of the state to what it should be serving everybody. We are doing this in a state that has a long statement.

You know I read Domineer Smith service for me it was describe the works of Dr Verwoerd very well. He says Dr Verwoerd was instilling a system of apartheid which had so deep roots that it would be impossible for future
10 government to change.

Until you get involved you do not realise the depths of those roots. And the question directed at me is that do not give out those roots they will change automatically by being partner – non-partisan and the luck will befall you.

I am saying deployment and deployment of people to institutions has a direct intention to say that every decision must be transformed to serve the interest of all the society.

CHAIRPERSON: Well I wonder whether this has got something to do to the question has something to do with –
20 with this namely whether there is any difficulty with the notion that out of the people that the party may have prepared for certain responsibilities those that gets appointed ultimately let us say properly to certain positions the party will not expect loyalty to them once they have been appointed to those positions but it will be content with the

knowledge that they are – they subscribe to certain values and because they subscribe to certain values what they will do there while in those positions will not be in conflict with the party. Is that something that – that notion something that exists?

MR MANTASHE: The reality Chairperson is that there are many examples of disappointment – many of people getting into positions expect to facilitate terms instead they get subdued to the system.

10 We have many examples of that. And that is why the on-going effort is important otherwise the change is not going to happen and that is it. So there is something that once you are deployed there is no Secretary General or Deputy Secretary General of the ANC who stand over your shoulders.

CHAIRPERSON: Who monitor.

MR MANTASHE: And monitor you. There is no such a thing. The assumption in good faith is that you will appreciate the urgency of the need for change. But there are cases of
20 disappointment where people get there senior enough, knowledge of enough but when they get there they get
00:08:49 to this thing. They get assimilated.

And those are examples of setbacks that we should deal with on an on-going basis. So there is no expectation that a Judge is deployed to a particular court he will hear a

case and come to the ANC and say I had two cases and you know I – I ruled in favour of this guy – we do not want that.

CHAIRPERSON: Ja.

MR MANTASHE: There is no such a thing.

ADV FREUND SC: Now I understand particularly in the South African context particularly given now that the ANC assumes power in state of a wholly offensive previous disposition and I can have no difficulty I am sure the commission can have no difficulty with obviously be it the
10 transformational objectives of the constitution and the policies of the African National Congress directed to achieving those transformational objectives of the constitution.

I want to put to you that in Section 197 of the Constitution which governs the Public Service it says that the Public – the – it governs the public administration in which there is a public service. If you have a copy it might be opportune to have a look at it. 197.1 oh you do not have it – I am sorry you do not. I will read it. So 197.1 under the
20 heading Public Service says the following:

“Within public administration there is a public service for the Republic which must function and be structured in terms of National Legislation and which must loyally execute the lawful policies of the government of the

day.”

So there can be no controversy that the public service and all members of the public service have a legal obligation and a constitutional obligation to execute the lawful policies of the government of the day.

But to say that is not to say the same thing as to say all deployees must remain loyal to the organisation particularly when we see as we going to see that there is a – there is a tension between the party quo party and the
10 government quo government even though it is appointed by the party. That is where the problem lies I want to put to you if this notion of all deployees must be loyal to the organisation.

MR MANTASHE: I 00:11:38 all I say and we are dealing with it every day of people expecting the ANC to go and contest elections when the governing party but expect it to forego the responsibility of government. Give it to somebody else I think that is the problem – that is the nub of the problem.

So the people expect the African National Congress
20 not to have a responsibility in government and go back to the next election or next election, win the election but when it must govern there is an assumption that it must be a free for all.

It does not happen anywhere else in the world. It is expected of the ANC here it does not happen anywhere in

the world when you contest the election you win the majority you must govern and take responsibility of governing.

ADV FREUND SC: In governance the party or the government?

MR MANTASHE: It is the government but the party is a majority government. That is why there is a distinction between government and state okay. That distinction of government and state is very important if you understand it is classical.

10 Government is elected every five years it governs it is having a state that is a tool in the hands of that governing party to execute the problem that win the election. Now – but in South Africa there is an expression that you will need governance to become a government do not tamper with the state, do not talk to the state because if you tamper with the state you want it to be like you.

Even deployed by the ANC I mean the state I must do the best in the state because if I do not I am actually demotivating the importance of a governing party to come. I
20 must do what is correct and do it to the best of my ability. And – and that cannot be foregone and will forego the responsibility that goes with being the governing party.

ADV FREUND SC: So this non-partisan public service finds expression I want to put to you in Section 197.3 of the constitution. That section says:

“No employee of the public service may be favoured or prejudiced only because that person supports a particular political party or cause.”

But it seems to me that the policy of the African National Congress as you describe it intends and is effective in populating the state with its deployees for the purposes of having in those positions persons accountable to the party not merely responsible to the government and not merely
10 responsible to their government superiors.

MR MANTASHE: No.

ADV FREUND SC: That is the tension.

MR MANTASHE: No. There is no tension like official tension. You want to have people in strategic positions in the state who understand policies of the governing party and who will be loyal to executing. That is all we are interested in and that is why in those strategic positions not everybody there is an ANC member. Not everybody is an ANC member. But to relate to them normal like any other senior public
20 service employee but intention is that do you understand the policy, do you understand the problem, are you executing that? Because you will find a situation where people actively work against the policies of a governing party.

CHAIRPERSON: But policies of the governing party get translated quite often into legislation as well, is it not?

MR MANTASHE: Yes.

CHAIRPERSON: To the extent that policies of the governing party have been translated into legislation any person employed in a government department where that legislation must be implemented whether they were deployed by the ANC, whether they were members of the ANC or are members of the ANC or not, whether they are members of the DA, members of the EFF once they are appointed to those positions and in those positions they are required to
10 ensure the implementation of that legislation that is what they must do. Is it not?

MR MANTASHE: Yes.

CHAIRPERSON: Yes. Why?

MR MANTASHE: That is...

CHAIRPERSON: Yes.

MR MANTASHE: That is what is expected.

CHAIRPERSON: That is what is expected of them yes. Why is it not enough for the governing party to take the position that says the President of this government is our deployee
20 as the governing party? The President of this government has appointed Ministers who are our deployees.

It is their job in those capacities to make sure that their departments and employees in their departments implement legislation that is based on our policies and we are not going to deal with the officials but we will deal with

the President because he is or she is whoever it is you know our deployee and he or she is in charge of government so we are not going to say members, officials must be loyal to the party. They must be loyal to the government and that is good enough because this is our government. Why is that not good enough?

MR MANTASHE: In practice – in practice that is what has happened. But when the party sits in this conference it goes into details on the nitty gritty of government.

10 Now the difficulty that I am having here is that we are putting ANC policies to the commission basically putting policies of the ANC on trial but these are policies that happened in the discussion in the ANC. I can give you an example. When we sit in a meeting with the ANC we will spend hours discussing the difference between white monopoly capital and monopoly capital and those will find their way to documents of the ANC.

 Then you take those documents you bring them to the commission then you are putting that conference before the
20 commission therefore policies of the ANC are on trial and that is the little bit of a – of a problem in this situation because these documents that I interrogated are internal discussion to the ANC.

 Now if you relate them to what is happening in practice what you explain is what happens? You will not

have one time here in this commission I think two Ministers came here and said that I reported corruption in my department here at Luthuli House and the 00:20:20 did nothing okay.

Then when we read about this we call them and say what did you expect the ANC to do? Did you expect the ANC to walk into a department and feel this corruption in your department when you have authority to deal with that in your department.

10 So in practice what you are describing is what happened in practice but that cannot stop the ANC from having a detailed discussion in its internal structural meetings and have a discussion on any issue including governance.

And if you take what is said in those meetings internal to the ANC you bring them to a commission. You take those commission – those policies you put them on trial then you interrogate them and that is what is happening.

CHAIRPERSON: Of course you will appreciate that the
20 reason why one is looking at – at them and their implementation is that in part the commission is trying to say to the extent that certain wrong things happened how did they come about? What are the – was there an environment that facilitated the happening of those wrong things? What should be done in the future to make sure that the prospects

of those wrong things happening again are minimised and when you want to do that you then say can we do that without looking at the governing party? How – how does it deal with certain situations? So that is the – that is the context I am sure you understand.

MR MANTASHE: No we have no problem with being looked at.

CHAIRPERSON: Ja. Yes, yes.

MR MANTASHE: With the governing party.

10 **CHAIRPERSON:** Ja, ja.

MR MANTASHE: The issue we are raising is that in doing so – when there are problems I can tell you that..

CHAIRPERSON: Yes.

MR MANTASHE: We have 00:22:23 those problems closer than a proper hearing.

CHAIRPERSON: Ja.

MR MANTASHE: We were sitting there these things happen in our offices you must deal with them. But it is a different issue when we take policies of the government quietly put
20 them on trial because when you do that objectivity disappears and it will ultimately make the situation more.

My misdemeanour will be attributed to the party whereupon but here am I – I go and steal state resources it is not the party that is to blame it is me and that money I do not steal it for the party I steal it for myself. But if we do not

draw the distinction we will end up saying it is the ANC that has stolen XY and Z. But that loot is not going Luthuli House okay. It has gone somewhere in another area.

All I am saying is that in practice that is what it is. We do not have public servants going to Luthuli House to account for their work unless for 00:23:47 for example if we discuss an economic policy there is nothing that stops us to from asking people who worked on the economic reconstruction and recovery plan to come and give us insight
10 on what they did. And then there is a 00:24:03 to debate that issue but that is it.

CHAIRPERSON: Okay Mr Freund.

ADV FREUND SC: Right. I want to primary [?] one but on the same page where we were 592 the very next sentence after the one we have looked at about the police should always be loyal to the organisation reads as follows:

“The ANC should begin to provide leadership
on the deployment of comrades.”

MR MANTASHE: Where is that?

20 **ADV FREUND SC:** Sorry it is about fifteen lines from the bottom of 592. It starts “The ANC should begin.”

MR MANTASHE: Okay.

ADV FREUND SC:

“The ANC should begin to provide leadership
on the deployment of comrades even if it

means to direct intervention.”

Now you were the Secretary General present at this meeting what does that mean? Even if it means to direct intervention.

MR MANTASHE: Let me give it a broad interpretation. I am Secretary General would pick up failures in the deployment process. It means I must take a walk, go to the deployment committee, have a discussion with them and say you are not making regular – you are not monitoring this place please
10 step up your game. That is what it means.

ADV FREUND SC: So I am not sure that I understood or heard you properly. Does it mean that if – if a cadre in – who has been deployed somewhere is not properly performing the duty they should be told to perform it properly or is it if the cadre – if the deployment committee is not being effective it should buck up its game? I am not quite clear what you saying.

MR MANTASHE: No I am saying the deployment committee of which I am not a member is Secretary General as it were
20 it means irregularity, it does not monitor the space does not even monitor 00:26:04 I have a responsibility to go to the 00:26:04 listen monitor the advert because if you do not you are not going to be able to recommend anybody. That you cannot be responsible for.

ADV FREUND SC: Right.

MR MANTASHE: But if a cadre is deployed he is not performing his duty it is somebody else's responsibility in the line of duty.

ADV FREUND SC: Now we were talking a little earlier about its perception of a tension in between party and government. I want to refer you to page 593 about six or seven lines down there is a sentence that reads as follows:

10 “It is correct to have a strong centre at the
 level of the organisation that being Luthuli
 House.”

Now what does that mean? What is the point being made there?

MR MANTASHE: The point that is made is that it is important to have functional organisation. That is what it means. It means that the ANC must be functional to fulfil its role.

20 **ADV FREUND SC:** Does it not also suggest that the
 intention of the speaker who has been noted here is that the
 real locus of power is Luthuli House and not the
 government? Luthuli House determines what is to be done.

MR MANTASHE: No you are creating an artificial connotation.

ADV FREUND SC: That is why I am asking you.

MR MANTASHE: No let me explain it. Luthuli House is the head office of the ANC. The ANC is a party in government.

So I do not know where the connotation is because this party is in government you see in the ANC the Secretary General, Deputy Secretary General and Treasury General do not go to government they stay in the head office of the ANC because it is important to have a vibrant organisation because our ability to govern depend on the health of the organisation which is our vehicle to govern. So there is not a 00:28:30 between the party and the government. We are a government we are in present in government and for us to be

10 effective the party itself must be effective. If you read our documents you going to find that almost every conference make time to talk about organisational renewal and unit organisational renewal and unit. Whether we make progress on that or not because it is always important to have a healthy and a vibrant organisation called the ANC. So it is not contradiction It is not contesting government.

ADV FREUND SC: Alright.

MR MANTASHE: It is a government party.

ADV FREUND SC: I want to move on I am very conscious of

20 time. So the next document I want to refer you to starts at page 594 unfortunately my copy page 594 is upside down but you will see that that is the cover page of the NWC meeting in July of 2009 and that having given your bearings if I can take you to page 598? And here dealing with the report on the North West Province and in paragraph 2.3 it is reported

the local government has become ...[indistinct – audio cut] of the municipalities. And then the sentence that interests me. The appointment of managers – and I stress the word appointment.

“The appointment of manager in the municipalities is centralised in the office of the Provincial Secretary...”

I suspect that is a party official.

10 “Thereby making it a norm that incompetent but loyal individuals to the dominant faction get appointed to all strategic positions...”

Now my first question arising from this is. Does this not show that the reality, whatever you may have been telling us, is that appointment decisions are made in this deployment process?

MR MANTASHE: No. I think what you are doing, you are turning a diagnoses made by the ANC itself of a problem. You are turning it on this side and make it a desirable situation of the ANC. The ANC diagnosis this as a problem
20 and therefore it must deal with it. It must deal with it because the problem, you can centralised the appointment of managers in the municipalities.

CHAIRPERSON: So it is part of the report of the North West Province about what was happening?

MR MANTASHE: Yes.

CHAIRPERSON: Ja, okay.

ADV FREUND SC: But am I correct in understanding your last answer to mean this? That as a matter of fact, it came to your attention that the appointment of managers in municipalities was being made by the Provincial Secretary, a party official?

MR MANTASHE: [No audible reply]

CHAIRPERSON: And now is the problem that was being identified.

10 **MR MANTASHE:** No, I do not know if it came to my attention as Secretary General.

CHAIRPERSON: Ja, yes.

MR MANTASHE: It has gone to the National Working Committee of the ANC. And in diagnosing problems in that province, it says one of the problems is this one.

ADV FREUND SC: Now, unfortunately, you know we stopped at page 4. We do not know what happened at page 5 or page 6 but on – is this the only example that you ever heard of officials being appointed to party structures?

20 Officials such as managers?

MR MANTASHE: No, our understanding is that appointment of officials to the municipalities are done by municipalities. The closest a Deployment Committee ever can come would be having a view on Section 56 and 57, annexures. Anything below that, it is a no-go area.

ADV FREUND SC: Now just to... [Speaker moves away from microphone – unclear.] ...on this issue. If I can take you to page 603? Just to get your bearings here. Again, my page is unfortunately upside down but we can read for ourselves.

MR MANTASHE: What is the number again?

ADV FREUND SC: 603, 604, 605. You can confirm that is the resolutions of relevance taken at the 53rd National Conference.

10 **MR MANTASHE:** Yes, there is an index.

ADV FREUND SC: And then at page 613, likewise, we find an extract, the relevant part of the resolutions taken at the ...[intervenes]

MR MANTASHE: 203?

ADV FREUND SC: 613... 613 and 614.

MR MANTASHE: 613 is a picture.

ADV FREUND SC: Yes and if you turn over the page, you will see that – you are in ...[intervenes]

CHAIRPERSON: Do you see yourself there,
20 Mr Mantashe?

MR MANTASHE: I see myself.

CHAIRPERSON: [laughs]

ADV FREUND SC: And you will see that above the picture what we are looking at is a document that is the document summarising ...[intervenes]

MR MANTASHE: Yes.

ADV FREUND SC: ...or recording the decisions taken by the 65th National Conference.

MR MANTASHE: Yes, the report. Yes.

ADV FREUND SC: And on the question of Cadre Deployment, we can read for ourselves what we see at 614. You can confirm that those were the decisions taken?

MR MANTASHE: By the resolution of the conference, yes.

ADV FREUND SC: Now I want to take you to something
10 that I am sure that will be a lot more controversial. Page 418, 100.418.

MR MANTASHE: 418...

CHAIRPERSON: You said page 100.418?

ADV FREUND SC: That is correct, Chair.

MR MANTASHE: 418?

ADV FREUND SC: Yes. It is a document on an ANC Secretary General's office letterhead.

MR MANTASHE: Yes, with no signature.

ADV FREUND SC: Yes, with no signature. Quite correct.

20 **MR MANTASHE:** Okay.

ADV FREUND SC: Now Chair, you will recall that at the commencement this morning that I said to you that we had put together a bundle of media reports and then I said, the very last page is of a different character that has been included for convenience at that point in the record.

MR MANTASHE: Yes.

ADV FREUND SC: It is obviously not a media report and – but it has a relevance to a media report because this was widely published in the media and there were a number of reports. This is, approximately, in the middle of last year during 2020 or something, asserting that this was a document prepared in the office of – or in the Thule House. And the Thule House issued a denial. They said this is a forgery. There is no such document.

10 But various journalists have asserted that five different sources within the party confirmed that this is an authentic document. And I want to make clear, I do not know who those people are. I cannot vouch for the accuracy of it but I want to hear, if I may, from you what, if anything, you can tell us about this document?

MR MANTASHE: I will have difficulties to deal with sources and informants in the Commission. My gut feel – it is a gut feel, what I call it, any document of the ANC that has no signature, is not *an ANC document*. [Speaker is not
20 clear.] You may issue a directive to start this. I write a letter. I sign that letter. The evidence now, it is a little – I – my gut feel or my first impression(?) was that, it is a fake.

ADV FREUND SC: But let us look at the content of it. I mean, it is admitted – and it is obviously not signed. And

one of the media reports suggested that it was a draft to be submitted to a meeting. I do not know. But let us look at the content of the report.

MR MANTASHE: My submission is that. It is a document with no signature of anybody in the ANC. We cannot pin anybody down and say what is your reason of this content because anybody who issue correspondence take responsibility for that correspondence. We do not have that correspondence. So if it is no content to date in 2021
10 or 2020, it will be fake because anybody can craft a fake document and circulate it and make it an ANC document. But if it had a signature, even if you want to call it a fake, we will find it difficult to make it a fake.

ADV FREUND SC: Well ...[intervenes]

CHAIRPERSON: I guess it is strange that it does not even have the position of whoever would have written it.

ADV FREUND SC: No, indeed it does not.

CHAIRPERSON: Ja.

ADV FREUND SC: But what I would like to explore with
20 your leave, Chair, is not its authenticity but the correlation between the content and what is the views of the witness.

CHAIRPERSON: Ja, okay.

ADV FREUND SC: If I may do that.

MR MANTASHE: I cannot talk to contents of a fake document.

ADV FREUND SC: Well, let me ask this then
...[intervenes]

MR MANTASHE: ...to the Commission.

CHAIRPERSON: Ja. Well, it may be that it is a question of how you tried to get the information that you want to get which you might get without reference to the document.
[laughs]

ADV FREUND SC: Let me ask you this Mr Mantashe. Is it or it is not compatible with the deployment policies of the
10 African National Congress ...[intervenes]

MR MANTASHE: What?

ADV FREUND SC: ...that the following procedure should be followed with regard to deployment of the following positions, director generals, Chairperson, CEO's and all board of SOE's and the procedure is that the office of the Deputy Secretary General should be informed of all such posts prior to them being advertised and be sent the advertisement once they have been published and that thereafter what is supposed to be presented to the... Well,
20 let me stop there. Is any of that compatible with correct policies and procedures?

MR MANTASHE: I do not have the right to refuse to answer questions but I think I need projection here where I am expected to answer questions on a fake document.

ADV FREUND SC: Are you saying under oath that this is

a fake document?

MR MANTASHE: I am saying nobody – there is no title, there is no date.

CHAIRPERSON: But I do not know Mr Freund whether you want to make any reference to the document at all as opposed to simply asking questions with no reference to the document and see whether ...[intervenes]

ADV FREUND SC: Well, I wish to do both, if I may?

CHAIRPERSON: Ja, okay.

10 **ADV FREUND SC:** I wish, firstly, to just confirm because I do not know which further evidence may come before the Commission.

CHAIRPERSON: H'm, h'm.

ADV FREUND SC: And I would definitely wanted to establish as a matter of fact whether Mr Mantashe is telling us of his personal knowledge that he knows. We know it is an unsigned document. We know it is an unnamed document but I want to establish as a matter of fact whether he was saying to us that you know this is a fake or
20 that you assuming and guessing it is a fake.

MR MANTASHE: From February 2018, I was deployed to government. If it was directed to deploy cadres or declare a comrade, I would have read it.

CHAIRPERSON: H'm, h'm.

MR MANTASHE: I would have read it.

CHAIRPERSON: H'm, h'm.

MR MANTASHE: So that is why I regarded it as fake.

CHAIRPERSON: H'm.

ADV FREUND SC: alright. So what you can say from your personal knowledge is that as a cadre who had been deployed, you did not receive it?

MR MANTASHE: Yes.

ADV FREUND SC: Alright. I understand that.

CHAIRPERSON: H'm, h'm.

10 **ADV FREUND SC:** Now I have not taken the Chair today through some of the proposing(?) documents that we have been talking about, but I want to understand your testimony about how the processes should work under the ANC policy when the question arises as to the appointment of director generals, chairpersons, CEO's and boards of SOE's. What is the procedure that should be followed in your opinion having regard to the policy documents that you are familiar with.

MR MANTASHE: I am a Minister today deployed by the
20 ANC. I have appointed few deputies. I have appointed boards of state entities in the portfolio... What I do, you see, I inform the Deployment Committee. We are going to advertise this board... because you know why I do that?

I do not want them at the point of actually interviews to say here is a cadre... We are looking for a

board to come to advertise it. We advertise in all the newspapers. Everybody read papers. We received a long list of applicants. Whatever structure made the selection.

The structure... Make a shortlist. *Had access to me(?)* I go to the *Deployment Committee(?)* and say: Listen, we are not in a state of interviewing. Here is the long list. Here is the shortlist. [Speaker is unclear.]

ADV FREUND SC: Sorry, I did not hear you. You say you go to the Deployment Committee and say this?

10 **MR MANTASHE:** I go to the Deployment Committee.

ADV FREUND SC: Right. I understand.

MR MANTASHE: And do that as a Minister and then I go. Then I ran the process myself.

CHAIRPERSON: I am sorry but I think you may be skipping something that in your mind you may have thought you said. When you go to them there must a purpose. What is the purpose?

MR MANTASHE: The purpose is to inform them that that board that they it is being filled we are in the process of
20 filling it now because – Chairperson, you are not...

CHAIRPERSON: [laughs] Ja?

MR MANTASHE: In my quest for knowledge, I tried to study accountings.

CHAIRPERSON: Ja, and what is that?

MR MANTASHE: It was not called accounting, it was

called accountants then. One principle that I hold so dear is that I was never an accountant. I could not do it. I thought – I formed(?) earlier that I am not accountant material.

CHAIRPERSON: [laughs]

MR MANTASHE: I am too restless to be an accountant. I learnt that it is always better for any transaction not to be handled by one person *from the beginning to the end*. [Speaker is unclear.]

10 **CHAIRPERSON:** Not to be handled by one person?

MR MANTASHE: By one person.

CHAIRPERSON: Ja.

MR MANTASHE: From ...[intervenes]

ADV FREUND SC: From beginning to end or I think ...[intervenes]

MR MANTASHE: From the beginning to the end.

CHAIRPERSON: Oh, okay.

MR MANTASHE: It is always well for you to get other opinions from what you are doing and they do this to the
20 Deployment Committee as a matter of believe that their view will help me see what is on my prime spot. And when I have done that, I go back. Then I am covered. I run with the process. Panels, interview. We appoint. We go to the Cabinet for confirmation(?). We do that as a matter of – all the time.

ADV FREUND SC: So what I hear you to be saying is, wearing your hat as a Cabinet Minister is that what you do is a matter of practise, is you inform you the Deployment Committee ...[intervenes]

MR MANTASHE: Yes, I do.

ADV FREUND SC: ...of vacancies, the long lists, shortlists, and you then invite their views. Is that correct?

MR MANTASHE: Can I repeat that Chairperson? I rather repeat it and taking your word from you. There is a
10 board... Hence we are going to be advertising vacancies in the board(?). Okay? Then after we have done that. We do not ask them whether they have sent anybody. We do not ask that, okay. We advertise, we receive application. We compile a list of them.

Out of that a team selects a shortlist. I go to the Deployment Committee and say to them: Guys, we have now got *what we have told you about(?)*. We have advertised. There were a thousand applications. Out of those we are looking at these ten or at these six.
20 Whatever the number. And they look at it.

I will never form a situation where they normally say: No, do not go ahead because we want to give you a name. I do not have that experience(?). I will hear the situation where and so they find – how they - they say it is fine, okay. Because I am careful myself in the process.

Having had their views, I go back and then conduct interviews.

CHAIRPERSON: My understanding of your response, Mr Mantashe.

MR MANTASHE: H'm?

CHAIRPERSON: It suggests that – your answer is or should be yes to Mr Freund's question because his question was whether you invite their comments and from what you are saying is. When you give it to them, you say
10 you have never had experience of them saying no. So I think usually or all the time they say it is fine but I do not think that ...[intervenes]

MR MANTASHE: Chairperson, in the majority of the cases.

CHAIRPERSON: In the majority of cases.

MR MANTASHE: Those people ...[intervenes]

CHAIRPERSON: Ja.

MR MANTASHE: ...are not cadres of the ANC.

CHAIRPERSON: Yes.

20 **MR MANTASHE:** Professionals.

CHAIRPERSON: Yes, yes. The people on the list, you mean.

MR MANTASHE: People on the list.

CHAIRPERSON: Ja.

MR MANTASHE: Most(?) of them are professionals.

CHAIRPERSON: Yes. But what I am putting to you is that my understanding of what you are saying is that when you give it to the Deployment Committee you – if they comment that falls within the process, within your expectation. So they might comment and say: We do not think that ...[intervenes]

MR MANTASHE: They will give ...[intervenes]

CHAIRPERSON: ...leave out so and so.

MR MANTASHE: H'm.

10 **CHAIRPERSON**: Or they might say: No, we are happy but you will say you just want in case they tell you something that you missed.

MR MANTASHE: Let me give an example.

CHAIRPERSON: H'm?

MR MANTASHE: One time I go there and say here are the five names. And they say to me but your five candidates are four men and one woman. Okay?

CHAIRPERSON: H'm.

MR MANTASHE: Even before you go for your interviews,
20 already you have a distorted(?) picture, okay.

CHAIRPERSON: H'm?

MR MANTASHE: When they say that I take that as a directive for me to go to that long list, try to add qualified women. That is it.

CHAIRPERSON: H'm, h'm.

MR MANTASHE: And that is how I can go. Then I am sent back in. I go and find a woman. And I ask the question. You want me to come back when I find? They say: No, find appropriate and qualified woman and add them so that the list is balanced.

CHAIRPERSON: H'm. So the process of you going to them contemplates that they may comment on the list?

MR MANTASHE: Yes.

CHAIRPERSON: Ja, okay.

10 **ADV FREUND SC:** And I presume you do not get other political parties and ask for their comments?

MR MANTASHE: No, I do not. I am not a member of other parties.

ADV FREUND SC: And one you, your department report to you that they have taken a view as to who is the suitable candidate for an appointment, in certain instances that has to go to Cabinet. Is that correct?

MR MANTASHE: I go to Cabinet as a matter of practise all the time.

20 **ADV FREUND SC:** Right. And you as a matter of practise never reach the stage of then going to Cabinet without first having come to the Deployment Committee. That is what I think you told us.

MR MANTASHE: No, the Cabinet does not call the Deployment Committee.

ADV FREUND SC: No.

MR MANTASHE: I go to the Deployment Committee.

ADV FREUND SC: Yes. You as the Minister
...[intervenes]

MR MANTASHE: Yes.

ADV FREUND SC: ...go to the Deployment Committee and
seek the Deployment Committee's perspective on a
decision before the matter goes to Cabinet.

MR MANTASHE: Yes.

10 **ADV FREUND SC:** Right.

MR MANTASHE: And you ask me if I do go to other
parties. I have never been invited to any interview in the
Western Cape or in Cape Town. I was never there. So you
go and explore to go and take where the day is where - I
do not understand this affair... [Speaker is unclear.]

CHAIRPERSON: Well, I wanted to raise something with
you that relates to something you said. You said
something along the lines that you go to the Deployment
Committee so that if there is something that was in your
20 blind spot, something that you did not see, they can alert
you to it.

So I wonder whether the reason is not more than
that because you could achieve that by going to your
colleagues to – in government in Cabinet, you know,
talking to them or a subcommittee. So I am wondering

whether the purpose is not more than that, namely, you are the Deployment Committee of the governing party.

The governing party is in government and I know that there is a deployment programme or policy in terms of which people who understand the policies of the governing party are made ready for certain responsibilities.

I want you to have a look and comment within the context of your job as the Deployment Committee before I make the final decision or before whoever has the
10 power to make the decision in government makes the decision. Would that be unfair to say?

MR MANTASHE: I do think your view and comment seriously.

CHAIRPERSON: Yes.

MR MANTASHE: I take them seriously.

CHAIRPERSON: Yes, yes. Yes, okay. But you accept the context that I am saying, I am understanding your evidence to include that it is not just for them to look at the blind spots. It is also in the context of the work of the
20 Deployment Committee.

MR MANTASHE: I am giving you the example of where they sent me back ...[intervenes]

CHAIRPERSON: Yes.

MR MANTASHE: ...because I had one woman in the list.

CHAIRPERSON: Ja, ja.

MR MANTASHE: I took that quite seriously because one of the things that I can tell you is that the views of the Deployment Committee is that black South Africans are educated.

CHAIRPERSON: H'm?

MR MANTASHE: Highly educated. They have been deprived for a long time. Today half the time, they are not affirmed. They are appointed to positions where they qualify today. But the narrative is that, we deployed them
10 because we love them. The reality of the matter is that...

You know, a few days ago I met a board of an entity in the department. In that board of eight, not a single member of that board is a less than a master's degree qualification. Not because – I look at them and they said h'm, huh?

And that shows that the conscience management of change is beginning to give us concrete results because black South Africans are now educated. They have accumulated experience. They are qualified to be
20 appointed in positions, not as a favour because they qualify.

CHAIRPERSON: Mr Freund.

ADV FREUND SC: Alright. Mr Mantashe, you are familiar or at least with the evidence given by Ms Barbara Hogan before this Commission.

MR MANTASHE: Yes.

ADV FREUND SC: And Chair... [Speaker moves way from microphone – unclear.]

CHAIRPERSON: Do not speak too far from the mic.

ADV FREUND SC: I have it as Exhibit L-1.

CHAIRPERSON: L-1?

MR MANTASHE: Bundle what?

CHAIRPERSON: Okay.

ADV FREUND SC: [No audible reply]

10 **MR MANTASHE:** When I look this way, I am looking for help.

ADV FREUND SC: I beg your pardon?

MR MANTASHE: I am familiar with her ...[intervenes]

ADV FREUND SC: Yes, you are familiar with it. I am obviously only going to take you to very brief portions of it.

CHAIRPERSON: Are we going to come back to this bundle soon?

ADV FREUND SC: We are going to come back to that file.

20 **CHAIRPERSON:** Okay alright. Okay. What page do you...?

ADV FREUND SC: I want to start at page 4 of the file of Ms Hogan's affidavit.

CHAIRPERSON: Yes, I have got it.

ADV FREUND SC: And just to get your bearings as to time, amongst other things. If you look at paragraph 9 on

page 4, you will see that Ms Hogan says that she was appointed as the Minister of Public Enterprises on the 11th of May 2009 after serving in other capacities.

MR MANTASHE: Yes.

ADV FREUND SC: And then I want to take you to paragraph 22. Ms Hogan says this. She is referring to, in particular, the appointments of CEO's of a variety of SOE's and she refers to them in paragraph 21. And she has previously described a process which she regards as an
10 appropriate process that results in a provisional selection of potential SOE's.

And then she says in paragraph 22 the following:

“In practise, however, there were parallel behind the scene process.

As the ruling party, the ANC had expectations that they would have influence over who were – who was appointed to boards via the Deployment Committee of the ANC...”

Now let us just stop right there. Do you dispute
20 here evidence that the ANC had expectations that they would have influence over who was appointed to boards by the Deployment Committee?

MR MANTASHE: No, I before I dispute that. Let me make a point that a beneficiary of the deployment process all decided see it as behind the scene process. That is my

problem because that deployment process deployed Barbara as a Minister. Now all of a sudden you want to appropriate to herself as well. I think that is a distortion of policy in my view.

ADV FREUND SC: Do you admit or deny that the ANC had expectations or they would have influence over who was appointed to board via the Deployment Committee of the ANC? It is either yes or a no.

MR MANTASHE: No, you are asking me the same
 10 question again, there is a deployment committee in the [indistinct – dropping voice]. We have gone into details explaining its role and how it works. So what do you want me to say now?

CHAIRPERSON: No, I think, Mr Mantashe, you remember that – and I think you repeated that day that I think you had some – I think serious disagreement with some of Ms Hogan’s evidence about the work of the deployment committee of the ANC when she testified and you came and testified about it to put the side of the ANC as far as the
 20 deployment policy I think was concerned. So I think what Mr Freund is trying to establish, which parts of her evidence you have no problem with, which parts you have a problem with so that when I have to look at the matter I do not have to speculate whether this was disputed or was not disputed.

MR MANTASHE: No, Deputy Chief Justice, there is a detailed submission on Barbara Hogan's evidence.

CHAIRPERSON: Yes.

MR MANTASHE: Now if I am expected to give that evidence again...

CHAIRPERSON: Yes.

MR MANTASHE: First thing, there is a [indistinct] 01.44 begin to [indistinct] 01.48 that there is a trap in this. They want to check if I am not going to say something different.

10 **CHAIRPERSON:** Yes.

MR MANTASHE: Then I am accused of submitting a contradictory evidence to the Commission.

CHAIRPERSON: Ja, no, no, no, I think it is fair to say to the extent that you have dealt with it, there is no need for us to deal with it again. So, Mr Freund, I think you must just [inaudible – speaking simultaneously]

ADV FREUND SC: Chair, I fully respect the spirit of that. The difficulty I have is that I was not present and I have not read that evidence.

20 **CHAIRPERSON:** Oh.

ADV FREUND SC: So I am not in a position to know. I have to be guided by you as to whether you feel it is unnecessary for me to explore this issue in full.

CHAIRPERSON: Well, I – maybe what we should do it insofar as you wanted him to deal with Ms Hogan's evidence

as far as deployment is concerned ...[intervenes]

ADV FREUND SC: That is all I am interested in.

CHAIRPERSON: Maybe until you have had a chance to read that evidence maybe you should park that. If necessary, he can come back to deal with it if there is something can clarify so that you can see where they have common cause and do not have common cause.

MR MANTASHE: It is quite an important.

ADV FREUND SC: Alright ...[intervenes]

10 **MR MANTASHE:** This is [indistinct] 03.03 because the allegation about Gama and all that.

CHAIRPERSON: Ja.

MR MANTASHE: Which were responded to.

CHAIRPERSON: Ja, ja.

MR MANTASHE: If we are expected to respond again today then we become nervous.

CHAIRPERSON: Ja. There is a part which I do not think was dealt with then but I think if we are going to park it I would need to check whether it was not covered as well
20 before we can look at it again, ja.

MR MANTASHE: Okay.

ADV FREUND SC: Chair, the difficulty, with respect, is that it make it necessary to come back.

CHAIRPERSON: Okay.

ADV FREUND SC: Whereas the questions were confined to

the deployment issue. Now if you think it is unfair to the witness to be asked about the same issue twice then I will not do that but we do have to consider the consequence because the consequence may well be that we have to come back.

CHAIRPERSON: Ja. No, I do not think he will have a problem with coming back.

MR MANTASHE: I have no problem with coming back.

CHAIRPERSON: Ja, as long as ...[intervenes]

10 **MR MANTASHE:** I am just expressing a sense of nervousness.

CHAIRPERSON: Ja.

MR MANTASHE: In a case where you are called to the Commission, you give your evidence, you make your submission, you settle that issue, you close it.

CHAIRPERSON: Ja. No, no, no, that is fair enough.

MR MANTASHE: There is no matter arising out of that.

CHAIRPERSON: Ja, ja.

20 **MR MANTASHE:** But we are expected to rehash that submission. That is where my nervousness comes.

CHAIRPERSON: No, no, that is fair enough, I think ...[intervenes]

MR MANTASHE: Because to us there is a Commission, who was present when and who is present now is not an issue, there is one Commission ...[intervenes]

CHAIRPERSON: And you say the Chair was the same?

MR MANTASHE: The Chairperson was the same.

CHAIRPERSON: Okay, alright. Let us to do that. Mr Mantashe has indicated he will not have a problem to come back if it is necessary to deal with whatever may arise once you have checked and compared.

ADV FREUND SC: That is fine, Chair, and then I will not need to deal with that file any further and I will go back to the file that we were in.

10 **CHAIRPERSON:** Okay.

ADV FREUND SC: And I am now going to ask a very different line of examination.

CHAIRPERSON: Yes, okay.

ADV FREUND SC: And I would like to take you firstly, please, to page 100.45.

CHAIRPERSON: Are we going to the other bundle?

ADV FREUND SC: The other bundle, the bundle 100.

MR MANTASHE: 100.

20 **ADV FREUND SC:** Point 45, four five. Really moving away, Chair, from the question of deployment, I am moving back to the question of parliamentary oversight.

CHAIRPERSON: Yes, no, that is fine.

ADV FREUND SC: And I might indicate both to you, Chair, and Mr Mantashe ...[intervenes]

MR MANTASHE: 45?

ADV FREUND SC: 45, yes. It seems to me the question of parliamentary oversight, the question of ANC oversight intercept, they overlap, so I will be dealing with [inaudible – speaking simultaneously]

CHAIRPERSON: Yes, yes, ja, no, no. I think they do because the ANC is the majority party in parliament.

ADV FREUND SC: Now according to this press report – now, Mr Mantashe, let me make clear, if I understand the press reports are not evidence on their own, proving the
10 truth of what they are saying, they are simply pieces of paper, recording what some journalist wrote down but sometimes, quite often, what they say may well be true and so I am going to take you through a number of these reports in order for you to tell us to what extent you can confirm or deny or comment on a number of things we see in these press reports.

And the first press report that I want to refer you to is this one which is dated 22 May 2009.

MR MANTASHE: What page is that?

20 **ADV FREUND SC:** At 45, 100.45. It is headed ANC ...[intervenes]

CHAIRPERSON: The page that he mentioned at the beginning, Mr Mantashe, I think that is the one you should be having in front of you, page 100.45. She will assist you.

ADV FREUND SC: Mr Mantashe, if you look at that report

you will see it is dated the 22 May 2009. Do you see that?

MR MANTASHE: May...?

ADV FREUND SC: May 22, 2009.

MR MANTASHE: Yes.

ADV FREUND SC: Because what I am going to try and do is I am going to try and move chronologically. So this is very early point in this series of years we are going to go through but this is a convenient starting point and the report quotes you as saying that – because this is the beginning of the new
10 parliament in 2009 and quote you as saying that – well, it says this:

“The ANC has given its MPs strict instructions to be robust and not to be afraid of holding cabinet ministers to account for their actions.”

It says the names of Chairpersons of the National Assembly were announced and then it says that:

20 “Party Secretary General Gwede Mantashe said MPs and Committee Chairpersons had been told to keep cabinet ministers on their toes. The committees were given a simple message, we are expecting an activist parliament, a parliament that is robust with its oversight role, a parliament that will force the executives to account, a parliament that will not wait for the opposition to raise issues.”

So my first question to you is, are you correctly quoted? Is

that what you said?

MR MANTASHE: Yes, I am correctly quoted.

ADV FREUND SC: Now what prompted you to feel the need to make that kind of statement? Did you have a perception that perhaps in the past it had not been as good as that or what was the context that gave rise to these comments?

MR MANTASHE: I was the Secretary General of the ANC during a phase that is regarded as a young democracy. In
10 that process we will observe a number of things. Sometimes MPs want to comply for the sake of complying and we thought that a parliament must be an activist parliament. That is still haunting me up to today because it can mean anything and many things to the [indistinct – dropping voice] But what we wanted to do was to have a parliament that is robust and activist in its approach including oversight, that was what prompted us. We intend to re-orientate parliament and have a different orientation and you will notice that we also changed the Chief Whip.

20 **ADV FREUND SC:** Yes.

MR MANTASHE: You will notice that, Chair.

CHAIRPERSON: You also changed what?

ADV FREUND SC: The Chief Whip.

CHAIRPERSON: Oh, the Chief Whips, ja.

MR MANTASHE: Changed the Chief Whip.

CHAIRPERSON: Ja.

MR MANTASHE: Because we wanted a leader who would whip the parliamentarians into activity.

ADV FREUND SC: And who was that new Chief Whip at that time?

MR MANTASHE: Jackson Mthembu.

ADV FREUND SC: Jackson Mthembu. This is in 2009?

MR MANTASHE: I will think so.

ADV FREUND SC: Well, I think Jackson Mthembu became
10 Chief Whip in about 2017 unless he served two terms.

CHAIRPERSON: I may be wrong, I am under the impression too that he did not start to be Chief Whip that early.

MR MANTASHE: But not 2017.

ADV FREUND SC: No, but if I can assist you. There may be things I do not know but what I do know is that in about March of 2016 Mr Jackson Mthembu was appointed as Chief Whip and that of course was at a time, we are going to come to it later, that was a time of deep national controversy about
20 state capture but the time that we are talking about here, is long before that.

MR MANTASHE: Okay, let me withdraw that [indistinct – dropping voice]

CHAIRPERSON: Ja.

MR MANTASHE: That culmination of change of the Chief

Whip was part of this process.

ADV FREUND SC: Yes.

MR MANTASHE: Of changing parliament into an activist parliament.

ADV FREUND SC: Well, we are out of sequence but since you mention it and to avoid me forgetting it, I would like to just explore what you are telling us now. I hear you to be saying that at a certain moment – and I suspect it was at a moment that the allegations about state capture would be
10 becoming quite widely publicised, are you saying there was a deliberate decision to change the Chief Whip and to introduce as the Chief Whip Jackson Mthembu?

MR MANTASHE: The decision was to change the orientation of parliament.

ADV FREUND SC: Change the orientation?

MR MANTASHE: You can actually deal with issues and not shy away from issues.

ADV FREUND SC: And I am interested in when that would be because if my information is correct, and other evidence
20 has been led on this, Mr Jackson Mthembu became Chief Whip in or about March of 2016.

MR MANTASHE: Okay, leave that but the concept of an activist parliament come much earlier.

ADV FREUND SC: Well, yes and no. You are quite right that your own statement that I have quoted here, which is a

2009 statement, is what you could call an activist parliament statement. I accept that.

MR MANTASHE: Yes.

ADV FREUND SC: But you will be aware, I am sure, that there has been some controversy in the evidence before this Commission about whether in a period later than this parliament vigorously did what it should have done and I am very interested in what you have been telling us. You volunteered it a moment ago that there was, as it were, a
10 decision, a conscious decision to make parliament more activist and I think, if I understood you correctly, but you will correct me if I am wrong, I got the impression that at a stage when the state capture allegations were quite clamant, a lot of people were making a lot of noise about it, I understood you to say at that time there was a conscious decision which coincided with the appointment of Jackson Mthembu as Chief Whip to make parliament more activist. Now I do not want to put words in your mouth, if that is not correct, you must please correct me.

20 **MR MANTASHE:** No. You see, because now we are dealing with the media statement. It is very difficult to be chronological, with simply a statement. Is that we take a conscious decision to make parliament more activist ...[intervenes]

CHAIRPERSON: In 2009.

MR MANTASHE: 2009 and I would say it was an orientation of the new term which started 2008 and that orientation was intended to activate parliamentarians not to be docile and be unresponsive to issues and that process took its time and later on the appointment of Jackson Mthembu was part of a long process.

ADV FREUND SC: Yes. And, I mean, it is fair enough that you take me back to 2009 because that is where I am simply going to start but let us just try and orientate ourselves
10 politically. This is early in the Jacob Zuma presidency and it is part of a transformation that is happening at that time, am I right?

MR MANTASHE: Without the allegations against Jacob Zuma, he had two terms, okay, he had two terms. As the Secretary General at the time, I regard the first term as successful, which will include 2009.

He effected a number of changes which were positive. One of those was to restructure education, split into two because it was two [indistinct] 16.10 department
20 including introducing the [indistinct] 16.18 programme in the state, we got very aggressive. He made many things that were positive. That first term, in my own view, was quite active first term. That is why we could talk of an activist parliament and by 2009 there was no call for state capture.

ADV FREUND SC: Ja, that is correct but it did not take

long to come, as we are going to get to. Now perhaps I should try to move on. Can I take you to page 100.48?

MR MANTASHE: 48?

ADV FREUND SC: 48.

CHAIRPERSON: I am sorry, Mr Freund, maybe let me just ask this question, Mr Mantashe, with reference to what you had in mind when you talk about an activist parliament, when you talk about in this quotation where you talked about members of parliament who would be robust and hold the
10 executive account. Would I be correct to understand that to mean they should not have an attitude that says because this is an ANC minister and I am ANC member of parliament I must not take up issues in terms of oversight and accountability even if he is going to be upset with me, he is going to be angry with me as long as I am doing my job?

MR MANTASHE: No, Chair, I do not think the issue should be bad attitude. The attitude is to say there is the executive, they have responsibilities, they have duties, they
20 must do them to the best of their abilities. There is parliament, parliament must not be restrained because ministers happen to come from a party.

CHAIRPERSON: Yes, yes.

MR MANTASHE: Those parliamentarians should do their work.

CHAIRPERSON: The way they are supposed to do it.

MR MANTASHE: The way they are supposed to do it.

CHAIRPERSON: Ja.

MR MANTASHE: And, if you remember, I made a point that says there is a contradictory situation where ANC parliamentary sits in study(?) of the ANC. The minister goes and joins them. Tomorrow they go to the portfolio committee. It was not compromised then that they were in the study group together. When they go to the portfolio
10 committee they must execute their work to the best of their ability. That was the orientation what we were starting to work on.

CHAIRPERSON: Yes, yes.

ADV FREUND SC: But that implies, does it not, that if in the judgment of the ANC MP of a portfolio committee there is something going wrong in the department for which the minister is accountable for, the duty of the MP is to take that up with the minister, to consider the minister's response and if the minister's response is regarded as
20 unsatisfactory, to indicate that it is regarded as unsatisfactory. Would you accept that?

MR MANTASHE: That is the duty of the portfolio committee.

ADV FREUND SC: Right. And the duty of the portfolio committee would go further. If they are not getting – if the

portfolio committee members experience that concerns that they are raising with the minister or with the DG are not being satisfactorily addressed, their duty as MPs and as a portfolio committee is to take that further, is it not? Presumably that the first instance to take it to the National Assembly, bring it to the attention of the full parliament. Would you agree?

MR MANTASHE: My short experience in parliament, I do not have depths of experiences, I am more a party head
10 than a parliamentarian.

ADV FREUND SC: I would never dare to accuse you of that.

MR MANTASHE: Come again?

ADV FREUND SC: I would never dare to accuse you of that.

MR MANTASHE: I am a party head than a parliamentarian. So my experience, short experience is that portfolio committees do their work, they bring reports to the – there are periods in parliament where they report on findings on
20 various issues and that should be normal.

ADV FREUND SC: And it would not be wrong for portfolio committees to in their reports indicate what is wrong and what in their view should be done to correct it. Do you agree with that?

MR MANTASHE: Let me agree with you, qualify my

agreement as follows. One of the things that I think is not helpful is a hostile relationship between a portfolio committee and a minister. It is not working. Actually it collapses, the work of that portfolio. It is important for the portfolio committee to be robust, rough, hard but seek to get solutions to problems and try to nudge that member of the executive to execute the task in a way that will give results and if we can find that – we do not normally find that, we sometimes get it right, sometimes we do not get it right but
 10 that would be optimal for parliament.

ADV FREUND SC: Oh.

CHAIRPERSON: But I understand – I think what your answer amounts to is there will be nothing wrong with that because it should be a job.

MR MANTASHE: There is nothing wrong with a portfolio committee that is harsh.

CHAIRPERSON: Yes.

MR MANTASHE: On a minister.

CHAIRPERSON: Yes.

20 **MR MANTASHE:** That is my point.

CHAIRPERSON: Ja.

MR MANTASHE: But I am qualifying it by saying do not destroy relations because destruction of relations destroy the work of the portfolio.

CHAIRPERSON: Yes, yes. Of course I guess that allied

to what you are saying would be when members of the portfolio committee are robust and maybe are critical of the minister in regard to the minister's department, the minister, if he or she has the right attitude, that they are just doing their job, there should not be a problem with that but there would be a problem of course if the minister takes the view that but you are ANC, why are you behaving like the opposition and therefore thinks that it is improper for members of the committee who are members of the ANC
10 to be robust.

MR MANTASHE: I can tell you that the experiences that witness were the attitude is not with the ministers, you find a chairperson of a portfolio committee who just talks down to a minister.

CHAIRPERSON: Yes.

MR MANTASHE: That we have oversight, like over you, how shall I do this, that we wanted [indistinct – dropping voice]. All those, whether the attitude is from the chairperson of the portfolio committee or the minister, a
20 hostile relationship ...[intervenes]

CHAIRPERSON: Does not assist.

MR MANTASHE: Make that portfolio to be supportive.

ADV FREUND SC: And I presume the same principles apply, for example, where a DG or a similar functionary is part of the process of accountability to the portfolio

committee. Your view would be the committee should, where appropriate, take up issues of concern, if necessary – stress, if necessary, they may have to be confrontational but in first instance they should try to cooperate to resolve problems.

MR MANTASHE: The DG or the officials of the department go to the portfolio committee on the work happening in the department. The primary relation is with the minister. When the minister is not available, then the officials are sent to
10 the portfolio committee or when issues are technical, the minister takes the technical [indistinct] 25.22 to the portfolio committee.

CHAIRPERSON: Yes.

MR MANTASHE: And to me, it should be a relationship with the institution rather than a DG or a minister. The primary relationship should be anchored(?) with the minister.

ADV FREUND SC: Because the minister is ultimately accountable.

MR MANTASHE: Yes.

20 **ADV FREUND SC:** And the minister is accountable, the government is accountable through the minister to parliament.

MR MANTASHE: Yes.

CHAIRPERSON: And of course if the portfolio committee had a meeting with the DG of the department or a series of

meetings to discuss and deal with various issues and they are not satisfied, there are immediate remedies to talk to the minister to say we are not happy with the answers we are getting from your DG.

MR MANTASHE: Alright.

CHAIRPERSON: Ja.

ADV FREUND SC: Yes, thank you. So there does not seem to be very little difference between us at this stage on the principle.

10 **CHAIRPERSON:** Yes. Yes but I think at some stage – I hope at some stage we can talk about to what extent this approach, as you articulated as quoted in these reports in 2009, of what the ANC expected of members of parliament., to what extent was it implemented.

ADV FREUND SC: Indeed.

CHAIRPERSON: Or is the position that it may have been implemented up to a certain point and at a certain point something else happened which did not reflect this? So at some stage I think it will be important that we do that
20 because on the face of it, what you are saying, Mr Mantashe, in terms of what you expect as the ANC from your members of parliament in terms of oversight and accountability appears to be what one expects but the question will be, to what extent has it been happening over the years. But we are at four o'clock and we should one, take an adjournment,

but also have some discussion so that we are all on the same page about how much more time we are going to take, so ...[intervenes]

ADV FREUND SC: Chair, can I indicate?

CHAIRPERSON: Ja.

ADV FREUND SC: Firstly, that I have established that the latest flight that leaves for Cape Town is at twenty past seven or something like that, which would mean I would need to be at airport, if I was going to catch a flight today.

10 **CHAIRPERSON:** Yes.

ADV FREUND SC: At about twenty past six, which would mean I need to finish by about five or something like that.

CHAIRPERSON: Yes.

ADV FREUND SC: I do not think that it is likely that we will finish that way.

CHAIRPERSON: Yes.

ADV FREUND SC: What I have no objection to doing and this has been discussed with Mr Mantashe, is therefore going quite late and then I would maybe catch an
20 aeroplane in the morning but I do want to caution in this respect, that the very question you have just raised as an abstract general question is a long and complicated issue and that in addition I still have in mind to go through parts of Mr Mantashe's principal affidavit and Mr Magashule's principal affidavit. In other words, what I am saying is, I

am personally prepared to work as late as you like.

CHAIRPERSON: Yes, yes.

ADV FREUND SC: But we do need to stare in the face the possibility that no matter how we go we may not finish.

CHAIRPERSON: No, I understand that. For me it is quite important that the issues – these issues be dealt with properly because to the extent that there may have been failures – and I am not saying that there were, to the extent that there may have been failures in terms of oversight and holding the
10 executive accountable by parliament and that is why certain things happened which should not have happened, it will be important to see what measures should be put in place or I should recommend should be put in place to avoid a repeat of those things and the majority are critical because if they are on board on saying we recognise that there were certain challenges and this is what we would like to – I would like to see oversight function performed and it is an acceptable way, if they are on board there is a good chance that whatever recommendations are made, if accepted, it would
20 work because then they would actively support. I am not saying that I would not recommend something that they do not like but certainly the idea would be, if it is possible to reach a point where they are on board with what the problem was, how it can be solved, what measures can be put in place, that could go a long way to assist.

So, Mr Mantashe, in terms of your time, how is your situation?

MR MANTASHE: Today?

CHAIRPERSON: Ja, today.

MR MANTASHE: It ends at 12 midnight.

CHAIRPERSON: Okay, thank you. Okay, no then I am happy. So in that event then I think we should take a ten minutes adjournment and then we will come back. I suspect that in the light of that answer and your saying
10 that there is still quite a lot to cover, we must work on the basis that we are going to sit for quite some time.

ADV FREUND SC: Quite some time, yes.

CHAIRPERSON: Ja, ja. Okay, alright. Let us take ten minutes break. It is ten past – no, it is five past. We will resume at quarter past four. Okay, we adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV FREUND SC: Thank you. Chair I think I have
20 established during the break that it is not correct that Mr Mantashe has previously testified in response to Ms Hogan's evidence, and I am only interested in evidence in respect of Cadre Deployment. It is correct that in 2018 he sent two documents containing as it were his version, his evidence, but to the best of my knowledge he has never

testified and that means we could leave it over if you wish or we can go back and deal with it.

CHAIRPERSON: No, I think he did testify in response to Ms Barbara Hogan, or was it only in writing? Oh, okay, okay, so I am wrong. I seem to have a picture of him sitting there giving evidence in the previous venue.

ADV FREUND SC: Well, he did that, but he didn't do that on this issue.

CHAIRPERSON: Ja, was it in regard to ...[intervenes]

10 **ADV FREUND SC:** The banks.

CHAIRPERSON: The banks, oh that was in regard to the banks, not in regard to Ms Barbara Hogan.

ADV FREUND SC: Yes, and your memory is not faulty in the sense that you would have read his version you would have known what he says.

CHAIRPERSON: Ja.

ADV FREUND SC: But the only point that I make, is that he hasn't testified orally on that and I leave it to your discretion as to whether you think it's necessary and
20 appropriate...[intervenes].

CHAIRPERSON: No, no, no if he's ready to – is able to deal with questions that might relate to that we can deal with it. If he – he is not because he didn't think it would be covered then we can look at another day, Mr Mantashe, you'll be able to...[intervenes].

MR MANTASHE: I'm happy to respond.

CHAIRPERSON: Okay, alright.

ADV FREUND SC: I'm still hoping we're going to finish tonight.

CHAIRPERSON: Okay, alright.

ADV FREUND SC: So, can I take you back then, Chair, and Mr Mantashe, back to that file with Ms Hogan's evidence which is Exhibit L1...[intervenes].

CHAIRPERSON: I don't know why, Mr Mantashe, I seem
10 to have a picture of you sitting on the witness chair and talking about the deployment policy and so on, so – but there is no way you would forget if you covered that part of the ...[intervenes].

MR MANTASHE: I doubt so.

CHAIRPERSON: Ja, ja, okay.

ADV FREUND SC: Now, Mr Mantashe, you will recall in this file that I have already asked you a question about, paragraph 22 at page 6, I'm not going to repeat that but what I'd like to do is take you to paragraph 35 at page
20 10...[intervenes].

CHAIRPERSON: And the Bundle we are looking at is the one written Exhibit L1 evidence Bundle of Ms Barbara Hogan?

ADV FREUND SC: That's correct Chair.

CHAIRPERSON: File 1 of 2, okay, alright.

ADV FREUND SC: Now, I want to try to deal with this extremely briefly because I understand – I've seen Ms Hogan's version, I've read your version, I don't want to spend a lot of time on this, but I do think we need to explore this, just a bit. You will be aware that Ms Hogan was critical about the pressure that she felt she came under in relation to appointments of Board's and CEO's and the like of SOE's and some of her evidence relates to her relationship with the President, there's no need for me
10 to deal with that now but some of her evidence relates to the very issue of deployment – National Deployment Committee and deployment committees and Deployment Policies and so, what Ms Hogan says, is, as I mentioned before the adjournment, that her perception was the ANC expected that her influence over who was appointed to the Boards, that's not the same thing as saying, expected to have an opportunity to encourage candidates to apply. She's alleging that there were expectations to have influence through the Deployment Committee on what these
20 appointments would be and – I don't remember but I think you didn't really want to answer that question, the time that I first asked it, so could you just, for the record, just remind me what your view is on that point?

MR MANTASHE: No, not my own view, the relationship between the Minister and the Deployment Committee, is

the same there was nothing new and unique in how the committee related to Ms Hogan.

ADV FREUND SC: Yes, and I think she would agree with you on that but where she differs from you is what that relationship is. Her allegation is that the relationship is not one, as you say of merely training and then encouraging persons to apply but was one of pressurising the persons responsible for making the decisions, do you dispute that?

10 **MR MANTASHE:** I dispute that, I think we can deal with that more appropriately when we go to the Gama case, which is – she signs as a case in point.

CHAIRPERSON: Yes.

ADV FREUND SC: Well, let's do exactly that if I can take you to paragraph 35.

CHAIRPERSON: What page?

ADV FREUND SC: Page 10.

CHAIRPERSON: Page 10.

MR MANTASHE: Page?

20 **ADV FREUND SC:** Page 10 paragraph 35. Now, I don't want to, laboriously go through the detail of her affidavit but in brief summary, what I understand her to say is this. There was a properly structured process by the Transnet Board, the object of which, was to select suitable candidates.

MR MANTASHE: Yes.

ADV FREUND SC: Chief Executive Officer if I recall correctly. A judgement call that she thought to be correct. There was, on the other hand, the potential candidacy of Mr Gama. Mr Gama, as I understand it and from what I read, a Senior Executive of a Transnet subsidiary, at that very time facing disciplinary charges which, in due course, were found to have sufficient substance to justify his dismissal and Ms Hogan thought, in those circumstances,
10 the proper thing to do is to go with the appointment view of the Board, the selection decision of the Board. That's the context in which we read what we see at paragraph 35...[intervenes].

CHAIRPERSON: Maybe before you proceed Mr Freund, just to make sure that the context is accurate, I don't think it's going to make a difference to – it should make a difference to the answer. To the extent that you want to ask Mr Mantashe about alleged pressure that certain persons, including Mr Mantashe were alleged to have made
20 or reported to have made with regard to saying Mr Gama should be appointed as Group CEO of Transnet. As I recall, that happened at a time when he was not yet facing disciplinary inquiries but there were investigations which could lead to disciplinary process, of course, later on there was a disciplinary hearing and he was dismissed.

ADV FREUND SC: I stand corrected.

CHAIRPERSON: Ja, at the time the position was that Mr Gama had been one of the candidates that were interviewed and there were a number of other candidates and the Board of Transnet had chosen a candidate that was not Gama and I think Gama was dissatisfied but I think, just to contextualise that, ja.

ADV FREUND SC: Fair comment, I'll accept that without reservation.

10 **CHAIRPERSON:** Okay, alright.

ADV FREUND SC: Now, with that qualification, that's the background, I just want to take you to paragraph 35.

MR MANTASHE: No, the root is that on this issue Ms Hogan is mistaken, I was not ...[intervenes].

ADV FREUND SC: Speak into the microphone.

MR MANTASHE: I was not in the Deployment Committee.

CHAIRPERSON: Yes.

MR MANTASHE: I was not in the Deployment Committee that is number one. Ms Hogan came voluntarily to brief
20 officials of the ANC of the processes in Transnet. In the course of that brief, what she calls pressure is a question on my part that what makes Mr Gama not to qualify for CEO of Transnet. He has been a CEO of Portnet, he turned it around from red to black. He was transferred to Spoornet, he turned it around from red to black. What

would require a young professional to be confirmed to be Group CEO, that was a question. It was a painful question I would imagine because we were conscious of this issue of being given a white candidate. One would think that there's an opportunity to appoint a black candidate and we didn't put any pressure, we asked those questions and those questions stood for a long time, Gama was not appointed by then and the later charges and cases have nothing to do with this issue.

10 **ADV FREUND SC:** No, I hear you and I'm not in a position to dispute anything you say but what I find puzzling is that you say this is a process outside of the – consulting the Deployment Committee, this is a process of consulting yourself as Secretary General and I don't know, who else...[intervenes].

MR MANTASHE: No, officials, she came to the meeting of the officials.

CHAIRPERSON: That is the top six.

MR MANTASHE: Top six.

20 **CHAIRPERSON:** Officials are the top six.

MR MANTASHE: She was not invited or present to come.

CHAIRPERSON: Ja.

MR MANTASHE: She offered to come, I would imagine – I'm now assuming that she wanted to get to the top six to take off the pressure that she thought she was under.

CHAIRPERSON: H'm, h'm, well maybe let me say this, Mr Mantashe because it becomes important. You said that the question that you put to her as officials of the ANC related to what it is going to be a young, I think, black professional to be eligible or qualified to take CEO position as opposed to a white professional. Now, that's quite important in this question because you may be having in mind or you may, as officials of the ANC then have been working on the basis that it was the Board had preferred a white candidate
10 but in terms of the evidence that she gave, that is Ms Hogan, it was at a time where the Board had referred a black candidate to Mr Gama. Were the officials aware of that because that's part of what I was concerned about...[intervenes].

MR MANTASHE: That is part of the confusion.

CHAIRPERSON: Okay.

MR MANTASHE: Because at the time there was a white candidate, that tried to ask the DFC to ...[indistinct] to ...[indistinct] we can't have ...[intervenes].

20 **CHAIRPERSON:** Well, we can – that candidate was an acting CEO, I think that you are talking about.

MR MANTASHE: Yes.

CHAIRPERSON: Mr Welsh.

MR MANTASHE: Yes, and we were worried about that and we asked the question. The question that there was

another black candidate who emerged was a later development.

CHAIRPERSON: Okay, well it's important that, ultimately, one knows exactly what was known to the officials or not because the process was – happened in two phases. There was a recruitment process conducted by the Board, where Mr Gama was one of the candidates for the position of Group CEO and another candidate was Mr Pravin Gordhan and there were other candidates. The candidate
10 that the Board wanted there was Mr Gordhan, but he withdrew at an early stage, early in 2009 and the Board was allowed to start the process afresh. So, it didn't go back to the candidates who had not been successful, but it allowed that they could apply. Then there was a second phase and Mr Gama were also a candidate in that second phase and that second phase, the candidate that the Board preferred and recommended was a black candidate it was not Mr Gama and Ms Barbara Hogan said she supported that decision of the Board to recommend that one, but she
20 said, if I recall correctly, she said in the media there were all kinds of pressures for Gama and so on. Does that accord with your – the officials understanding at the time?

MR MANTASHE: No, I'm remembering this question because I personally asked it, that's why she sends me a mail including the Secretariat General Gwede Mantashe.

CHAIRPERSON: H'm.

MR MANTASHE: He is specifically the reason ...[indistinct – dropping voice] because I asked this question which, until I could see the gaps of this agreement, I thought it was an innocent and logical question. Here is this young professional working for Transnet he's given a responsibility by Transnet to turn around Portnet and it did turn around because there was a Spoornet that was struggling, he is sent to Spoornet to turn it around and he

10 turns it around and they ask them what is it that is required of a black candidate to be confirmed to be Group CEO of Spoornet. To me that question has never been answered up to today, leave that it was a pressure on Ms Hogan, but to me that question was never answered and it's a very important question in the sense that our power as Minister – I can say our now I'm a Minister to actually have a particular dislike of individual people who are potential, who are a good in what they are doing, to not like them. I think it's something that should be watched very closely, I

20 think this is a case in point because it can be a question of like or dislike. Black excellence must be recognised, I insist on that then, I insist on that today that black excellence and black capability must be recognised, and I asked the question that was based on the capability and the proven performance. How that became a pressure on

Ms Hogan, is still an issue that has not been told to me.

CHAIRPERSON: But my – am I correct to say your concern was more in terms of giving opportunities to black professionals as opposed to – it's just Gama, if it was another black person...[intervenes].

MR MANTASHE: I would have raised that question...[intervenes].

CHAIRPERSON: You would have raised the same question?

10 **MR MANTASHE:** Yes.

CHAIRPERSON: Because that leads me to the question, one of the things that was of concern to me when I listened to the evidence and looked at the documentation, there are also newspaper cuttings that you would have come across in the file, was did the people who were reported to be pushing for Mr Gama to be the one to be appointed, have any issue with a black candidate that the Board had recommended and there seems to be nobody saying there's any problem with that candidate.

20 **MR MANTASHE:** That is a later development.

CHAIRPERSON: Yes.

MR MANTASHE: That is a later development but think of this, Chairperson, let's say the selection process, [indistinct], is number one, Gama number two and...[intervenes].

CHAIRPERSON: No actually, he was not number two in terms of the Board's list, we have got that evidence.

MR MANTASHE: No on the three first submissions.

CHAIRPERSON: From the first one as well.

MR MANTASHE: He was number two.

CHAIRPERSON: No, on the evidence, I don't know outside of the evidence. The Chairperson of that Board was a Mr Frederick Maswana, he is now – because the Commission made the investigation, he now lives, I
10 understand, in Denmark or something. We pursued to find out from him, exactly what the position is and one of the points he made in his affidavit, which the Commission has, is that there was this idea that Mr Gama was number two, there was no such thing, he was not number two.

MR MANTASHE: So, you could imagine if there was that confusion in all that process.

CHAIRPERSON: Yes, yes.

MR MANTASHE: With even that confusion.

CHAIRPERSON: Ja.

20 **MR MANTASHE:** But the question I asked, specifically to Ms Hogan, which is captured here as pressure is, what does it take for a black professional to qualify to be a Group CEO of Transnet if he has turned two subsidiaries around and the answer to that question has not been given to me and I won't pursue it with anybody now and many

things that have happened.

CHAIRPERSON: H'm I can also mention this, for what it's worth. The documentation that is in the possession of the Commission, and it's not evidence that Ms Barbara Hogan gave, reveals that Mr Wertz was acting CEO at the time put in his application for this position but it lasted only for a few days, I think he withdrew it, that is in the first phase. So, for a long time as the process was going on it seems that he was no longer a candidate because he felt that he
 10 was being accused that he was pushing a disciplinary process against Mr Gama because he wanted him – to disqualify him from competing with him for the position. The documentation that I've seen suggested his application was there only for a few days and he withdrew it but of course, you know, one doesn't know how much of this was known to those who may have said, Mr Gama should be the one appointed, Okay, alright.

ADV FREUND SC: If I may ask a question that follows from your observation?

20 **CHAIRPERSON:** Yes.

ADV FREUND SC: Because I have no personal knowledge about this but from what I'm hearing the obvious question seems to be the following. There was no reason for you to assume that the alternative candidate under consideration was not black and yet if you had no such reason, I have

difficulty with why there's such – on her version, and I think even on your own version, such adamant support for Mr Gama, it raises a question.

MR MANTASHE: Mr Chairman, it raises no question, you see, that there was a black candidate is something new to me, okay, something new to me. At the time when we raised that questions, we were already aware that racism is in the subconscious mind, it's a prejudice and therefore it must be highlighted everywhere its showed inside. This
10 side, this thing of Pravin and another black candidate is new to me and the reason that we're not given the details, I would imagine, is because we're not the Deployment Committee, we're not in the selection process we were briefed and we asked questions because maybe, in the other processes there was already a pressure that was mounted when we saw there, added our question to the pressure she was under but the reality of the matter was that we're asking a question in relation to racism being sub-conscious and being prejudicial and therefore ask the
20 question. Here is a young professional who is doing well, why is he not given the opportunity, that was the question, and that question was never answered. I picked it up later, that was a big issue out there and Ms Hogan thought that I added pressure on her and all that, but the issue is that we – I personally asked that question that's why my name is

mentioned, specifically because I asked that question and I will ask that question in respect of another young professional who I think is not treated fairly.

CHAIRPERSON: H'm, h'm, was your attitude, as reflected in that question that you put to Ms Barbara Hogan when she met the officials of the ANC reflective of the attitude of the officials. In other words, is that how you all thought or, as far as you can recall?

MR MANTASHE: If you come to the meeting of the
10 officials, you present whatever report.

CHAIRPERSON: H'm.

MR MANTASHE: Actually, in the majority of cases on this issue officials note it, they express no view.

CHAIRPERSON: H'm.

MR MANTASHE: They ask questions, and you leave, you don't follow up because you are not part of the selection process but if you take your time, you come to conclusions, well ask these questions, if they put pressure on you, then sorry, we feel sorry for you.

20 **CHAIRPERSON:** Well for what it's worth I just want to say, just in case you might not know this, the evidence of Ms Barbara Hogan was that she informed the then President, Mr Zuma, of the Board's recommendation of this black candidate and that President Zuma's attitude was that he wanted Gama and his choice was Gama and nobody

else. Of course when Mr Zuma came before the Commission he denied that he said that, he said that he could not have said that because his preoccupation was whether processes were followed but that was the evidence of both of them but one of the things that Ms Barbara Hogan said was that – I mean when she became – she was appointed Minister of Public Enterprises in May 2009, this process of filling the position of Group CEO was underway and it was in 2009 when she was talking to President Zuma
10 about this but she says, one of the things that President Zuma said when she said, but Mr Gama may be the subject of some investigation and there might be disciplinary processes, she says, he said, well then the position should not be filled until those processes have been finalised. The position remained unfilled until 2011. Ms Barbara Hogan, in October 2010 was removed from Cabinet. So, - 2009 the position was vacant, 2010 the position was vacant, and Ms Barbara Hogan says the candidate who had been preferred by the Board and that she was supporting,
20 and she says, it was a credible candidate had to pull out because of this delay and that candidate was later to be appointed to another State owned entity but I'm just mentioning that for what it's worth, you might not wish to say anything.

MR MANTASHE: No.

CHAIRPERSON: Ja.

MR MANTASHE: The issue is, when you are guilty by association it's very difficult, I think to – I think if there were irritations in the action between Cabinet Minister Barbara Hogan and the President, J Zuma, that will not be extended to us.

CHAIRPERSON: No, no, no – well...[intervenes].

MR MANTASHE: No, let me, I'm saying that because while you say there was pressure put on me, by me ...[indistinct]
10 – dropping voice] including Gwede Mantashe and I know that I never went to Barbara ...[indistinct – word cut] and say please take garments off it never did that. I asked this specific question in a meeting it voluntarily came to which was not a necessary meeting for the selection.

CHAIRPERSON: Ja. Mr Freund.

ADV FREUND SC: Because also as I understand it is not a meeting of the deployment committee it was the meeting with the Top 6.

MR MANTASHE: Yes.

20 **ADV FREUND SC:** I understand. So I do not want to take the Hogan issue with.

CHAIRPERSON: No that is fine.

ADV FREUND SC: I want to go back to where we were.

CHAIRPERSON: That is fine.

ADV FREUND SC: And so you can dispose of the Hogan

file.

CHAIRPERSON: Ja.

ADV FREUND SC: Go back to the first file and I was about when we took the last adjournment to refer Mr Mantashe to page 100.48.

MR MANTASHE: Yes that is where I am.

ADV FREUND SC: Now I want try to deal with this reasonably crisply the difficulty is there is a lot of detail. What I want to indicate to you your relation to this
10 newspaper report is that as early as January 2011 the newspapers were reporting allegations of improper Gupta family pressure on government decisions and on – and on appointment decisions and I – I – the first thing I want to establish is whether those reports came to your attention – I am sure they must have.

MR MANTASHE: I do not know which reports you are referring to.

ADV FREUND SC: Well I refer for example to the report at page 48 – 100.48.

20 **CHAIRPERSON:** You must just take Mr Freund what report it is it seems to be a Sunday Times report.

ADV FREUND SC: Alright then I will have to deal with it. It is a Sunday Times report on the 30th of January 2011 the fourth last paragraph and bear in mind that the – the heading is “Gupta Influence Is Remarkable.” The fourth last

paragraph:

“According to decision makers in government it is becoming common to receive a directive from this family or is it perhaps from people pretending to be members of this family with the stern message that it comes from the very top. This is just said as on occasion led to some questionable decisions being taken.”

Now I understand that this is not the strongest of evidence
 10 but there is a series of such reports that we are going to go to. Maybe I can take you immediately before you even comment on that report to the report at page 63. This is a report a month later in February of 2011 in the Sunday Times under the headline “Ministers shiver when summoned to family’s home” and the sting of this is an allegation for example we read this in the fourth or fifth paragraph:

20 “A member of the working committee who attended the most recent meeting said: The concern is that these people – the Gupta’s now have influence in the appointment of CEO’s and Chairman of state owned entities which then means the ANC has lost its way and its influence in these crucial deployments.”

Again it quotes:

“Other sources were alleged that three Deputy Ministers were phoned and told that they were to be promoted days before the cabinet reshuffle was announced. Several Ministers were – were phoned by them to assure them that their jobs were secure. Bragging about public officials coming to meet them at their home. Pressure to support the New Age.”

10 And then on the next page at 64 in the middle of the page.

“A member of the working committee claimed Ministers feared for the – feared the family believing they had too much influence over Zuma. People are scared of them and they are called to their house all the time. The Gupta’s are known to be the President’s people and that is why even Ministers shiver.”

Another top ANC leader said:

20 “You must see the way they treat Ministers.”

And on it goes. Now the first thing I want to establish is whether reports at this time came to your attention?

MR MANTASHE: No. In my opening statement I gave you a brief summary of how the relationship between the Gupta family and the ANC evolved. I stand by that submission.

Okay. As I said there was no pressure mounted on the ANC on the Gupta family during the first term. There were signs that were beginning to show that something is going wrong but the real pressure of the Gupta family 00:05:13 on the first time was nothing. For example the question of the newspapers and the TV station we supported that because we wanted diversity in the media and that came about until things go wrong.

ADV FREUND SC: Well what is the answer to my question?

10 Did the report of these allegations come to your attention in about February of 2011?

MR MANTASHE: No. Newspapers do not report to me. I read newspapers so if Sunday Times report about Gupta's does not report to me.

ADV FREUND SC: Of course it is not a report to you but it is a report in a national newspaper which gained a huge amount of attention in the country are you – are you telling the commission that you were unaware of these allegations?

MR MANTASHE: No. You are wanting me to answer a
20 question that I should not be answering. I am saying in the first term there were no reports of Gupta influencing the Zuma Presidency. Then later in the term many things began to emerge. Actually as I said there were serious incidents that actually opened our eyes was the landing of that plane in Waterkloof military airplane.

CHAIRPERSON: That was 2013.

MR MANTASHE: (Inaudible) Come again.

CHAIRPERSON: That was 2013 April if I am not mistaken.

MR MANTASHE: Yes.

CHAIRPERSON: Ja.

MR MANTASHE: That was the first thing that opened our eyes and we – we came up 00:07:02 and in 2014 Mbalula made a confession in the NEC of this. Those were the earlier signs of this issue.

10 **CHAIRPERSON:** So I think just to make sure that you – you understand the question I think what Mr Freund is asking is to the extent that in 2011 there were newspaper articles suggesting something that could be improper that while may have been done by the Gupta's in terms of government or in terms of President Zuma do you recall that you were aware of some of those allegations in the media?

MR MANTASHE: I am saying in 2011 there were no reports that came to us. If they are in newspapers they are in newspapers. Let me tell you how newspapers 00:08:13
20 because if you can be working as a party on the face of newspaper reports we will not exist by now. We will be out – we will be dead by now because newspaper reports raise issues that we ask each other what is this – anything and we would take our time to try to understand this. You know.

ADV FREUND SC: Mr Mantashe.

MR MANTASHE: So the serious attention brought to us was the landing of that plane at Waterkloof.

ADV FREUND SC: We will come to that report that clearly was a serious report. It was entertained by you but I am trying to deal with an earlier period. I am trying to deal with 2011 and I am not clear in my own mind what your evidence is. I think your evidence is that you deny that these allegations ever came to your attention in 2011.

MR MANTASHE: Yes they did not. I am saying that again.

10 **ADV FREUND SC:** That cannot possibly be correct can it? If I take you to page 100.77.

MR MANTASHE: 100?

ADV FREUND SC: 77.

MR MANTASHE: 100.77.

ADV FREUND SC: 100 and then 77.

MR MANTASHE: Yes.

ADV FREUND SC: You are quoted there – let us just see if you are quoted correctly.

20 “As dismissing criticism of the Gupta family’s political influence.”

Is it correct that you rejected that criticism?

MR MANTASHE: Yes I did.

ADV FREUND SC: Well if you rejected the criticism you must have been aware of the criticism, correct?

MR MANTASHE: No. I am saying I dismissed the criticism

at the time.

ADV FREUND SC: I accept that you dismissed the criticism.

MR MANTASHE: Yes.

ADV FREUND SC: You dismissed the criticism according to this report in March 2011 which means a matter of ineluctable logic that you were aware of the criticism before the 8th of March 2011, you accept that?

MR MANTASHE: The criticism comes from Mail and Guardian.

10 **ADV FREUND SC:** And other – and other reports?

MR MANTASHE: And other newspapers.

ADV FREUND SC: Yes were you aware of that?

MR MANTASHE: No.

CHAIRPERSON: Okay let...

MR MANTASHE: I think it is an unfair question.

CHAIRPERSON: Let me try and put it this way.

MR MANTASHE: I think it is an unfair question because I am expected to take newspapers reports as reports to me.

CHAIRPERSON: Yes no that is...

20 **MR MANTASHE:** The Secretary General.

CHAIRPERSON: Let me...

MR MANTASHE: And you are saying they are not.

CHAIRPERSON: Let me put the question in my own way maybe that is going to make a difference.

MR MANTASHE: Yes.

CHAIRPERSON: Once you accept that you dismissed certain criticisms that as I understand the position may have come from certain newspapers about what the Gupta family was alleged to be doing or whatever obviously it means that you were aware that there were allegations being made that the Gupta family was doing ABCD and you were then rejecting that criticism of whatever it was alleged they were doing.

MR MANTASHE: Okay.

10 **CHAIRPERSON:** You accept that? You accept that it must mean – you would not dismiss criticism that you were not aware of.

MR MANTASHE: Okay let me allow that question to pass and say let me wait for the follow up question.

CHAIRPERSON: Yes, yes.

MR MANTASHE: Because ...

CHAIRPERSON: Okay alright.

MR MANTASHE: Because I do not want to accept that if the newspaper reports those reports are reports 00:12:25.

20 **CHAIRPERSON:** Yes no, no maybe the word reports – maybe the word reports is causing confusion. Maybe we should say articles.

ADV FREUND SC: Articles.

CHAIRPERSON: Newspaper articles.

ADV FREUND SC: Quite happy to use the word articles.

CHAIRPERSON: Ja, ja. In other words the question was a much earlier question whether you were aware of newspaper articles that made certain allegations against the Gupta family?

MR MANTASHE: Yes there are – there were in the newspaper.

CHAIRPERSON: Yes okay. I think maybe the reports that was creating problems.

ADV FREUND SC: Yes okay well I will change the word to
10 articles because to me they are synonyms.

MR MANTASHE: You can call it a newspaper reports that it is the same.

ADV FREUND SC: Alright but I will call them articles.

CHAIRPERSON: Okay.

ADV FREUND SC: To avoid any possible ambiguity. I now understand you to accept that you were aware that there were newspaper articles making allegations at the time that I have just summarised and read out, am I correct? You were aware of those articles?

20 **CHAIRPERSON:** Or it is some of them.

MR MANTASHE: Okay I – articles yes, reports to me.

ADV FREUND SC: Yes.

MR MANTASHE: I do not know.

ADV FREUND SC: No I am not – I am not suggesting...

CHAIRPERSON: Ja, no let us just say articles at least part

of the report is maybe causing confusion. You would have been aware of certain articles in the media.

MR MANTASHE: That is why I responded.

CHAIRPERSON: That is why you responded yes.

MR MANTASHE: Yes.

ADV FREUND SC: Yes. Now the next question is once we accept as we must that you were aware that there were newspaper articles making allegations of these type I assume that you would accept that if the allegations were
10 true they were a matter of the utmost seriousness.

MR MANTASHE: Come again.

ADV FREUND SC: If the allegations made in the newspapers or the newspaper reports to which we have referred were true if they were true they would be matters of the most utmost seriousness allegations of this kind of influence over the President and the appointment processes and Cabinet Ministers you must surely accept that too?

MR MANTASHE: I should have accepted that.

ADV FREUND SC: You should accept that that is a serious
20 matter. It would be – if they were true I know they are allegations but if the allegations are true the allegations are a matter of extreme seriousness.

MR MANTASHE: Yes but the reaction at the time on the basis of the analysis we did. In terms of the information at our disposal was that we actually dismissed those

allegations.

ADV FREUND SC: Yes so they were serious allegations and they needed to be investigated, correct?

MR MANTASHE: Yes which I am not an investigator.

ADV FREUND SC: But they are allegations which to you as the Secretary General of the party and to the leadership of the party should have been a matter of the most serious concern. I understand that if the allegations are false there is nothing to be worried about but the allegations exist and if
10 the allegations are true then these are matters of the highest seriousness which require to be investigated, you agree?

MR MANTASHE: At the time we did our analysis and we came to a conclusion of what this is racist stance with that newspaper and that in itself was the project of analysis we made at the time.

ADV FREUND SC: Yes.

CHAIRPERSON: And – and when you say analysis that you made would this be analysis that was made by a structure of the ANC or you talking about yourself a certain functionary?

20 **MR MANTASHE:** No the ANC – the ANC is an organisation. It has its operational structure which runs day to day affairs of the ANC. It does not work for the meeting of the officials, the meeting of a government. That operational structure is the structure that is in Luthuli House and when we sit at the 00:16:47 of that structure.

CHAIRPERSON: Oh so – the analysis would have been done in so to speak in the office of the Secretary General?

MR MANTASHE: Yes.

CHAIRPERSON: Or by people working, assisting or supporting the Secretary General.

MR MANTASHE: Yes by...

CHAIRPERSON: Yes.

MR MANTASHE: For example department of information.

CHAIRPERSON: Ja okay alright. So certain analysis had
10 been done and it was on the basis of that analysis.

MR MANTASHE: Yes.

CHAIRPERSON: That the criticism was dismissed.

MR MANTASHE: Yes.

CHAIRPERSON: Okay.

ADV FREUND SC: And it was not only rejected it was labelled to be the – an expression of racial prejudice that was an allegation you made, correct?

MR MANTASHE: I am saying there is an allegation on the newspaper we do not call meetings of structures every time
20 there is a newspaper article. We analyse it with our department in head office. We came to this conclusion.

CHAIRPERSON: And the allegation I am – I was just looking at the article – the allegation really was against the Gupta's was that the Gupta family was that they were having undue political influence on government or on President Zuma, is

that correct?

MR MANTASHE: Yes.

CHAIRPERSON: Ja okay.

ADV FREUND SC: And in particular undue influence on the appointment of the CEO's and chairmen of state owned entities that would have been a matter of considerable concern to you given the evidence you have been giving us all day.

MR MANTASHE: Yes but you can only take decision on the
10 basis of information at your disposal.

ADV FREUND SC: Indeed. But it becomes a matter of extreme importance therefore if you are going to investigate the issue that is important which if it is true has serious consequences that you do such an investigation thoroughly and you get access to all the necessary information, not so?

MR MANTASHE: Yes you know if we do that every day there is a newspaper article with the right to them actually we would be sitting here in the commission with a different investigation on us on how we try to interfere with
20 newspapers.

ADV FREUND SC: It is not about interfering with newspapers. If you had investigated thoroughly at the time the probabilities I want to you is we would not be having this commission. This commission is in part a consequence of the fact that when these allegations were first made when

they were first made in 2011 which you say is the successful period of the Jacob Zuma Presidency.

MR MANTASHE: Yes.

ADV FREUND SC: They were not taken seriously. We are all paying the price.

MR MANTASHE: I am not sure if we can say the commission is a consequence of that. There are many things that are involved in the state capture and I can tell you when you are in Luthuli House one of them you have a sense of – when
10 you are in government you come across 00:20:02. And if you can only limit this commission to the incident of the Gupta's then you will only scratch the surface and I am sure the commission is 00:20:21 now.

ADV FREUND SC: Now the newspaper reports to which we have just referred quote you as saying:

“That the matter was not raised for
discussion at the NWC meeting but then
quote the NEC as saying that the issue had
been disposed of by the NWC and therefore
20 the NEC would not investigate or take the
issue any further.”

Is that also correct?

MR MANTASHE: I – I cannot remember in that sequence but all I am saying newspaper reports are not items of the NWC or the NEC. Newspaper reports we analyse them as we go

that is why we have a DIP in the head office to do that on-going analysis.

ADV FREUND SC: But let us look at this. Deputy Ministers are being told allegedly of their appointments by the Gupta's weeks before this has been decided or being announced. Ministers are being assured that they are safe and – and there is the concern about the abuse of – or the undue influence over – over the appointments of SOE's. I have great difficulty Mr Mantashe understanding on what basis
 10 these allegations are treated so flippantly and on what basis the conclusion is reached that this nothing other than racial prejudice.

MR MANTASHE: Well the ruling that we made particular analysis and come to certain conclusion is that the focus would be biased to a particular kind of company established companies that are actually benefitting from state are not investigated. Even up to this day and my argument is when that happens in an organisation like the ANC which come from the background of a Liberation Movement it pays
 20 attention to that fact that newspapers will raise issues about companies of a particular kind and close eyes to companies of a different kind.

ADV FREUND SC: Now one of the allegations that was made in the report was of Ministers and Deputy Ministers being told by the Gupta's not members of government about

their appointments as Ministers weeks before any official announcement is made. You say that the information available to you when this was dismissed by you in March of 2011 did not substantiate that. Let us leave that there. Later that very year in 2011 is it correct that Mr Fikile Mbalula at a NEC meeting said directly to the President that he himself had been told that – of his appointment by the Gupta's I do not know the exact period but I think a couple of weeks before the announcement was made is that correct factually?

10 **MR MANTASHE:** Yes and that is why I said earlier two incidents brought this issue to our serious attention was the landing of the plane at Waterkloof and the incident of Mbalula in the NEC.

ADV FREUND SC: Alright now let us get the timing straight. The Mbalula allegation is made in 2011 at a NEC meeting.

MR MANTASHE: Is this 2011?

ADV FREUND SC: Are you comfortable with that or do you want me to show you?

CHAIRPERSON: Ja I was also wondering because I thought
20 when he gave evidence Mr Mbalula said it was 2011 but when you said it was 2014 I became confused because my recollection is that when Mr Mbalula made – confronted the President or raised the issue in the NEC he had been told about a promotion from being Deputy Minister to Minister and I was thinking well I am not sure whether before 2009 he

was Deputy Minister or not.

MR MANTASHE: Obviously I will have to check that.

ADV FREUND SC: Well let me take you on the dates up to three media reports. The first is at page 100.82. This is a report dated the 28th of August 2011. It does not name Mr Mbalula I will come to that later.

CHAIRPERSON: Sorry what page? What page? 382?

ADV FREUND SC: No 1 – I said 182 but it is in fact 183. It is headed “Zuma wins NEC battle but war goes on
10 underground” Do you have that Chair?

CHAIRPERSON: Oh that is – that is page 100.183.

ADV FREUND SC: Yes.

CHAIRPERSON: Oh okay. Business Day – Business Day?

ADV FREUND SC: No, no Sunday Times. Let me just check.

CHAIRPERSON: At page 100.183.

ADV FREUND SC: No at page – let me just check. It is at page 100 – sorry let me just start again. 100.83.

CHAIRPERSON: .83.

20 **ADV FREUND SC**: Yes. Sorry did I say 183? If I said that it was a mistake.

CHAIRPERSON: Ja that is fine. Sunday Times articles.

ADV FREUND SC: Sunday Times.

CHAIRPERSON: Okay. Have you got it Mr Mantashe?

ADV FREUND SC: And what – do you have the page Mr

Mantashe?

MR MANTASHE: I have got the page.

ADV FREUND SC: Right now I accept that this does not mention a name yet but if you look at – if you look at about the fifth paragraph it says:

10 “A cabinet minister for instance told the meeting which is a reference to the August NEC meeting in Zuma’s President – in Zuma’s presence that it was true that the Gupta brothers had known beforehand of the President’s plan to reshuffle his cabinet in October last year. He told of how one of the brothers had informed him days before changes were announced that Zuma would promote someone who was Deputy Minister at the time to a full Ministerial post. According to NEC members etcetera.”

20 So there is a reference to this allegation at this meeting. Now I agree this is just part of jigsaw puzzle. Let me now take you to page 182 – well let me take me to page – so 100.83.

CHAIRPERSON: That is where you were reading from.

ADV FREUND SC: Let us go to .90.

MR MANTASHE: 90?

ADV FREUND SC: 90. Well let me go to – this is at 90 I

just got to check that. I have to tell you that I am working through papers that are differently paginated from yours.

CHAIRPERSON: Well 90...

ADV FREUND SC: So .91.

CHAIRPERSON: Okay.

ADV FREUND SC: It is the article that is headed there – it starts at 100.91. And you will see near the foot of the page there:

10 “The Mail and Guardian reported last week
 that during the same meeting Mbalula has..”

CHAIRPERSON: Where about are you reading on the page?

ADV FREUND SC: I am on the second last paragraph at page 91.

CHAIRPERSON: Yes okay alright.

ADV FREUND SC: Starting the Mail and Guardian.

CHAIRPERSON: Hm.

20 **ADV FREUND SC:** And we reading a report in the Sunday
World in September 2011 and we see that the Sunday World
reports that the Mail and Guardian reported last week that
during the same meeting it is the NEC meeting we have been
referring to:

 “Mbalula accused the President of allowing
 outside forces such as the Gupta family to
 run the ANC and the government on his
 behalf. Mbalula allegedly told Zuma he i.e.

Mbulala knew about his appointment as Minister of Sports and Recreation through the Gupta's two weeks before Zuma made the announcement."

So I say to myself well where is this Mail and Guardian report? I now take you to 100.414. We find the Mail & Guardian report dated the 26th of August 2011. If I take you to page 416 the third last paragraph. 100.461.

MR MANTASHE: 414 and then 413 ...[intervenes]

10 **ADV FREUND SC**: Oh, 414 is where the article starts, right?

MR MANTASHE: Oh.

ADV FREUND SC: Alright. It is just so that you can see the date of it and where it comes from. It comes from the Mail & Guardian on the 26th of August and at 416 it is reported by the Mail & Guardian that Mr Mbalula accused the President of allowing outside forces such as the Gupta family to run the ANC and the government on his behalf. And Mbalula said or complaint that he first learnt of his
20 appointment as the Sports Minister from the Gupta rather than from Zuma himself.

Now the point I am trying to make is not that these articles established the truth of this having happened but the point I am trying to make is that if we want to identify when this incident happened. What we see is that

this incident happened in August of 2011 and not as what has otherwise been thought in 2014. Do you follow my logic?

MR MANTASHE: Okay.

CHAIRPERSON: Just remember to speak into the microphone Mr Mantashe.

R MANTASHE: I am listening to this, okay?

CHAIRPERSON: Ja, ja.

MR MANTASHE: I am listening.

10 **CHAIRPERSON**: No I just wanted the okay to be captured. [laughs]

MR MANTASHE: [laughs]

ADV FREUND SC: Right.

CHAIRPERSON: Okay alright.

ADV FREUND SC: And the point of that is this. In January and February allegations are reported which is true for the series but your investigation in March says there is nothing to support this. We do not accept these are true. But at an MEC meeting, only a few months later,
20 Mr Mbalula says to the President to his face: This is what happened.

MR MANTASHE: Oh, no. You say I said – in what report did I say there is nothing to support it. What are you referring to?

CHAIRPERSON: Oh, okay ...[intervenes]

ADV FREUND SC: I am referring to your evidence about ten minutes ago.

CHAIRPERSON: The analysis. He is referring to your evidence when you said.

MR MANTASHE: Yes.

CHAIRPERSON: Within the SG's office ...[intervenes]

MR MANTASHE: Yes.

CHAIRPERSON: ...the allegations against the Gupta's ...[intervenes]

10 **MR MANTASHE:** Yes.

CHAIRPERSON: ...were analysed and they were dismissed.

MR MANTASHE: That is it.

CHAIRPERSON: Ja, ja. Okay. Okay.

ADV FREUND SC: Now I do not want to read through this what happened in March but I want to ask you. What, if anything, the leadership structures of the ANC did when Mr Mbalula made this allegation? Were they investigated? Were they believed?

20 **MR MANTASHE:** Mbalula in the NSA.

CHAIRPERSON: Sorry?

MR MANTASHE: It was an outburst by Mbalula ...[intervenes]

CHAIRPERSON: Yes.

MR MANTASHE: ...in the MEC(?).

ADV FREUND SC: Yes.

CHAIRPERSON: H'm?

MR MANTASHE: It was an outburst which required us to talk to Mbalula and try to get the sense of what he had made his allegations which I can – and that depended more on ...[indistinct] to give that evidence to us, and that is why we said a further admission we made here was, two incidents made it more serious to us that there should be a fire under that smoke, it was the plane and Mbalula
10 incident.

CHAIRPERSON: H'm.

ADV FREUND SC: Yes, but I want to put to you for your comment that really there is real fault to be attributed to both the ANC as a party and to Parliament also for not pursuing these allegations when they first made particularly when they appeared on face value to be supported by what was openly said at an MEC meeting in 2011.

MR MANTASHE: Yes, I go to an MEC meeting, I make a
20 statement. We need to follow that with the person who made the statement first. Now his willingness to give evidence that lead us to a discretion becomes critical.

ADV FREUND SC: Well, did you attempt to get that confirmation from him?

MR MANTASHE: Yes, yes.

ADV FREUND SC: In 2011?

MR MANTASHE: I do talk to Mbalula(?) after every MEC if he makes that statement. He made many of those statements. I talk to him every time but sometimes to make... meeting, refused to talk outside of the meeting which makes it difficult for any official of the ANC to follow [Speaker is unclear.]

ADV FREUND SC: Alright. And you say or you do not say but what implicitly what you say is that you do not have the
10 power to compel somebody to come and answer questions. You rely on people to voluntarily give you information.

MR MANTASHE: I would say I get the powers of the Commission to summon...

ADV FREUND SC: Yes.

MR MANTASHE: [laughs]

ADV FREUND SC: But of course, Parliament does have that power isn't it?

MR MANTASHE: Come again?

CHAIRPERSON: [laughs]

20 **ADV FREUND SC:** Parliament does have that power ...[intervenes]

MR MANTASHE: Ja ...[intervenes]

ADV FREUND SC: ...and Parliament(?) committees have that power.

MR MANTASHE: No, I am not giving evidence on behalf

of Parliament. I was not at a parliamentarian.

CHAIRPERSON: Well, I thought, Mr Mantashe, I thought maybe when people were summonsed by the SG, not formally, to the SG's office, they would take it seriously?

MR MANTASHE: No, people do come.

CHAIRPERSON: Yes, ja, ja.

MR MANTASHE: And whether they come and be prepared to give you the evidence *is another matter(?)*. I do not remember when you say, well, call somebody he does not
10 come. People do come. But if it comes to the evidence, you will see further down until you come to that *where these people make these allegations(?) No one is confiscating(?) it*. [Speaker is unclear.]

CHAIRPERSON: H'm, h'm.

MR MANTASHE: Okay. Yes, we will come to that.

ADV FREUND SC: Yes ...[intervenes]

CHAIRPERSON: Yes, but I do want you to, if you can, to tell me as far as your recollection – as far as you are able to recall what the response was, generally speaking, of
20 other members of the MEC when Mr Mbalula made this statement ...[intervenes]

MR MANTASHE: Ja. Let me ...[intervenes]

CHAIRPERSON: ...because you said when he was testifying, if I recall correctly, generally speaking – maybe I should not say that. At least some people in the MEC were

liking shooting him down, if I am not mistaken.

MR MANTASHE: Yes.

CHAIRPERSON: And so on.

MR MANTASHE: And that is the dynamic that the Commission... protects(?) fully. [Speaker is unclear.]

CHAIRPERSON: Yes.

MR MANTASHE: Of... in an organisation that is divided.

CHAIRPERSON: H'm, h'm.

MR MANTASHE: And we try to keep it together.

10 **CHAIRPERSON:** H'm, h'm.

MR MANTASHE: That dynamic will not be understood fully by the Commission. The Commission may come to a conclusion that says you are reckless and so forth but the reality of the matter, when you the General of the ANC you need to move with a necessary(?) slow speed so that you do not rush into things and actually create a bigger crisis. You are running an organisation.

CHAIRPERSON: Well, I can tell you, Mr Mantashe, that I need to understand in whatever evidence that tells me if
20 there was a certain environment that make it difficult to take certain action or make certain decisions because of maybe something such as the one you are talking about because one appreciates that one is not a member of the ANC, does not attend ANC meetings.

So people who were part of that needs to be

able to share with the Commission, to say these were the dynamics, these were the challenges. Maybe when you sit here you could think that we could easily have done A, B, C, D but we who were there on the spot were faced with these challenges and might not have been founded – might not have founded ...[intervenes]

MR MANTASHE: I can do that in brief.

CHAIRPERSON: Ja.

MR MANTASHE: But you sit there. You have a group of
10 members of the MEC who stand up and then they say – and say to the President who must resign.

CHAIRPERSON: H'm.

MR MANTASHE: Thereabout. And the majority of the members say: No, that is not how it is done. Okay.

CHAIRPERSON: H'm, h'm.

MR MANTASHE: When that happens, your duty as the Secretary General is to navigate through that stormy weather with care because there is an organisation to protect. And you will have noticed the period between
20 2011 and the time when – where the time – to the time when ultimately the MEC's are not Parliament. The ...[indistinct] is President.

And to me that period(?) of time reflect to everybody who cares to look into. But we are navigating through a turbulent weather with care. The fact that we

came out of it with an organisation together, in itself is a big achievement. But people who are outside and spectators can go on the merit who will say we are reckless, we did not do that. Because they in the – they counter pose the ANC as a party and the ANC in Parliament.

CHAIRPERSON: H'm, h'm.

MR MANTASHE: The methodology(?) that Parliament played overrules – makes certain intervention. The ANC
10 moved in a particular way up to a point.

CHAIRPERSON: Ja, okay. Mr Freund.

ADV FREUND SC: Yes, thank you. Now you have already referred to the Waterkloof incident.

CHAIRPERSON: Ja, maybe. Mr Mantashe, I just want to – if I should say, for what it is worth, that you know that there was that article, one of the articles that Mr Freund referred us to when he was putting one of the questions to you. It is a March 2011 article about the Gupta's. I just want to say that that was – that article was about a month
20 after Mr Themba Maseko had been removed from his position as DG or CEO of the Communications Department in government.

You will recall he gave evidence about that. And he was saying that based on what Mr Archie Gupta had said to him earlier and what he was told by Minister

Thabane before he was removed. Or he was told by Minister Thabane that it was Mr Zuma as President who said he should be removed. So I am just saying that that article came about a month after that development. And of course, you might not, at that stage, had been aware of it.

MR MANTASHE: That is why it is important to always appreciate the dynamics of a party of the state.

CHAIRPERSON: Ja.

MR MANTASHE: I must comment Mr Maseko in that after
10 we started the process of investigating the thing of the Gupta's. He was the only person who gave us a written submission.

CHAIRPERSON: H'm, h'm.

MR MANTASHE: Everybody refused. That is why we referred to an independent institution and had to make a supported(?) information of this Commission because it was clear to us that people fear to incriminate themselves within the party structures.

CHAIRPERSON: H'm, h'm.

20 **MR MANTASHE**: And the party's(?) independent structures. It is because *I comment Mr Maseko for it(?)* because he gave us a written submission. The only one out of eight people that did.

CHAIRPERSON: H'm, h'm. Mr Freund.

ADV FREUND SC: I do propose to come to that but I am

trying to get there in a chronological sequence.

CHAIRPERSON: Ja.

ADV FREUND SC: So, if I can take you back then to March of 2013 at 100.104?

MR MANTASHE: At 100...?

ADV FREUND SC: Dot one, o, four.

MR MANTASHE: One, o, four.

ADV FREUND SC: I am going to – I think I will just use – I will not say a hundred every time. I will just use the
10 number after the dot. You will know what I am talking about. So let us call this page 104.

CHAIRPERSON: And that is an article in The Star?

ADV FREUND SC: In Star in May of 2013.

MR MANTASHE: Wait, wait, wait. 104?

ADV FREUND SC: 104. An article in The Star.

MR MANTASHE: One...

ADV FREUND SC: One hundred and four.

CHAIRPERSON: One, zero, four. So you remember he said he is not going to mention one hundred anymore. He
20 will just say 104.

MR MANTASHE: Yes.

ADV FREUND SC: Alright. I just want to help you to get your bearings here. You will see this is the 3rd of May 2013. You will see it is about the use of the Waterkloof Airbase in relation to the Gupta wedding. I am

not going to take you into the details of that. It all very well-known. But what I want to take you to is comments attributed to you in this article. So not directly quoting you. Third hand sources claiming that you ...[intervenes]

MR MANTASHE: Here are your sources.

ADV FREUND SC: Alright. So let us – you are the source. I want ...[intervenes]

CHAIRPERSON: To clear that ...[intervenes]

ADV FREUND SC: I want to hear from you whether these
10 are true or not.

MR MANTASHE: You hear it from. Here are your sources.

CHAIRPERSON: [laughs]

ADV FREUND SC: Alright. You will see here in about the fifth last paragraph. It says: According to a well-placed source. Do you see that?

MR MANTASHE: Yes?

ADV FREUND SC: Mr Mantashe...

20 “Dr(?) Zuma he had allowed the Gupta’s in the kitchen cabinet too much influencing in government to the expense of the party and its leadership. He said that the ANC Secretary General felt marginalised when Zuma appointed the Limpopo ANC and the ANC Youth League Task Teams...”

And then the part that really interests me.

“Mantashe allegedly went to so far as to tell some ministers to have the backbone and to refuse to take instructions from the Gupta’s...”

Now my question is whether it is true that the comments that you allegedly made, reflected your attitude at the time?

MR MANTASHE: Yes, except that it is prefaced(?) with a term that there was a fallout.

ADV FREUND SC: Alright. Let us leave the fallout aside.

10 **MR MANTASHE**: No, no, no. Allow me to respond.

ADV FREUND SC: No, of course. Of course.

MR MANTASHE: Allow me to respond. It says with a fallout. Yes, so. Factually it cannot be true. Let me explain why it cannot be true. Because my relation with the President of the ANC is always a professional one, not a personal one. We will not become buddy-buddy. So when you are the Secretary General you raise the issues. You do not look over your shoulders to say how does the President feel on the issue. You comment on this issue on
20 behalf of the African National Congress.

Now, the things that I have said I have said by sources. Let me say. That was the beginning of saying do not comply with instruction if they are not legitimate. We did that with the Cabinet ministers who would resist if you say it now in English, begin to resist. And it became to

agreement many ...[indistinct] [Speaker is unclear.]

ADV FREUND SC: Well, that is a very important thing you have just told us.

CHAIRPERSON: H'm.

ADV FREUND SC: And I would like understand ...[intervenes]

CHAIRPERSON: I am sorry. I have missed that last sentence.

MR MANTASHE: Yes ...[intervenes]

10 **CHAIRPERSON:** ...or something.

MR MANTASHE: I said – we said: Please, do not do what is not legitimate on instruction(?). And I said many began to do that and many paid the price for it.

CHAIRPERSON: Yes, yes.

MR MANTASHE: Okay.

CHAIRPERSON: Yes. So it is implied from what you are saying that you had received, maybe over a certain period of time, reports that were suggesting that ministers were being given instructions by the Gupta family and that is
20 why you would have given that instruction or warning, to say do not comply with illegitimate instructions. Would that be a fair conclusion from what you are saying?

MR MANTASHE: Yes. Let me read you from this.

CHAIRPERSON: Ja?

MR MANTASHE:

“Nthembo dismisses a suggestion that Zuma and Mantashe had fallen out is an old bullshit - an old bullshit...that’s it by people who wanted to sow dilution amongst ANC leaders. And he confirmed that. Now they had met ...[indistinct] regards to ...[indistinct]”

All I am trying to say is that the issue that they prefaced here with a fallout is quite important because – and that is what determines our relationship with the
10 newspapers. Sometimes they report issues but they phrase it in a way that are actually plan(?) to intent to divide the African National Congress.

When that happens, you do not take the media report as a report. You take it as an effort of part of packing the lies and words driving amongst leaders of the ANC. So this was one of that examples and therefore – I just had words(?) to talk to ministers who begin to start resisting and that was the beginning of a process of appreciating that this must be stopped...

20 **ADV FREUND SC:** Right. And you put that in 2013?

MR MANTASHE: Yes.

ADV FREUND SC: I heard you. If you could just repeat that ...[indistinct]

MR MANTASHE: Yes.

ADV FREUND SC: Thank you. Now you have also said

something this morning that took me a little bit by surprise.

If I can take you to page 100.432 or let us just call it 432.

MR MANTASHE: 432?

ADV FREUND SC: 432. This is your opening statement this morning.

MR MANTASHE: Yes. It took you by surprise?

ADV FREUND SC: Well, the – one detail in it took me by surprise.

MR MANTASHE: Okay?

10 **ADV FREUND SC:** I am not saying that it may not also appear in your affidavit. It had. But the point is. I had never – it has never rung the bell that it now rings.

MR MANTASHE: I have got it.

ADV FREUND SC: At the foot of page 432, paragraph 61. Do you have that?

MR MANTASHE: Yes.

ADV FREUND SC: You say there:

20 “Since 2013... [which is the time we are now talking about] ...after the Integrity Commission recommended that the former President Zuma should step down, the ANC has been undergoing a period of instability...”

And my question is one of fact. What can you tell me about a recommendation by the Integrity Commission and when was it made?

MR MANTASHE: Since 2013, we say so, after the Integrity Commission recommended.

ADV FREUND SC: So are you saying that there was an Integrity Commission recommendation in 2013?

MR MANTASHE: Yes.

ADV FREUND SC: That President Zuma should step down?

MR MANTASHE: Yes.

ADV FREUND SC: Do you know on what basis that
10 recommendation was made?

MR MANTASHE: On what basis?

ADV FREUND SC: They made that recommendation. If this is an Integrity Commission recommending the President should stand down.

MR MANTASHE: No, no ...[intervenes]

ADV FREUND SC: What was it that they relied upon?

MR MANTASHE: No, I cannot be able to give details of the Integrity Commission. I am not a member of hearing the hearing with somebody who is not myself, who was not
20 there.

CHAIRPERSON: I think what Mr Freund is looking at is whether you having being the Secretary General of the ANC at the time, you are aware whether the Integrity Commission's recommendation that President Zuma should step down or – ja, step down. I see there, yes, it says step

down not step aside. Step down. The recommendation that President Zuma should step down was connected in any way with the allegations of the friends of the Gupta family ...[intervenes]

MR MANTASHE: Yes, it was.

CHAIRPERSON: It was connected?

MR MANTASHE: Yes.

CHAIRPERSON: Okay alright.

ADV FREUND SC: And just remind us ...[intervenes]

10 **MR MANTASHE**: He did not ask that question.

CHAIRPERSON: Sorry?

MR MANTASHE: He did not ask that question.

CHAIRPERSON: Oh, okay. [laughs] Alright.

ADV FREUND SC: Well, but I will take all the help that I can get.

CHAIRPERSON: [laughs]

ADV FREUND SC: Mr Mantashe, this is an important picture we are now dealing with.

CHAIRPERSON: I think it is very important.

20 **ADV FREUND SC**: It is not something that I personally was aware of and I do not know whether the Commission was aware of it.

CHAIRPERSON: Actually, I was not. If you ask me whether the Integrity Commission of the ANC was there in 2013, I was likely to think that no it was not there at that

time but obviously you know that it was there and it made a recommendation.

MR MANTASHE: It was there.

ADV FREUND SC: Ja.

MR MANTASHE: Very active, chaired by Andrew Mlangeni(?).

CHAIRPERSON: Yes.

ADV FREUND SC: Chaired by?

MR MANTASHE: Andrew Mlangeni.

10 **CHAIRPERSON:** Yes. Mr Andrew Mlangeni.

ADV FREUND SC: Mlangeni. And staffed by its senior in respect of members of the African National Congress. When I say start, the personnel of the Integrity Commission will fall into that category.

MR MANTASHE: Yes.

ADV FREUND SC: And in fact, I speak now just from my general recollection as a citizen reading newspapers, the very creation of the institution of the Integrity Commission was the product, presumably, of conflict resolution which
20 saw this as a proper device to address allegations of malfeasance and misconduct. Would that be right?

MR MANTASHE: Yes, yes.

ADV FREUND SC: So you have now got a serious problem. You got an Integrity Commission which is recommending that the president of your organisation and

the President of the country must step down. That would obviously been a matter of very great personal concern to you what to do about this problem. Correct?

MR MANTASHE: *Ja, relatively(?) we were all worried.*

[Speaker is unclear.]

ADV FREUND SC: Yes.

CHAIRPERSON: I guess ...[intervenes]

MR MANTASHE: Not individually.

CHAIRPERSON: Not individually?

10 **ADV FREUND SC:** Collectively ...[intervenes]

MR MANTASHE: Not individually, collectively.

CHAIRPERSON: Ja, ja.

MR MANTASHE: We get this report.

CHAIRPERSON: Can I just ask whether that recommendation was made after the Waterkloof landing?

MR MANTASHE: Yes.

CHAIRPERSON: Or do you not ...[intervenes]

MR MANTASHE: Yes, it was after the Waterkloof ...[indistinct] [Speaker is unclear.]

20 **CHAIRPERSON:** Ja, okay alright.

MR MANTASHE: So it was after the Waterkloof landing.

CHAIRPERSON: Ja, okay.

MR MANTASHE: Ja.

FREUND SC: And I understand that you were not a member of that committee. I understand that you would

not have attended and heard the evidence. But my common sense tells me that on the probabilities, if the Integrity Commission was recommending that the President should stand down, they would have had at least summarised the reasons for which they were making that recommendation. Is that correct?

MR MANTASHE: Ja, they would have submitted a report.

ADV FREUND SC: Right. And to the best of your recollection, what were those reasons?

10 **MR MANTASHE**: I cannot recollect except that it was connected to the Gupta influence.

ADV FREUND SC: And I do not know whether you have authority to answer this question but would you have any difficulty in making that report available to this Commission?

MR MANTASHE: I am not Secretary General.

CHAIRPERSON: [laughs]

MR MANTASHE: I am not keeping records of the ANC.

CHAIRPERSON: Well, I think the Deputy Secretary
20 General is here. [laughs]

MR MANTASHE: No, he is not here. He is not here.

CHAIRPERSON: [laughs] Well, let me say that if the ANC could make that record available to the Commission, that would be appreciated.

MR MANTASHE: Ja... Except that Deputy Chief Justice,

the problem in converting the Commission into an inquiry into the ANC rather than the state capture.

CHAIRPERSON: Ja. No, no, no.

MR MANTASHE: The ...[intervenes]

CHAIRPERSON: I understand that.

MR MANTASHE: That is quite ...[intervenes]

CHAIRPERSON: Ja.

MR MANTASHE: ...in the ANC that the time you fail(?) in a sense that the Commission is actually trying the ANC.

10 **CHAIRPERSON:** H'm.

MR MANTASHE: So a number of documents that are here, internal ANC documents that were brought to the Commission.

CHAIRPERSON: H'm, h'm.

MR MANTASHE: I was even shocked to see ...[indistinct] you have ...[indistinct] meanings of the NWC. They gave the report so ...[intervenes] [Speaker is unclear.]

CHAIRPERSON: Well, I ...[intervenes]

MR MANTASHE: So ...[intervenes]

20 **CHAIRPERSON:** I am not even aware that ...[intervenes]

MR MANTASHE: Okay.

CHAIRPERSON: ...about that ...[intervenes]

MR MANTASHE: So the point I am making is that it is an issue that I will have to refer to the organisation.

CHAIRPERSON: No, no that is fine. That is fine.

MR MANTASHE: Because there is a lot of disquietness in the organisation

CHAIRPERSON: Ja, ja.

MR MANTASHE: That we must not convert the Commission into a trial of the African National Congress.

CHAIRPERSON: H'm, h'm.

MR MANTASHE: It must do what is in the Terms of Reference of the Commission.

CHAIRPERSON: H'm, h'm. No, I think what certainly the
10 Commission does is to say in order to establish what happened, how it happened and what may need to be recommended in order to make sure it does not happen again. You cannot leave a governing party outside. You have got to look at what was its role in regard to A, B, C, D.

But when you do that, I accept that or I think that it does not mean you go all the way. You cannot keep them out but maybe you can go too far. So it might be the striking of that balance. I think earlier on you did say you
20 do not have a problem in the Commission looking at the ruling party. So it is question of how far goes, I think.

MR MANTASHE: That is why we here, Chair.

CHAIRPERSON: Ja.

MR MANTASHE: And that is why the President ruled to come here.

CHAIRPERSON: Yes, ja.

MR MANTASHE: We want to work with the Commission.
Cooperate with the Commission.

CHAIRPERSON: Ja.

MR MANTASHE: But sometimes our cooperation
...[intervenes]

CHAIRPERSON: Ja.

MR MANTASHE: ...almost get used to strip the ANC
naked.

10 **CHAIRPERSON:** Ja. [laughs]

MR MANTASHE: In public. Yes. Strip the ANC naked in
public. You want document that are... to the ANC.

CHAIRPERSON: Ja.

MR MANTASHE: And...

CHAIRPERSON: I think for now, I am – I think I am happy
with your response that says that you will revert to the
right authorities.

MR MANTASHE: Ja.

CHAIRPERSON: Or you will look at it and then we will
20 hear from somebody. Ja. Okay.

MR MANTASHE: Okay.

ADV FREUND SC: Perhaps I can explain, Mr Mantashe,
from my particular advantage point, why I start to ask
these questions because the Deputy Chief Justice asked
me to examine the question of Parliamentary oversight.

MR MANTASHE: Yes.

ADV FREUND SC: In respect of allegations of state capture and corruption. And the evidence that has been led on that question, as it were, forces one to ask themselves, why did the parliamentary caucus act as the parliamentary caucus at certain moments?

And in order to understand that, it seems to me one has to understand what is the position with the African National Congress more generally because you cannot
10 understand ANC and peace(?) without understanding the organisation context in which they are operating.

So if I can give you my personal assurance that the purpose of my questions is not to attack the African National Congress but to unpack the problem of state capture.

MR MANTASHE: Yes.

ADV FREUND SC: ...causes of state capture and more importantly, the persistence of the alleged state capture and why problems were not addressed satisfactorily more
20 early as far as spending much time talking now about 2011 and 2013, when we all know that in 2017 there were certain developments and so forth. Because this question of time and response is, it seems to me with respect, to be within the terms of the Commission.

MR MANTASHE: Ja.

ADV FREUND SC: So, and I want to give you an opportunity to comment on that very proposition I put to you is whether you accept that that is a legitimate inquiry?

MR MANTASHE: No, to the other members of the ANC, they normally come to me. I am an elder member now. And they would say to me that the ANC is very slow to take decisions.

CHAIRPERSON: H'm, h'm.

MR MANTASHE: I always remind them of incidents of the
10 evolution of the African National Congress. It is a 109-
years-old. I give them this example all the time. You
know, in 1969, it take a political(?) decision. Not all
members in the league of the ANC agree with it. They
resisted and caused chaos in the organisation. It took the
ANC years to expel them.

Do you know why it took so long? Because the
ANC believes that there is nobody who cannot be corrected
and be helped. That is the ANC for you. When the ANC
takes the last step of pushing their personnel, you must
20 know that it has tried and tried and tried. So the question
you will be asking that why did it take so long.

The evidence we are giving you show you the
evolution of the efforts that there was this operation(?) of
the effort from the time when we dismissed this allegation
to a time when we were starting to pay... until to a point.

So the ANC involved with this decision because there is nobody who is a member of the ANC who is incorrigible(?). No member of the ANC is incorrigible(?) So the ANC is patient in dealing with its members. [Speaker is unclear.]

CHAIRPERSON: Well, it is just ...[intervenes]

MR MANTASHE: And that was the question: Why does it take so long.

CHAIRPERSON: Well, I must say Mr Mantashe and you will tell me if my understanding is wrong. My reading of
10 your affidavit as well as your statement, your evidence you have been today is that the ANC's approach to the issues that this Commission is investigating, is to say we want this Commission to do its job correctly. We want this Commission to be able to tell us what happened, why it happened, who was involved in what happened.

And what is it that made it possible for these things and we want to be part of the solution of saying, what needs to be done to make sure that we do not – the country does not find itself having these challenges again.
20 So my understanding is that that is where the organisation – that is the approach of the organisation through your evidence that it wants to be part of the solution.

MR MANTASHE: I agree.

CHAIRPERSON: Yes.

MR MANTASHE: That is why we say, ourselves since

2013 after the Integrity Commission recommended that that former President Zuma should step down, the ANC has been undergoing a period of instability and we go on and on. We have already given this information to you.

CHAIRPERSON: H'm, h'm.

MR MANTASHE: To try and paint the picture to the Commission that dealing with this problem, evolved over a period of time. Now the question is. Give us the report of that and give it to the Commission. Now we went through a
10 very painful process the whole morning where we deal with the resolution of ANC conferences and tried to tear them apart.

And that is why I am saying. There is no other party, I would imagine, that has given this Commission internal documents of its proceedings except the *agreements that are promised*. [Speaker is unclear.] And we do that because we want to walk the talk and be part of this. But I am saying, if we stretch that to the limit, we are going to be stripping the ANC naked because it has
20 cooperated. [Speaker is unclear.]

CHAIRPERSON: H'm, h'm.

MR MANTASHE: And that is our part.

CHAIRPERSON: Ja.

MR MANTASHE: We will take this thing to the ...[intervenes]

CHAIRPERSON: That is fine.

MR MANTASHE: Okay.

CHAIRPERSON: And may well be that if there are thing, I do not know, if there are things that are sensitive and has nothing to do with what we are looking at in the reports, it may well be that an affidavit by somebody who has read the report and says as far as this which the Commission is interested in, this is the information that ...[intervenes]

MR MANTASHE: Okay, question.

10 **CHAIRPERSON**: ...that could be looked at.

MR MANTASHE: Okay we take it like that.

CHAIRPERSON: Ja, ja.

ADV FREUND SC: I am going to leave that issue there. I am going to move on.

CHAIRPERSON: Ja.

ADV FREUND SC: And I am also going to move on, quite rapidly, in respect of a couple of years. We are in 2013. I am not going to deal with 2014. I am not going to deal with 2015. I just want to indicate the sorts of things that
20 were happening in that period.

Allegations in relation to the Gupta influence, the Gupta benefits, the connection with the President's family, apropos of Transnet, apropos of SAA and so forth.

All sorts of allegations are out there but I am just going to skip over that and I am going to fast-forward

to early 2016 because early 2016 is a moment of crisis, as I see it.

CHAIRPERSON: Well, Mr Freund before you proceed We are five minutes before six o'clock. We intend to take a ten minutes' break after every two hours or so. It may be that we take the ten minutes' break before you start on that.

ADV FREUND SC: That should be fine. I think that will make a lot of sense.

10 **CHAIRPERSON:** Yes.

ADV FREUND SC: Because I am going to spend some time focussing on early 2016.

CHAIRPERSON: Yes, okay alright. Let us take a ten minutes' adjournment. We will be back at about – okay let us make it a little bit more than that. Let us make it up to ten past six.

ADV FREUND SC: Thank you, Mr Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

20 **INQUIRY RESUMES**

CHAIRPERSON: Let us continue. I know that Mr Mantashe you did say earlier on you are ready we can go up to 12 midnight but I just want to say if, as we go on, you feel that you are exhausted or anything, feel free to mention that.

MR MANTASHE: Okay.

CHAIRPERSON: Okay, alright.

MR MANTASHE: Concentration levels.

CHAIRPERSON: Yes. Ja, no, no, no, ja, so we accept that, I mean you are only one being questioned, he is the only one standing, we are all seated so from his side, on his side, he must tell me when his legs do not allow him to continue standing. So okay, let us continue and then we will see.

ADV FREUND SC: Thank you, Chair. Mr Mantashe, will you turn to page 166 please?

10 **MR MANTASHE:** There is nothing there.

CHAIRPERSON: What page?

ADV FREUND SC: 166.

CHAIRPERSON: Okay.

MR MANTASHE: Nothing there.

CHAIRPERSON: Mr Mantashe, says there is nothing at 166.

ADV FREUND SC: Oh sorry, let me just check that? Alright, then it must be 167.

CHAIRPERSON: No, he is right. 167?

20 **ADV FREUND SC:** Yes, 167.

CHAIRPERSON: That is a Sowetan article of 17 February 2016, nè?

ADV FREUND SC: That is correct. Chair, perhaps I should explain to you why I have these pagination difficulties and

that is that I have had to work the last set of pagination until last night.

CHAIRPERSON: Oh, I see.

ADV FREUND SC: I had preliminary set of pagination on an index but I actually had paginated papers and so I am struggling to find my way about.

CHAIRPERSON: No, no, that is fine. The air con has been switched on, it is noisy, but I do not know, sometimes I am told that it is hot that side.

10 **ADV FREUND SC:** I am alright.

CHAIRPERSON: So I do not want it to be switched off in case you are all boiling. Okay, at least maybe if they can just turn it down a bit. Yes, okay, continue?

ADV FREUND SC: Alright. Now, Mr Mantashe, we dealt with the events of 2013 and the problems that that created, the investigation of the Integrity Commission, the views they took. I said I am going to jump over 2014, I am going to jump over 2014 and I want to pick up the thread in early 2016 and this newspaper report claims that a meeting took
20 place attended by yourself, amongst others, with the Gupta family representatives on this issue of undue influence and the third paragraph of this newspaper article says that a report had been compiled of all the allegations of how the family influenced ANC leaders to get business, an accusation they have denied. And then the newspaper article suggests

that these accusations were put and answered at the meeting. Is all of that factually correct?

MR MANTASHE: It is factually correct that there was a meeting. If you follow that newspaper article, I said we did not met the family, we met the company. That distinction was quite important for us because we were dealing with a company that was threatening to retrench workers and we met them. Actually that happened.

ADV FREUND SC: And the company that was threatening
10 to retrench workers, is this now related to the Eskom coal mines and what is that, Oakbay or...? This is not material that I am terribly familiar with.

CHAIRPERSON: Well, I am interested to know if they were meeting a company, what was the name of the company they were meeting?

MR MANTASHE: We met, I would imagine, it was Tegeta.

CHAIRPERSON: Tegeta.

ADV FREUND SC: Tegeta.

MR MANTASHE: Ja.

20 **CHAIRPERSON:** Okay.

MR MANTASHE: But the reality was that we had all the Gupta companies almost closing down so wanted understand what was the matter.

CHAIRPERSON: Was this after the banks had started closing the accounts?

MR MANTASHE: Yes.

CHAIRPERSON: Oh, okay.

ADV FREUND SC: Okay. And again I am going to ask you a question similar to one I asked you before where I accept that you may not have authority to answer the question but you will see there is a reference here to a report that had been compiled of all the allegations of how the family influenced ANC leaders to get business.

So my first question, which I think you are authorised
10 to answer, is whether there was such a report.

My second question is, if there was such a report is there any prospect of that being made available?

MR MANTASHE: I am sure parliamentary people would be in a position to answer

CHAIRPERSON: Oh, have they got it?

MR MANTASHE: They drafted the report.

CHAIRPERSON: Oh, it was a report drafted by parliament?

MR MANTASHE: Very certainly.

ADV FREUND SC: Well, that may be correct but certainly I
20 am totally unaware of it and I do not think there has been any evidence before this Commission of such a report.

CHAIRPERSON: Are you able to indicate what structure in parliament or particular committee or...?

MR MANTASHE: Sowetan confirmed that family business – okay, there is the Guptas...

ADV FREUND SC: I think the only reference to the report that I am aware of is in that third paragraph itself.

MR MANTASHE: In the...?

ADV FREUND SC: That a report had been compiled and ...[intervenes]

MR MANTASHE: In which paragraph is that?

ADV FREUND SC: The third paragraph. So the first paragraph:

“ANC leaders...”

10 The second paragraph:

“The Sowetan can confirm...”

The third paragraph says:

“A report had been compiled of all the allegations of how the family influenced ANC leaders to get business.”

MR MANTASHE: No.

ADV FREUND SC: I am asking about ...[intervenes]

MR MANTASHE: There was no such a report.

ADV FREUND SC: There was no such report.

20 **CHAIRPERSON:** There was no such report?

MR MANTASHE: There was no such report compiled in the ANC.

CHAIRPERSON: Okay.

ADV FREUND SC: And you have indicated that the context was the banks issue and Gupta companies closing down.

Was that really the subject matter or was the subject matter the allegations of Gupta influence over appointments and the like? Because they seem to be very different issues.

MR MANTASHE: No, I do not think we could meet Guptas about the influence on the ministers at the department, could not do that, but we could meet them on the question of them closing business.

CHAIRPERSON: Because of potential job losses?

MR MANTASHE: Yes.

10 **CHAIRPERSON:** Ja, okay.

ADV FREUND SC: Now I want to refer to another feature of this report. The 10th paragraph starting with the words last month. Do you see that paragraph?

MR MANTASHE: Last month, yes.

ADV FREUND SC: Yes. Now this is a report in February in the Sowetan referring to a report in the Sowetan the previous month which would be in January 2016.

MR MANTASHE: Yes.

ADV FREUND SC: And I have not found such a report but I
20 have not tried very hard to find it.

MR MANTASHE: Which report is that?

ADV FREUND SC: The January 2016 report. But what I want to just put to you for your comment is that the Sowetan alleges that you had stated that you had told that newspaper, the Sowetan, that the Guptas had captured individual ANC

leaders and not the party itself. Is it correct that you said that.

MR MANTASHE: That is correct.

ADV FREUND SC: That is correct?

MR MANTASHE: That is correct.

ADV FREUND SC: Well, the obvious question is, which ANC leaders?

MR MANTASHE: No, answered that way it means if a Gwede Mantashe have dealings with the Guptas and goes to
10 the compound, Gwede Mantashe goes to the compound, if the ANC is captured, Luthuli House, 6th floor, will be the home of the Guptas because the people in the 6th floor of the Luthuli House will spend a lot of time with the Guptas, then the party will be captured and we make that distinction because the operational floor of the ANC is the 6th floor, we stayed there and we made it our responsibility to protect it as a centre.

ADV FREUND SC: And is that the 6th floor of Luthuli House you are referring to?

20 **MR MANTASHE:** That is the Secretary General's floor.

ADV FREUND SC: Secretary General's floor.

MR MANTASHE: And the DSG.

ADV FREUND SC: Right. And I understand and accept the distinction you draw between capture of individual ANC leaders and capture of the ANC. I have no difficulty with that

distinction but nonetheless, I am going to put the question again, I do not know if you are willing to answer it or not and the question is, when you told the Sowetan that the Guptas had captured individual ANC leaders, which ANC leaders did you have in mind?

MR MANTASHE: No, there were quite a number of reports about this leader and that leader. I will start with Fikile Mbalula who had confessed himself. The others have not confirmed. All I am saying is if any individual leaders of the
10 ANC have found it comfortable to be captured by the Guptas, those individual members were captured, not the African National Congress.

ADV FREUND SC: But that is if, that is not that you know that it is the case, it is just that if it is so, it does not mean that the ANC itself has been captured.

CHAIRPERSON: Switch on your mic.

MR MANTASHE: The ANC was not captured. That I know, I can give evidence under oath that the ANC was not captured.

20 **ADV FREUND SC:** Yes, but while you are still giving evidence under oath, I want to know whether there is a Secretary General in February of 2016 whether you were aware that there were individual ANC leaders who had been captured. There were stories around about individual ANC leaders having been captured.

CHAIRPERSON: So I guess what you are saying is there were stories that certain individuals were captured.

MR MANTASHE: Yes.

CHAIRPERSON: But whether or not that was factually correct you know or you do not know.

MR MANTASHE: And we made that statement on that basis that if they were captured, so and so went to the compound and came with a bag of money or so and so slept in the compound or whatever. That was not the ANC. And in the
10 operational floor of the ANC, Guptas did not stay there and they had no dealings with us there.

ADV FREUND SC: Yes. But perhaps they did not need – and I am not making any prejudgment of whether there was state capture or corruption but assuming for the purposes of argument that there was, perhaps they did not need to capture the ANC as an organisation. If they were to capture senior leaders of the ANC, that might be all that was necessary to achieve their purposes.

MR MANTASHE: Stories about a number of leaders of the
20 ANC captured were flying all over, okay, more worrying was the story about the closeness of that family to the President but the officials of the ANC, in the top six, who had nothing to do with the Guptas.

ADV FREUND SC: Ja. Now I am very interested in what you have just told us, that stories were flying all over the

place by February 2016 of capture of the ANC leaders. That has huge implications for the question that I am particularly interested in which is the adequacy of the manner in which parliament dealt with the issues that they should have dealt with. Now those stories that were flying around, are those stories that you believe would of the probabilities have come to the attention of MPs who were members of portfolio committees of relevance, for example, the Public Enterprises portfolio committee, Transport committee and others? These

10 are things that you were aware of and presumably they should have been aware of.

MR MANTASHE: One of the issues that we are careful about, we do not want to pretend to be running parliament, we are not running parliament and that is why when an allegation is made that portfolio committees were dysfunctional and all that, we know that there were portfolio committees that were very effective throughout. Many, after they were a the majority, but there were portfolio committees that fell flat during that process and that was where the

20 focus was and the same would apply to this one. Parliament would be aware of stories, what they do about it is another issue but further down, we began to saw portfolio committees taking up action in that regard.

ADV FREUND SC: Further down. But I want to just go back to a comment you made a moment ago, that – I do not

remember your words but it was to the effect of we, Luthuli House, the administration section of the African National Congress, we did not control parliament and parliamentary oversight. Now if we accept that, the question that has arise is, from where do the ANC caucus get their instructions as to what positions to adopt on the controversial issues of the day?

MR MANTASHE: They discuss that in caucus and take decisions in caucus.

10 **ADV FREUND SC:** Are you suggesting that they are free as a caucus without any pressure or instruction from the party to do whatever they deem to be appropriate.

MR MANTASHE: No, you had distracted my...

ADV FREUND SC: That is why I put to you, so you can correct me if I am wrong.

MR MANTASHE: Yes. Caucus takes decision. If the head office of the ANC thinks that it must communicate a message to caucus, it will go to caucus.

ADV FREUND SC: Sorry, I did not hear you, if somebody
20 wanted to go – if who wants to go?

MR MANTASHE: If the head of the office of the ANC want to communicate a view to caucus, it has no choice but to go to caucus because caucus must take that decision.

ADV FREUND SC: Alright, so that would include your then office, the office of Secretary General?

MR MANTASHE: Yes.

ADV FREUND SC: Would from time to time go to caucus to convey, as it were, the position of the party which the ...[intervenes]

MR MANTASHE: Yes, I have only one office in parliament that I have access to, if the office of the Chief Whip of the party. I do not go to the Speaker and anybody else, I have access to the office of the Chief Whip.

ADV FREUND SC: Yes.

10 **MR MANTASHE:** And I want to talk to caucus, I communicate with the Chief Whip and then go to caucus.

ADV FREUND SC: Yes. And when you do that, I know you were then personally the Secretary General but would you do that because you, as Secretary General thought it was the appropriate thing or would you do that because you are actually yourself under instructions from some organ of the party that says you must go and talk to the caucus.

MR MANTASHE: I will get the sometimes directive from the structure of the ANC to communicate this message to the
20 caucus. I will do that, it is part of the job of the Secretary General to do that. But sometimes there were delegates that will say to the Chairperson of the ANC or sometimes the Deputy President, there is this important message for the caucus, convey it, because [indistinct] 18.32.

ADV FREUND SC: But those structures, would that

typically be – I do not know, who would it be, would it be the NEC the [inaudible – speaking simultaneously]

MR MANTASHE: Can be the ANC, it can be a NWC, it can be a subcommittee of the MEC dealing with a particular issue which may be the top six of the ...[intervenes]

ADV FREUND SC: The top six, alright. And there has been evidence of a committee which I think is referred to as the parliamentary committee which I – I am talking from memory now, I have read somewhere is a subcommittee of the NEC.

10 Is that right? Have I got that right?

MR MANTASHE: I do not know what you are talking about.

ADV FREUND SC: Is there a subcommittee of which you are aware to function, is to give political direction to members of parliament on controversial issues?

MR MANTASHE: It is not a subcommittee of the NEC, there is a committee in parliament of senior members of cabinet and the presiding officers who coordinate political work in parliament. It is not a subcommittee.

ADV FREUND SC: I think it is the political committee, is it?

20 **MR MANTASHE:** The political committee, yes.

ADV FREUND SC: Political committee is what I meant to say when I said parliamentary committee. It is the political committee and that political committee, does it comprise exclusively persons who are members of parliament or does it include other ANC ...[intervenes]

MR MANTASHE: It is only parliamentary members.

ADV FREUND SC: Parliamentary members but including senior leadership members in parliament.

MR MANTASHE: Yes, it is chaired by the Deputy President.

ADV FREUND SC: Chaired by the Deputy President. And in the period from 2016, which we are now starting to deal with, that would have been the then Deputy President Cyril Ramaphosa, is that correct?

MR MANTASHE: It is always chaired by the Deputy
10 President.

ADV FREUND SC: Always chaired by the Deputy President.

MR MANTASHE: Whoever the Deputy President is.

ADV FREUND SC: Right.

CHAIRPERSON: Well, before you proceed, Mr Freund, I missed the part that says what this committee does. What is its function?

MR MANTASHE: That committee coordinate political work in parliament, that is why it is called political committee.

CHAIRPERSON: But does it do so as a structure of the
20 ANC or it is a parliamentary...

MR MANTASHE: Yes and ANC political committee.

CHAIRPERSON: Okay, in parliament.

MR MANTASHE: In parliament.

CHAIRPERSON: Okay, okay.

MR MANTASHE: And it only deals with ANC issues and

structures.

CHAIRPERSON: Okay, okay, okay.

ADV FREUND SC: Yes. And I want to just recover this ground, I think it is important and I want there to be no room for misunderstanding between us. The political committee, I understand you to have told us, is a committee comprising only members of parliament but those would include very senior people and would be chaired by the Deputy President of the party. Am I correct so far?

10 **MR MANTASHE:** I do not know what you describe as senior, there will be members of the ANC who sit on that committee. Most of them would have rose in parliament. Your Presiding Officer in that committee, Whips in that committee and other members.

CHAIRPERSON: Oh, well I wanted to say do they go into – do they become eligible to be part of that committee by virtue of certain positions they hold in parliament?

MR MANTASHE: No, the ANC decides who sits in the committee.

20 **CHAIRPERSON:** Oh.

MR MANTASHE: But others are eligible because of the roles.

CHAIRPERSON: Okay.

MR MANTASHE: You cannot have a political committee that does not involve Presiding Officer.

CHAIRPERSON: Yes, okay, okay.

ADV FREUND SC: Yes. But the political committee would be chaired by the Deputy President and amongst its other members would be ministers, is that correct?

MR MANTASHE: Others are ministers.

ADV FREUND SC: Some would be ministers. Would some of them be chairs of portfolio committees?

MR MANTASHE: Yes.

ADV FREUND SC: And I think you have mentioned the
10 Chief Whip.

MR MANTASHE: The Chief – the whips and the Presiding Officers.

ADV FREUND SC: And the presenting (sic) officers, I will come back to that in a moment. The DCJ just asked about the Speaker, would the Speaker also be party to that or not?

MR MANTASHE: That is the Presiding Officer.

ADV FREUND SC: It is the presenting officer. Now if you could explain to me ...[intervenes]

MR MANTASHE: Well the job of Presiding Officer is job of
20 the Speakers and MA and Chairperson of the NCOP.

ADV FREUND SC: Right. So the Speaker of the National Assembly or the Chair of the NCOP would be regarded as presenting officers to the political committee.

MR MANTASHE: They are not Presiding Officers to the political committee.

CHAIRPERSON: Yes, they are [inaudible – speaking simultaneously]

MR MANTASHE: They are Presiding Officers in parliament.

CHAIRPERSON: Yes, the Speaker presides in proceedings of the National Assembly.

MR MANTASHE: Yes.

CHAIRPERSON: That is why she is calling Presiding Officer.

MR MANTASHE: Yes.

10 **CHAIRPERSON:** And the Chair of the NCOP presides in proceedings of the NCOP.

MR MANTASHE: Correct.

CHAIRPERSON: And the two houses form parliament.

MR MANTASHE: Yes.

CHAIRPERSON: Therefore the two officers are called Presiding Officers of parliament.

MR MANTASHE: Yes.

ADV FREUND SC: Yes, I am sorry, I misheard you, I thought you said presenting officers, I now realise you said
20 Presiding Officers, is that correct?

MR MANTASHE: Presiding Officers.

ADV FREUND SC: Right. So they would also be members of this political committee.

MR MANTASHE: Yes.

ADV FREUND SC: And what I also wanted to clarify is this,

that that committee on issues of political controversy would be the structure that would be giving guidance or instructions or advice at least as to what positions the caucus should adopt and the MPs should adopt, is that right or is that wrong?

MR MANTASHE: Politics are controversial by their nature so I do not know what you will regard as controversy.

ADV FREUND SC: Well, let me take the controversial out.

MR MANTASHE: Politics are controversial generally.

10 **ADV FREUND SC:** Let me accept that a lot of politics is controversial but I am trying to characterise the role of this committee.

MR MANTASHE: It coordinates political work of the ANC in parliament.

ADV FREUND SC: Yes, now what does that mean?

MR MANTASHE: Including intervening on issues of conflict in parliament so that not all the time when there are issues they will run to Luthuli House. Parliament must deal with its problems there in parliament.

20 **ADV FREUND SC:** Right. Including taking decisions on what should happen in certain parliamentary structures.

MR MANTASHE: No, those decisions are taken by either structures of the ANC or by caucus.

ADV FREUND SC: So would be an example of the sort of issue that would go to the political committee?

CHAIRPERSON: If there is tension between the Speaker and Chair of the NCOP would that be the kind of issue?

MR MANTASHE: The cabinet will intervene in that situation.

CHAIRPERSON: Yes.

MR MANTASHE: Facilitate a resolution.

ADV FREUND SC: Well, but I asked for an example.

MR MANTASHE: I want you to ask what you want to ask.

CHAIRPERSON: If there was to be – if there was a political
10 issue or debate that is maybe national, that is attracting the
attention of a large section of the nation or the nation and it
appeared as if maybe different people or members of
parliament are speaking in the media about this issue in
different ways and would that be the kind of thing that the
political committee would say look, come here all of you, on
this issue, this is the line, or what?

MR MANTASHE: That problem, if government members,
cabinet members, talk at cross purposes, that is a
presidential issue.

20 **CHAIRPERSON:** Okay.

MR MANTASHE: It is the cabinet of the President who must
deal with that.

CHAIRPERSON: Yes, yes. But if it were to be an ANC
issue, then it could.

MR MANTASHE: It depends where it happens.

CHAIRPERSON: Okay.

MR MANTASHE: If it happens in parliament.

CHAIRPERSON: Ja.

MR MANTASHE: Government would have responsibility over it.

CHAIRPERSON: Okay.

MR MANTASHE: If it is a general ANC problem, the ANC structures here have the responsibility.

CHAIRPERSON: Okay.

10 **ADV FREUND SC:** Well, let me ask this question. We have started to deal – and we are going to deal in more detail shortly with the ever-increasing crescendo of allegations in relation to Guptas, state capture, improper influence and we are going to be looking, not only through your evidence but the Commission more generally, at the way in which parliament responded to that. Now is that the sort of issue in your judgment that you would expect to be taken to and considered and addressed and resolved by the political committee or not?

20 **CHAIRPERSON:** No, if there is something happening in energy, the portfolio committee on energy will deal with it. If it happens on transport, the portfolio committee on transport will deal with it. It is a parliament issue, it is not an ANC issue.

ADV FREUND SC: Yes. But if the political issue of the day

is allegations that people outside of state structures are exercising improper influence over leadership figures inside state structures in order corruptly to benefit themselves – I mean, this is a political issue of the utmost importance and I am trying to understand how the ANC decision-making process would take place on the question of how to address and in particular from the perspective of parliament.

MR MANTASHE: The decision-making process of the ANC are very clear, they go to the NWC, go to the NEC and the
10 NEC take decisions.

ADV FREUND SC: And can you tell us whether in the first quarter of 2016 either the NWC or the NEC considered and addressed the allegations of state capture which were then widely circulated?

MR MANTASHE: Yes.

ADV FREUND SC: And what did they, if anything, do about that?

MR MANTASHE: The first thing was to do investigation and the Secretariat's office was given that responsibility.

20 **ADV FREUND SC:** Alright.

MR MANTASHE: That will open that, they will come forward, let us have a discussion, what are the issues. I am saying we had a total of eight submissions, and those submissions, we said give us in writing, people did not give us in writing only Mr Masako gave it to us in writing.

Then we resolved that listen, quite clearly there is suspicion in the ANC people do not want to do anything that is career limiting, or they fear being persecuted, they do not want to give submissions. Then we said we are giving you the right to go to an independent and seek questions of State.

ADV FREUND SC: Now, let us just place on the record the facts that a well-known and put this conversation we are having in context. Now BC Jonas's statements, where
 10 he claims to be offered rights by the Gupta's to do certain things if he accepted a certain position, it is allegations of bribery.

Barbara Hogan's public statements, that what was now being alleged and surprise, for reasons which she then gave. Those were allegations made by senior members of the ANC structures, and they were allegations of serious consequence if they were true, do you agree?

MR MANTASHE: One of the things that was sensitive between the ANC is to have a description of senior and
 20 junior to leaders of the ANC, we do not do that because it pays false superiority, let us start from there.

Of the eight, Jonas was one of them he did not give us a written statement. He came to the Commission, we welcome that because we said go to independent institutions and he chose the Commission and we

welcomed that, because there was no faith in the processes in the ANC for him as a senior member of the ANC.

ADV FREUND SC: Now, you have told the Commission earlier this morning, maybe early this afternoon, that you lack powers to compel testimony and I am sure that your right when you say that. You cannot subpoena people, you cannot force them to testify, you cannot subject them to interrogation unless they consent to it. But that is not true
10 of Parliament, is it? Parliament has those powers.

MR MANTASHE: Yes, when I was Secretary General I was not running Parliament, Parliament has all these institutional mechanisms of forcing people to do things to summon people and all that. In the ANC, we are a voluntary organisation we do not have those powers.

ADV FREUND SC: Right, I understand that but there have been suggestions and allegations in the evidence before this Commission. That within the caucus of the ANC, in this period there was amongst a significant number of the
20 MP's apprehension and concern that if they were to pursue investigations in relation to these allegations through the Portfolio Committees, for example, they would be seen as disloyal to the party, and they would be exposing themselves to career prejudice.

Would that be a legitimate position for them to hold

or not?

MR MANTASHE: No, actually what you want me to do is to figure out the feeling of a colleague, I cannot figure that out.

CHAIRPERSON: Well I think, I am not sure if that is what he seeks to establish Mr Mantashe, but I think he may be asking whether to the extent that they may have been ANC MP's who felt like that, whether you would think that they had proper grounds to feel like that.

10 **MR MANTASHE:** No, the reason I cannot imagine their feelings it is because there were no such a directive from the ANC.

CHAIRPERSON: Well, that is important, ja.

MR MANTASHE: So on the basis of that fear that it will be seen as is something that, I must battle to assume because there is no such a directive in the ANC.

CHAIRPERSON: So you saying the ANC had not done anything or said anything that should have made anybody feel like that.

20 **MR MANTASHE:** No, no, the ANC has not done anything and told nobody to fear anything.

CHAIRPERSON: Ja.

ADV FREUND SC: Were you aware that a motion was put in Parliament in September of 2016 by an opposition party, that there should be an *ad hoc* Committee to investigate

these allegations of State Capture and corruption, specifically linked to Gupta's, the need to summons them and other related persons and that on mass, the entire ANC caucus voted against that.

MR MANTASHE: A motion is put by the opposition and it was voted by the ANC caucus.

ADV FREUND SC: It was opposed by the ANC caucus. In other words, there is an opportunity for the exercise of the Parliamentary powers that the ANC caucus says, no.

10 **MR MANTASHE:** I want to understand this.

CHAIRPERSON: Yes, a motion of – a certain motion, note of no confidence, a certain motion is put before the National Assembly, to say the National Assembly should resolve that an inquiry...[intervene]

ADV FREUND SC: An *ad hoc* Committee should be appointed to do an inquiry to these allegations.

CHAIRPERSON: Ja, an *ad hoc* Committee should be established of Parliament to investigate certain allegations relating to the Gupta's and when the voting takes place on
20 that motion almost all members of the ANC vote against that motion. I think that is what he is talking about.

ADV FREUND SC: That is what I am talking about, I am asking whether you even knew of that.

MR MANTASHE: I do not know if I knew about that because processes in Parliament were not run from Luthuli

House where I was stationed.

ADV FREUND SC: Well, yes and no, when there was a vote of no confidence motion you very much interfered or very much influenced that.

MR MANTASHE: Coming to that, ask a direct and I will answer to it. The vote of no confidence come to it directly so that I can give you an appropriate answer. Parliament take decisions in caucus, they execute them. They do not phone Luthuli House can we do this, they discuss and
10 assess the risks themselves, take decisions themselves.

ADV FREUND SC: Now, I apologise if I interrupted you a moment ago.

MR MANTASHE: I will come to the vote of no confidence if you want that.

ADV FREUND SC: I am coming to that, there were a series of votes of no confidence, I think some eight that were put in President Zuma, not all of which were pushed all the way. We have all the details, dates, and so forth but in the circumstances, I do not think it is necessary to go
20 through all of that.

And my personal impression as an outsider watching this, is that initially, they really had very little prospect of being taken seriously but as time went by, particularly as one moved into 2016 and 2017 there was more and more political pressure.

But from the South African public frankly for these votes of no confidence to be seriously considered on their merits, because many people took the view that there was substance in the complaints that were being raised.

Now my question to you arising from that is whether you agree that that was factually correct and if you do agree, why was it that you felt it appropriate, essentially to instruct caucus not to support such votes of no confidence?

10 **MR MANTASHE:** I deal with that in my introductory comments, that removal of a certain President of the ANC is very serious matter. Some party called ATM has two members in Parliament is having a vote of no confidence against Cyril Ramaphosa, the sitting President.

That is what we are dealing with every day. That was they simply think that they can put a motion of no confidence, we will go for an assumption option, we will pull the polls over the ANC, kill it, and hope that things will go well in future. Our attitude is that the issue of a sitting
20 President is a political matter, it is a party matter because if you destroy that pillar of the organisation and of the government, you are going to find many issues you will deal with as consequences.

I told you that one time the ANC itself recalled a President and all the Ministers had resignation letters in

their hands because that President appointed them to cabinet until the incoming President had to say stay put, well let us have a discussion and re-appointed them.

So we take it serious the issue that we can just by vote of no confidence by the opposition fire a sitting President and have no options to look at. We take it serious, but it is one area that within that it is mischief that we should resist all the time.

And I went to Parliament and told members of the
10 ANC do not vote for a removal of a sitting President, nine ANC members voted with the opposition, nine of them. Who they are we do not know, know only one, Makotsi Kotze.

The only reason that we know that she did that is because after doing that she went public in the media that I voted against the ANC, which was ill-discipline in itself, because it is a secret ballot that will go ahead and nine voted with the opposition. We did not go to investigate who that nine is because we said okay. There is only one instance, where members of the ANC were allowed to
20 follow their conscience in voting. It was when we had three Parliamentarians who voted against abortion in legislation, they were allowed by the ANC to follow their conscience on the basis of religious consciousness and understanding they were allowed.

In things like this, of removing a President, the ANC

will do everything in his power not to split this process, because we're going campaign to go to parliament on a list of the ANC. Now everyone that arrive there they become individuals will have no party. If a person thinks that he is bigger than the ANC, that person must feel to leave the ANC, we fill that list because we are a party in party political system.

ADV FREUND SC: Now I understand the political problems that can arise of a vote of no confidence in a
 10 President. The first and most obvious one is that that President must set aside. The second is that when the vote of no confidence is in the President, it follows that the cabinet must resign.

But what then follows, of course, is the governing party, the ruling party selects another President and that President appoints a cabinet. So it is not an impossible situation. I accept it is a serious situation not to be unlikely but surely, if there are substantial grounds, it is an if - there are substantial grounds that justify the concerns
 20 about the President, it is the appropriate thing to do.

MR MANTASHE: The ANC has the experience more than any party they removed two certain presidents out of its own followship because there were issues, so that let's take that decision. The difference is that when the ANC does that it looks into all the consequences and the

realities, talk to that President and absorb the tensions and go ahead and do that and understand what we are going to do. But if we can open Presidents of the ANC to be sitting ducks that opposition party must come with a vote of no confidence and therefore they are gone. I can assure you Mr Chairperson if there is another vote of no confidence now I will go to Parliament and say it is unacceptable to remove your own president on the basis of a vote of no confidence.

- 10 **CHAIRPERSON:** Well let's talk about that Mr Mantashe. Do you see no tension as the party when for argument sake let us say the – an opposition party that has put forward a motion of no confidence in the president of the country, who is President of the ANC, has advanced, let us say for argument sake and for now I am not talking about any particular person or any particular president just think for argument sake has put in grounds for that motion that a plausible, you see no attention in the instruction from the ANC to a member of the ANC who is a member of
- 20 parliament to say thou shall no vote in support of this motion. In circumstances where that member may believe or believes that it is in the interest of the country, the Republic, remember the oath of office that they take, that now in the light of all the grounds that had been put forward leave out that they have been put forward by an

opposition party, I believe there are two that this President should be voted out of office, you believe that there is no attention between that instruction and the oath of office?

MR MANTASHE: As the Secretary General who runs a party I will know that we allow a free vote on a vote of no confidence we will deal with a crises immediately, that is what we will be hunting for.

Let me give you the behaviour of political activists. If the majority of the ANC members go and vote for the
10 removal of their president it does not fall logically that they can put another one and have a president, it doesn't follow logically, because it will create tensions in the party, such that an opposition may nominate somebody in retaliation ...[indistinct] of that opposition and have an opposition president. All those consequences are analysed in the party, because we are running a party and the party contest elections and the party goes to government and that party elects a president who is voted in Parliament by its members and other members but any call for the ANC to
20 fire its second President because ...[indistinct] call them ANC because when those opposition parties do not remove their leaders who are nowhere to be seen even in Parliament, but they have a guts of saying to the ANC fire your president.

CHAIRPERSON: But what if ...[intervenes]

MR MANTASHE: It is a political issue Mr Chairperson I am saying.

CHAIRPERSON: Ja.

MR MANTASHE: It is not just a superficial technical legal issue, it is a political issue.

CHAIRPERSON: Yes.

MR MANTASHE: You collapse your party and hope that it will survive, that's the option of your ...[intervenes]

CHAIRPERSON: I understand that. Notionally it ought to
10 be possible to have a situation even with the context of a motion of no confidence in the President to have a situation where what is in the interest of the ruling party or government party, the majority party, might not be in the interest of the Republic, based on your – based on your answer it seems to me that you may be saying it will always be against the interest of the governing party or its members to vote on the basis of how they see the interest of the Republic in that context.

MR MANTASHE: That – you know that question has been
20 put to us 101 times.

CHAIRPERSON: Yes, yes.

MR MANTASHE: Is it the ANC first or the country first.

CHAIRPERSON: Yes, yes.

MR MANTASHE: And I am saying it is the country but we are in that government of the country to the ANC when I

am standing ...[indistinct] I have a responsibility to keep the ANC intact for it to have the vibrancy and the capacity to govern.

Now you can take it that it is not in the interest of the country to just destroy the ANC now and you ask me to cooperate in that because it is in the interest of the country to destroy the ANC, obviously it will be a huge call for any ANC member to destroy the ANC because he thinks it is in the interest of the country. You are exercising your
10 right in government through the ANC, until what the judgment has given us, the constituency system and other things maybe at that point there may be serious consideration, but at this point in time we are having a political system that is a party political system.

Now if you say the ANC, and I am sure this call will never be made to any other party, it can only be made to the ANC, and you say to the ANC go and break your pillars, kill yourself, you will wake up again, you are a strong party. We will know that is not real and that is why we go
20 to the election every five years to test if we still have that support, but we go to those elections every five years, once we are elected people will oppose that and they come, they tell us that listen fire this president of yours and collapse your structures and you agree to that politically it will be a disaster.

That is why the alternative is that when there is a big ...[indistinct] the ANC must be able to take a decision to recall its president.

CHAIRPERSON: H'm, h'm. No that I think up to a certain point I can understand a situation where the ruling party says if there is a feeling amongst members of Parliament, whether it is only opposition party members or a mix the person should go if they are voted no confidence. We are reluctant that a president of the ruling party who is
 10 president of the country should be removed in that way at the insistence of an opposition party, but that would – the difficulty would be mitigated if the party would then put in motion a process to establish whether there are real grounds on the basis of which the President should be removed, in which case then if its own processes show that there are proper grounds and it can either do that internally or it can itself if it were to see fit, put in the motion so that the motion doesn't come from the opposition party, in which case it has done its own work, it knows that
 20 removing the president is not going to cost any huge problems in the party. I am saying ...[intervenes]

MR MANTASHE: No, even when the party does it, it causes problems, you know when we removed the President for the first time we had 37 ...[indistinct] in Parliament of a party called COPE reflecting disagreement

on that action, and we had 37 sets in Parliament that were not in the ANC, that was the first massive decline of the ANC in Parliament. We did it for the second time and those ...[indistinct] happened but ructions within the party is reflective of the importance of a certain president being removed, I can tell you with my eyes closed you allow an opposition party to say remove your president and you remove that president there will be a massive split in the ANC and collapse, it is ...[indistinct] option and I am
 10 saying it is bad of the ANC to take the ...[indistinct] option, it may have been good for ...[indistinct] to collapse those pillars because it was in the hands of the enemy but to collapse pillars around yourself deliberately is a disastrous decision.

CHAIRPERSON: But you see as I see it then your difficult, or the position you take the problems that you say would arise if the President of the country, the President of the ANC is removed when an opposition party has put in a motion of no confidence and that is supported by the ANC
 20 would still occur even if the ANC removes that President without – outside of Parliament and without an opposition party, just as you say it happened when you – the ANC removed this for the first time there was COPE, you say the second time there was no party that was created, but the problem would still arise even if there is no opposition

party involved and the question that arises for me is your concern as the ruling party about the challenges that are going to – that may arise if the president is removed, even if he is removed or she is removed by the party itself, those problems might put the party in a situation where it cannot act against actions or wrongdoing that it should act against because it is scared that those problems will arise and as long as the party is seen by its own members that it cannot act because it is scared of a splinter party and what
 10 else, then those who might be involved in wrongdoing feel that they are not under any pressure.

MR MANTASHE: No, ...[indistinct] Mr Chairperson.

CHAIRPERSON: Sorry?

MR MANTASHE: We will ...[indistinct] that price ...[intervenes]

CHAIRPERSON: Yes, yes.

MR MANTASHE: And with experience, we understand what we are encouraged to do, I hope this Commission is not doing that, is that leaders of the ANC must be at the mercy
 20 of anybody, and therefore we do not have an ANC, and I am saying as a party head in my bigger part of my life taking that decision will be cutting your nose to spite – to spite your face.

That is ...[intervenes]

CHAIRPERSON: Those who know English will tell us.

MR MANTASHE: Yes you are telling the world that we are holier than thou, we are good, you are correct and the consequences of that you will destroy your party. Now and I am saying that advice we take it with a pinch of salt from whoever it comes from because difficulties of dealing with leadership of the ANC I was telling somebody I said if the ANC would charge me today [indistinct] a decision [?] but if you go and cheat the President of the ANC the consequences will tell you that you have committed suicide
10 so you committed suicide.

The difference when the ANC does it at least there is an internal discussion in the ANC on the reason for that action. When people are not convinced you see a hope. When people understand even if they say ja nee they limp on but problems creep into the organisation. So any advice that says we must allow the opposition to just take a resolution that we are going to compare them on the principle the ANC via him. If you say we must accept that as normal policy I can tell you now it is a bad advice you will be given.

20 **CHAIRPERSON:** Well if it – for me it is – this discussion is very important.

MR MANTASHE: Yes.

CHAIRPERSON: Mr Mantashe so because it is important for one to understand what the challenges are within the ANC when people who are outside may be expecting it to deal

with certain situations in a necessary manner.

But let me ask that attitude on the part of the party to say members of the ANC must not vote in support of a motion of no confidence put in by – tabled by an opposition party because of the challenges that you have identified it does not apply – does it apply – it does not apply I assume to other decisions it is just the issue of the motion of no confidence in the President? Or maybe also motion of no confidence in the Cabinet because I think the constitution
10 applies it.

MR MANTASHE: In many decisions as the MP's are allowed to think and take decisions but there are decisions that are actually cutting at the cut of the butter. Those decisions are political and the party must take political decisions.

CHAIRPERSON: So – so is my understanding then of your evidence correct that you are saying a motion of no confidence in the President or any decision in Parliament that would result in the removal of the President or it could be an impeachment as opposed to motion of no confidence
20 that is something special on that the political party will intervene saying this is the direction insofar as voting is concerned for its members but for other decisions generally speaking the party leaves that to its MP's to think, apply their minds and make decisions?

MR MANTASHE: In [indistinct] in applying their mind. That

is where the importance of a caucus is. That ANC members must pursued each other to a particular direction. And agree on a decision – I am agreeing on the decision.

That is important if you run a party in the system that we are having of a political party system because if your political party is falling apart you will not make the impact in the system. So you have a responsibility as Secretary General to ensure that that party is kept intact if there are contradictions deal with those contradictions within the
10 structures of the party.

But if you take contradictions out and you play with 00:04:55 that is why the worst thing that can happen is that always happens with the ANC is when ANC members go out public and attack each other in public. It is the worst thing that happens with the ANC because we know that when that happens it has no chance of strengthening the ANC.

It will only weaken the ANC and splinter it into small factions and can collapse and the opposition that is encouraging us to take the [indistinct] option will smile from
20 end to end.

CHAIRPERSON: Just to follow up on when you say – when you talk about the discussion at caucus in the caucus among ANC members and where you say there is members of the ANC must try to pursued one other and agree you are not saying are you that for example members of the ANC in

different political – in different portfolio committees are obliged to only articulate in their respective political – portfolio committees decisions as taken at caucus and they are not free to take their own views or are you saying it depends on the issues?

MR MANTASHE: Chairperson the ANC is a political party. It has policies. It develops them over a long period in a very long process. People who go to Parliament on the ANC list first and foremost understand those policies. They go there
10 on the basis of executing at the implementation of those policies. That is the first thing.

And therefore on policies matters as policies of the ANC that have gone through the policies and you are a Parliamentarian to promote this policy because that is what is in your manifesto.

CHAIRPERSON: Yes.

MR MANTASHE: That is the policy that you use to win votes.

CHAIRPERSON: Yes.

20 **MR MANTASHE:** Therefore that the point is that MP's must understand the portfolio [indistinct] first of the ANC they must understand policies of the ANC and those policies must guide Parliamentarians. If there is something unique out of this world that comes they have a duty to go to caucus and discuss and actually try to get views on a number of issues.

And I can give you many examples of those issues that come and almost divide us and we have to intervene and say no engage and one day you must just wear something that will not make worse or recognise you go to the caucus of the ANC and you see how robust that caucus is because that caucus is not a question of just brushing each other, force each other to do those things. It is robust, people engage, people think and people pursued and that is what we are saying is the starting point. But these free votes on certain
10 issues maybe yes but I am saying ...

CHAIRPERSON: On policy matters the position is (inaudible)

MR MANTASHE: To the policy of the ANC you see.

CHAIRPERSON: Ja, ja.

MR MANTASHE: On political matters that affect directly the heart of the ANC we cannot allow a free for all.

CHAIRPERSON: But certainly I would imagine I guess – I guess the policy of the ANC is clear on corruption – no corruption.

20 **CHAIRPERSON:** Yes it is clear.

CHAIRPERSON: And therefore there should be no debates about any member of the ANC in their portfolio committees taking a strong stand against anything that looks like corruption.

MR MANTASHE: Yes.

CHAIRPERSON: Ja okay alright. Mr Freund.

ADV FREUND SC: Thank you. I do not want to take this particular debate much further but just a few points arising. Mr Mantashe are there not situations where there can be a conflict between the interest and the party and interest of the nation?

Put it differently when a MP takes an oath of office to respect and promote the constitutional values and interests of the nation and I am paraphrasing is it not so that that MP
10 actually is duty bound to apply that MP's own mind to where do the interests of the nation lie? And are there not situations in a corruption scenario where if the party is not removing the President it is quite appropriate to say my judgment call is that the interests of the nation and the constitutional values require me to support such a vote. Do you – do you wholly reject that argument?

MR MANTASHE: Mr Chairperson I am in Parliament now for three years – for three years yes.

CHAIRPERSON: That is not very long experience compared
20 to others.

MR MANTASHE: That is a very short experience.

CHAIRPERSON: Ja.

MR MANTASHE: But I am looking forward to a day where any opposition party displays its roots. I never had that experience even on straight forward issues where there is a

budget vote that has been agreed in the portfolio committee. Budget changes that will vote against that budget vote and opposite party without fail vote against that budget vote. That is why we will sometimes have a sense that there is an effort to divide the ANC instead of towing to principles that must apply across the board.

Why should it be ANC MP's were encouraged to vote as they like but I have never seen even when I was SG [indistinct gradually was to open channel 8 to Parliament I
10 have never seen opposition parties splitting their votes.

And my own is that if you talk about those principles let us talk about principles that cut across and not have principles and policies that are directed at a government but there must be principles that cut across.

CHAIRPERSON: I think – I think in terms of logic Mr Mantashe I think you would agree in terms of logic that there must be situations where the opinion of one or more members of Parliament let us leave out whether they are ANC or what they are might be that the interests of the
20 Republic dictate that they should vote in a certain way on a certain matter and voting in a certain way or voting in that way might not be what the party from which they come would like or might not be seen by the party bosses as being in the interest of the party. I – talking out about the principle leaving out whether it is ANC or whatever party my thinking

is that you would accept that proposition.

MR MANTASHE: The – in principle.

CHAIRPERSON: Yes.

MR MANTASHE: I agree with you.

CHAIRPERSON: Yes.

MR MANTASHE: That is why when there were nine members of the ANC.

CHAIRPERSON: Yes.

MR MANTASHE: That voted for the removal of the
10 President.

CHAIRPERSON: Yes.

MR MANTASHE: Would they investigate, would they...

CHAIRPERSON: Yes.

MR MANTASHE: We only suspect.

CHAIRPERSON: Ja.

MR MANTASHE: Which would be so and so and so and so.

CHAIRPERSON: Ja, ja.

MR MANTASHE: So it has happened to the ANC.

CHAIRPERSON: Ja.

20 **MR MANTASHE:** It has happened to the ANC

CHAIRPERSON: Yes okay.

MR MANTASHE: But the point I am making is that how do you come to that determination on the issue because I think we should demystify the feeling that what is in the interest of the ANC is against the interest of the state? Who must...

CHAIRPERSON: You state or nation or Republic or – ja.

MR MANTASHE: Ja you must demystify that. But the ANC has no interests of the Republic it has its own interest. I think we must demystify that. That is why coming to that determination even on issues that has been in the interest of the state it should come through a process of discussion in the party as other parties will do. Now the point I am making is that I think there can be no assumption made that anything that is needed by the ANC is understated.

10 **CHAIRPERSON:** Ja, no, no. It cannot be.

MR MANTASHE: Okay.

CHAIRPERSON: It cannot be. But I think because you answered the question the way you answer it in terms of the principle positively that should enable Mr Freund to see if he wants to take it further.

ADV FREUND SC: Well Chair given the time of night I was really proposing to move to a different question but of course once there is – once the principle is established.

CHAIRPERSON: Ja.

20 **ADV FREUND SC:** Then the legitimacy of a party member voting in accordance with that party's – with that member's assessment of the interest of the nation I want to put to you for your comment is not as you called it the worse betrayal but in fact the execution of the member's duty – duty to the country, duty as a Parliamentarian, duty in terms of the oath

of office of a Parliamentarian.

MR MANTASHE: I agree on an ANC list you have a duty to strengthen that ANC that you are in the list of. You are not a free rider or a – in a free range that because you are in Parliament there [indistinct] of the nation if you are a free rider you can do as you wish. You are on a party list. I know of parties in Parliament that fires its MP's at the slightest provocation if they do not do what the party says. I know of them.

10 We are not going to bring them here but there are a few instances where we saw good Parliamentarians kicked out of Parliament because they defy a party on a frivolous matter.

 All I am saying is that as you do that you must appreciate that you on the ANC list, you are in Parliament, you are expected to respect the constitution and all the obligations that go with that as a MP but you are not a free rider.

 You are not in a free range where you do as you like
20 otherwise if that advocates will help us we would not have caucuses. Political parties have caucuses because they appreciate the political party system that puts them together into that Parliament.

ADV FREUND SC: Chair I do not propose to take that line of questioning any further.

CHAIRPERSON: Ja.

ADV FREUND SC: Unless you wish me to.

CHAIRPERSON: Yes, no, no that is fine.

ADV FREUND SC: I want to try and wrap up on this present line of questioning which as it were a chronological line of questioning. And I want to just explain to you certain evidence that the commission has heard and then I am going to ask you to comment on it.

The commission has heard evidence that certain
10 opposition members attempted to pursued certain portfolio committees, investigate certain allegations, corruption, state capture and the like and could not get the – could not get those committees to agree to investigate so it is alleged.

Secondly there has been evidence that we referred to earlier today of an attempt in the National Assembly to ask a motion to establish an ad-hoc committee to investigate these allegations of state capture rejected.

That takes us to about September of 2016. In June of 2017 Mr Frolick who was the Chair of Chairs in Parliament
20 wrote letters to four portfolio committee Chairs saying these allegations should now be investigated in your committees as a matter of urgency. That is the background that I want to explain to you.

Now the question is this do you have any knowledge as to why having resisted up until September 2017 – 2016

Parliamentary efforts to investigate these things all of a sudden in May and June of 2017 there is an about face – there is whole new position adopted within ANC members of Parliament, do you have any insight into that?

MR MANTASHE: I can only answer that question by describing it. That hence you do not go and instruct portfolio committee to do things other than to take decision. But if the opposition party moves a motion if there is no [indistinct] to pursue anybody the ANC must instruct its members in
10 portfolio committees to support that motion. That is my understanding of the essence (inaudible) the opposition move a motion that they must (inaudible) insight. I do not know the things.

ADV FREUND SC: Yes but let us assume for the purposes of the question we accept that the ANC until a certain position – oh sorry are you still answering? I have interrupted.

CHAIRPERSON: Yes you can continue.

MR MANTASHE: I want to say Chairperson (speaking in
20 vernacular).

CHAIRPERSON: You will have to say that in English so Mr Freund hears.

MR MANTASHE: (Speaking in vernacular) that means you sit on mouth as I talk.

ADV FREUND SC: I am sorry. I apologise.

MR MANTASHE: You see the point I am making is that we have taken MP's in portfolio committees they come across various issues, they apply their minds, they take decisions okay. Now it does not follow automatically that if opposition moves a motion it must be supported. Members of Parliament where as that portfolio committee will meet and think and take it a decision. It is ironical that there is an experience that the [indistinct] to start them to accept that notion.

10 But the ANC must not tell its MP's not to vote in a particular way that is a – that is a contradiction in terms – serious contradiction in terms.

My understanding of how the policy works I think all opposition parties pays Jackson Mthembo and how we are related to them. For only one reason he understood the value of walking, go to political party and explain a proposition and then move to the next one and try to reconcile decision.

20 Opposition parties do not have that opportunity they do not do that. Even if there is a good motion they are hoping to [indistinct] to supporting that. There – it does not work that way they must get out of their offices, go to other political parties including the ANC to speak to them that listen we have this motion, this is the purpose of this motion and convince the ANC.

By the time there is a formal motion you have done your work. Jackson Mthembu may his soul rest in peace was a master of that you see and in that way he made a lot of progress in difficult areas because outside of the formal processes he went to [indistinct] and pursued them to support a position. Opposition parties must appreciate their responsibility to pursue other parties to their position.

CHAIRPERSON: Well based on what you have said except in respect of a motion of no confidence in the President.

10 Based on what you have said in regard to portfolio committees and how members of the ANC are supposed to take part and vote I am getting the impression that you are saying that members of the ANC must apply their minds to what is before them and take decisions on the basis of the merits or demerits of what is before them. So I ask the question whether it is seen as a bad thing within the ANC for an ANC member of Parliament to in a portfolio committee for example to go along with proposals from an opposition party if he or she thinks they have merits.

20 **MR MANTASHE:** ANC MP's have agreed with opposition parties on [indistinct].

CHAIRPERSON: Okay.

MR MANTASHE: But the tendency is when they happen to disagree with a particular motion then the voice goes up loud of the ANC this ANC that.

CHAIRPERSON: Using his security.

MR MANTASHE: Because with his almost blackmailing the ANC into accepting anything that comes from the opposition without applying its mind.

CHAIRPERSON: Okay.

MR MANTASHE: And I think if that can change we will have a happy life in Parliament.

CHAIRPERSON: Okay. Mr Freund.

ADV FREUND SC: I think you may have misunderstood what
10 I was trying to enquire about when I contrasted the position in September 2016 with the position in mid-2017. I am not focussing on ANC suggestions – I mean on retracted I am not focussing on opposition, proposals or motions or anything of the like because the decision to start these investigations in Parliament in June of 2017 did not come from the opposition it came from the ruling party.

It came according to the evidence of Mr Frolick from instructions that he received which I am not entirely sure who was party to the creation of those instructions but they –
20 he said included the then Speaker Baleka Mbete the then Chief Whip Jackson Mthembu but I have the impression and others as well so the evidence that we have from an ANC MP who actually issued this – these sets of letters says I was told that I should now convey to these portfolio committee – yes they should commence these investigations.

This is quite alike what had happened before that in 2012/2013/2016 nothing like that had ever happened before. But in mid-2017 the ruling party seems to have taken the initiative to say we need through Parliament to investigate these allegations and they are not new allegations they are allegations that have been around a long time.

My question to you is whether you have any knowledge that explains why at that time the ruling party took that initiative and if you do why it did not take a similar
10 initiative much earlier?

MR MANTASHE: I was not part of that decision. I can only make an assumption that earlier it looked into the question and came to a different conclusion. Then they may – life evolved and conditions developed and made an analysis came to a different conclusion. Now it is an assumption.

ADV FREUND SC: I hear you it is an assumption.

MR MANTASHE: I have no facts, I do not know what you are talking about but if you take a particular decision and later you take another decision life has evolved and therefore the
20 situation is in front of you have changed and you come to a different conclusion.

ADV FREUND SC: Chair that completes that line of examination. What remains to be traversed is the content of Mr Magashule's affidavit which has been adopted by Mr Mantashe and then expanded upon on certain issues by Mr

Mantashe.

Those issues are of fairly considerable importance and they are not all simple issues. Now I am in your hands as to how you wish to deal with that. I can try to deal with it fairly quickly this evening or we can recognise that perhaps we are tired and that we need to set aside an evening or whatever on another occasion or I could start it and see how far I get but I am just indicating to you now at ten to eight that I am now going to turn to that question.

10 **CHAIRPERSON:** Have you got an estimate of how much time they would need if they were to be done properly?

ADV FREUND SC: You know Chair.

CHAIRPERSON: Or fairly properly.

ADV FREUND SC: I can only answer this way. When...

CHAIRPERSON: Taking into account my own interventions.

ADV FREUND SC: Leaving that aside Chair. When this particular session was first contemplated it was contemplated to deal only with one question which was the considered position of the leadership of the African National
20 Congress as represented by our senior office bearer on – to what extent it was accepted, there were need for improvements on parliamentary oversight and what would be best forms for that type of improvement to be. And of course, there are some related issues which are things, like, close lists and constituencies and there are all sorts

of other related issues. And when that was contemplated, I personally thought that would be day's evidence. So one answer to your question is, it is a day's evidence.

One might take a different view. One might say, actually, these documents speaks for themselves because we have explored with other witnesses many, but not all, of the issues and if we have the affidavits and we have them and they are confirmed under oath by Mr Mantashe, he may take a view it is not necessary but your question, I am
10 afraid, is a bit like the question, how long is the stream?

CHAIRPERSON: Ja.

ADV FREUND SC: I could easily take a day but if you tell me I have got ten minutes, I will do it in ten minutes.

CHAIRPERSON: H'm. I know you have been standing there for a long time and I know that Mr Mantashe has been dealing with questions the whole day. Maybe what we should do... Well, I would imagine that it should be possible to do justice to them without going beyond two hours. Is my assessment ...[intervenes]

20 **ADV FREUND SC:** I think that can be done.

CHAIRPERSON: Yes.

ADV FREUND SC: Let me put it the other way around.

CHAIRPERSON: Yes.

ADV FREUND SC: If you say to me: Mr Freund, do it in two hours.

CHAIRPERSON: Ja.

ADV FREUND SC: Do what you can in two hours.

CHAIRPERSON: Ja.

ADV FREUND SC: I will take two hours.

CHAIRPERSON: Because I am thinking that maybe we should adjourned and then we try and find an evening during April because I want to try and avoid oral evidence that goes into May. I have already allowed the President to go into May. So if we find an evening when
10 Mr Mantashe comes. If he came at five o'clock, we should be done by seven o'clock. Then we are done.

ADV FREUND SC: H'm.

CHAIRPERSON: So I think that is what we should do. Mr Mantashe, does that sound fine with you?

MR MANTASHE: I agree.

CHAIRPERSON: Ja, ja.

ADV FREUND SC: I certainly have no difficulties. I support this.

CHAIRPERSON: Yes, yes, okay. No, I think let us do it
20 that way. So let us adjourn then for the day. Thank you, Mr Mantashe and thank you to the ANC's legal team and thank you Mr Freund and your team and the staff of the Commission and the technicians that we have been able to work right into the evening to try and finish the work of the Commission.

For the benefit of the public, I must just mention that tomorrow I will hear evidence from Mr Nkwinti, the former Minister. That is the witness for tomorrow. So, otherwise then, an arrangement will be made for when Mr Mantashe will come back to complete his evidence. Thank you. We adjourn.

INQUIRY ADJOURNS TO 15 APRIL 2021