

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

29 JUNE 2021

DAY 419



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 29 JUNE 2021

REGISTRAR: Good morning

AMBASSADOR CWELE: Yebo. Yes Hi.

REGISTRAR: Do you take the – I am well, how are you Ambassador? Do you take the oath or the affirmation Sir?

AMBASSADOR CWELE: I take the oath.

REGISTRAR: Thank you Ambassador. I am informed the DCJ that you are ready to begin – waiting for him to log on now – DCJ is logging in now.

10 **CHAIRPERSON:** Good morning Mr Pretorius, good morning everybody.

ADV PRETORIUS SC: Morning Chair.

ADV SEMENYA SC: Chair good morning.

AMBASSADOR CWELE: Good morning Chair.

CHAIRPERSON: Good morning, good morning. I am terribly sorry about this delay. There have been challenges from my side. I understand there were some challenges of a technical nature but my Registrar who normally helps me is not well and did not come to assist me today but I only
20 saw her message about ten minutes to ten. So when I have nobody I cannot make a move – I cannot do anything technologically. So – so I have needed to try and see how I am going to manage so that is why there has been this delay. But we – we can start now. Good morning Ambassador Cwele.

AMBASSADOR CWELE: Good morning or good afternoon Deputy Chief Justice. I am not sure which one to [?].

CHAIRPERSON: Well you see because it is English you have got to think about whether it is morning or afternoon and if you are in another country where it is afternoon and I am in a country where it is morning it gets confusing. But if you used Zulu then you would not bother about whether it is morning or afternoon.

AMBASSADOR CWELE: Sawubona – Sawubona.

10 **CHAIRPERSON:** Sawubona Ambassador.

AMBASSADOR CWELE: Sawubona Chief Justice.

CHAIRPERSON: Okay all right. Thank you for availing yourself – thank you. All right Mr Pretorius – okay no Mr Pretorius you want to start?

ADV PRETORIUS SC: Thank you Chair. Your connection is not consistent so we having difficulty hearing you. You freezing occasionally.

CHAIRPERSON: Is that so?

ADV PRETORIUS SC: Yes. But let us – let us continue and
20 I will let you know if it is such that we need to take a break for some technical assistance.

CHAIRPERSON: Yes. There is some – there is somebody – there is a technical person from the court who I think he might have left now but he is going to come back so that he is available to assist me from this end if there are technical

glitches. So let us continue but obviously any glitches that can be fixed from somewhere else it can be fixed from somewhere else and that would be helpful.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: If the glitches are not from this end.

ADV PRETORIUS SC: Chair the witness set down for today as we now know is Ambassador Cwele. He is testifying remotely from China so there is a time difference but we – on your direction will try and finish by one o'clock our time
10 which is well within the Ambassador's capacity in China. May the Ambassador be sworn and then I can just outline what documents and files should be before you Chair.

CHAIRPERSON: Okay no that is fine. My acting Registrar will administer the oath or affirmation. Registrar please do that.

REGISTRAR: Ambassador

AMBASSADOR CWELE: Yes.

REGISTRAR: Could you please state your full names for the record.

20 **ADV PRETORIUS SC:** Doctor Siyabonga Cyprian Cwele.

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

AMBASSADOR CWELE: No, no objection.

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

AMBASSADOR CWELE: I do.

REGISTRAR: Do you solemnly swear that all 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.

AMBASSADOR CWELE: So help me God.

REGISTRAR: Thank you excellent.

CHAIRPERSON: Thank you very much – thank you very much. Okay Mr Pretorius.

10 **ADV PRETORIUS SC:** Thank you. Chair you should have before you a number of bundles. The principle bundle prepared for the Ambassador's evidence is SSA Bundle 05. It is Exhibit YY19. It comprises just on 800 pages.

CHAIRPERSON: I have got it.

ADV PRETORIUS SC: And then in addition you should have before you Exhibit PP1, PP2 and PP3.

CHAIRPERSON: I have got them.

ADV PRETORIUS SC: And then SSA Bundle 2A and 2B.

CHAIRPERSON: I have got them.

20 **ADV PRETORIUS SC:** We probably will not need those to the time available but they should be available for you.

CHAIRPERSON: Okay no that fine. I have got them. Let us try and see if we can finish by one o'clock but if we have not done justice to the issues we – we could use a little bit of time after lunch and hopefully maybe we will not

need more than thirty minutes but let us play it ear and see how it goes and let us just do the best we can. But of course we want to – the bottom line is that the issues should be dealt with properly.

ADV PRETORIUS SC: Understood Chair. Ambassador

ADV SEMENYA SC: Chairperson might I just place myself on record. I am appearing on behalf of Doctor Cwele.

CHAIRPERSON: Oh I – I thought I saw somebody but I did not have enough time to see who it was. That is why I
10 asked whether Ambassador Cwele was legally represented
you - I am sure you did not hear. Okay that is – that is
Advocate Ismail Simenya SC. You representing
Ambassador Cwele.

ADV SEMENYA SC: Indeed Chairperson.

CHAIRPERSON: Okay no thank you very much – thank you. Okay, all right. Let us continue then. Mr Pretorius.

ADV PRETORIUS SC: Ambassador I understand that you were Minister of State Security during the period September 2008 to May 2014, is that correct?

20 **AMBASSADOR CWELE:** That is correct Sir.

ADV PRETORIUS SC: And prior to that you were Chair of the Joint Standing Committee on Intelligence. Do I understand the position correctly?

AMBASSADOR CWELE: That is correct I was the Chairperson.

ADV PRETORIUS SC: Yes. Ambassador we would like to deal today with certain categories of evidence that have already been led. The first of which is the fate of the contemplated investigation or the actual investigation into the Gupta brothers that originated within the State Security Agency at the time.

As you will know from the evidence of Messrs Shaik and the others who testified they became aware of a report in a Sunday National newspaper to the effect that one
10 Fikile Mbalula had reported to the ANC NEC of certain matters that had occurred involving him and the Gupta's in relation to his appointment as the Minister of Sport before it occurred. You are aware of that series of incidents are you?

AMBASSADOR CWELE: If I am correct they said in 2012 – 2011.

ADV PRETORIUS SC: Yes 2011 is the date given.

AMBASSADOR CWELE: I have heard of that from their evidence.

20 **ADV PRETORIUS SC:** Right. Now they Messrs Shaik, Njenje and Maqethuka discussed that incident and determined that it is a matter that should have or should be investigated and you are aware of their evidence in that regard. I am not going to detail that evidence simply to put on record by way of preparatory information for questions

to follow that this decision was taken by the three senior officials within the SSA, correct?

AMBASSADOR CWELE: I have read that in their evidence Chair.

ADV PRETORIUS SC: Right. There was another reason for them having decided to conduct an investigation and that was the report received by them from a foreign agency that the Gupta's intended to purchase a Uranium Mine and there was a concern about that.

10 **AMBASSADOR CWELE:** Are you asking question? I have – I have seen that in their evidence. I was not aware of it.

ADV PRETORIUS SC: Right. Now to get to your own involvement in these issues is it correct that you summoned the top 3 persons we have just mentioned to your offices?

AMBASSADOR CWELE: No that is not correct Chair. The correct version is that if you have read my statement it was not in 2011 as they claimed that they had a super 00:13:08 in 2011. It was in 2010. It was in 2010 as I have put it I
20 called Mr Njenje to my office in Cape Town which is Deputy and to come and explain what I have discussed as I have said with my deputy – with his deputy in his absence. Because I first requested to hear from Njenje about these allegation of interception at monitoring – yes.

ADV PRETORIUS SC: Well who told you about

interception?

AMBASSADOR CWELE: I have put in my statement. It was a DDG of Njenje – DDG of Domestic branch what was called NIA then.

ADV PRETORIUS SC: Was he communicating directly with you in relation to investigations?

AMBASSADOR CWELE: No. As I have said my first interaction with the Gupta's – I first met them in the ANC fund raising dinner in Durban. That was somewhere
10 between the 20th and the 24th of September 2010 when we have National – General Council of the ruling party. That was a fund raising dinner of the ruling party. I have explained what happened in my presence in the DP – if you want me I can go into details. But what worried me was the allegation of intercepting a person.

ADV PRETORIUS SC: Yes please explain to the Chair.

AMBASSADOR CWELE: I called Njenje and I was told he was on leave.

ADV PRETORIUS SC: Before we get there if I may
20 interrupt you Ambassador Cwele.

AMBASSADOR CWELE: Ja.

ADV PRETORIUS SC: The 00:14:40 communication about an alleged interception came directly from a subordinate of the head of the SSA to you. You were communicating directly with him about operations, correct.

AMBASSADOR CWELE: I was communicating directly because Mr Njenje was alleged to be on leave at that time.

ADV PRETORIUS SC: All right.

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: What was the communication about?

AMBASSADOR CWELE: I was – I wanted to communicate first with Njenje. I was told he is not around, he is leave for that week.

10 **ADV PRETORIUS SC:** And what did you want to communicate with him about?

AMBASSADOR CWELE: I wanted to ask whether they were conducting any interception and to these people or the so called Gupta's as they alleged and he did say yes we are. I asked him, did you have the direction of the Judge? He said, no they were instructed by the top 3 which was the top management.

ADV PRETORIUS SC: So are you saying now Ambassador that you – someone told you that there was in fact an
20 interception.

ADV PRETORIUS SC: That is what happened in that first meeting yes.

ADV PRETORIUS SC: Who told you that?

AMBASSADOR CWELE: Unless – it is the DDG for – for Domestic Branch what was called MIA then. Unless you

want me to disclose the name.

ADV PRETORIUS SC: (Inaudible)

AMBASSADOR CWELE: He was the DDG of Mr Njenje.

ADV PRETORIUS SC: Right and according to your evidence he told you directly that there was an interception – what interception was this?

AMBASSADOR CWELE: Not for 00:16:37.

ADV PRETORIUS SC: (Inaudible) interception tape.

AMBASSADOR CWELE: It is the interception –
10 interception of communication.

ADV PRETORIUS SC: Right that is not clear from the evidence that we have on your affidavit but we will come back to that in a moment. You then – how did it come about that the top 3 met with you in Cape Town in your office?

AMBASSADOR CWELE: I then requested the DDG to come with his director which was Mr Njenje when he comes back from leave. But instead of him coming with the DDG he came with these other top 3 people in the meeting in
20 Cape Town.

ADV PRETORIUS SC: Right.

AMBASSADOR CWELE: So I see most of the statement they are saying I summoned them especially Mr Shaik. I never summoned Mr Shaik to that meeting. I never asked even – I do not know what they mean by summon to come

to that meeting. I never asked him. I never asked Mr Maqethuka to come. I asked for Mr Njenje and his deputy.

ADV PRETORIUS SC: Now – Ambassador it is not necessary to debate the difference between summoned and called but as I understand it you called Njenje and his deputy to your office in Cape Town.

AMBASSADOR CWELE: Yes that is correct. Yes Sir.

ADV PRETORIUS SC: You then had a meeting pursuant to that with the top 3.

10 **AMBASSADOR CWELE:** That is correct.

ADV PRETORIUS SC: Right. That meeting I think it is common cause on the papers was a tense and confrontational one

AMBASSADOR CWELE: You know Chair about tense but I was enquiring about whether they had the direction of the judges. You know, if you want to intercept a person as a Minister who is responsible for oversight one of the responsibilities is that I must make sure that they act within the law. If somebody is alleging interception and a
20 direct – a Deputy Director General says, no they did not have the direction of a judge that worried me a lot. Because those things have happened in the past. Those bad incidences.

ADV PRETORIUS SC: Yes well – Ambassador the three persons besides yourself who attended the meeting are all

at one that this was not discussed at the meeting but let us just clarify it was quite permissible for the SSA to conduct an investigation.

AMBASSADOR CWELE: It is. It is permissible.

ADV PRETORIUS SC: Correct.

AMBASSADOR CWELE: I had no problem with investigations.

ADV PRETORIUS SC: And you had ...

AMBASSADOR CWELE: The problem I had was
10 investigating without a direction of a judge.

ADV PRETORIUS SC: Yes and well the question is, did you communicate to the three at the meeting that firstly an operational decision to conduct an investigation was a decision that they made and were authorised to make without any interference from your part. Was that clear to them?

AMBASSADOR CWELE: I made it clear as I said the meeting lasted too long Mr Pretorius. We started in the early evening it finished in the early hours of the morning.

20 **ADV PRETORIUS SC:** No the question is a simple one. Was it made clear to them Ambassador firstly that any operational decision to conduct an investigation.

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: And I stress the word investigation was theirs to make.

AMBASSADOR CWELE: It was clearly put to them.

ADV PRETORIUS SC: And they were free to make ...

AMBASSADOR CWELE: And I will try and explain so that you understand. I was one who called the meeting. I am the one who also concluded the meeting. After listening to all the stories I made it clear that if you believe that there is some wrongdoing by any person we are authorised by law to investigate and even intercept that person.

ADV PRETORIUS SC: Yes well that is not stated within
10 your affidavit Ambassador.

CHAIRPERSON: Mr Pretorius let him finish. Let him finish Mr Pretorius.

ADV PRETORIUS SC: Yes Chair.

CHAIRPERSON: I think he has not finished his answer.

AMBASSADOR CWELE: I said – I made it clear after listening to all the discussion particularly from Njenje because it was Njenje who was answering. That I had no problem with them doing any investigation but it must be done in terms of the law. If you are intercepting a person
20 you must have a direction of the judge. It is put there in my statement.

2. The other problem I also had because there were many things emanated in that meeting was the issue of conflict of interest particularly by those director – Deputy – particularly in concerning Njenje in this matter. I will

explain later in details why I said so.

I clearly remember saying, when we employed you we asked yourselves to – and the 00:22:02 to stop all business operation we were doing because we were coming to this environment. But I was disappointed now that he was conducting businesses and he was also investigating people in relation to his personal interests in those businesses. Those were the things I put at the summary. I did say also that as I said at no stage I said they must stop
10 the investigation. I said go and get a direction from a judge because if it is true there is no judge who will refuse you – the direction from the allegations they were putting. There were many allegations they were putting and I was convinced that it would be easy for them to get a direction from the judge.

ADV PRETORIUS SC: Yes. You are aware of the fact that the three persons besides yourself you attended that meeting deny that there was any discussion about interception. Yes Chair. DCJ you are on mute. Can you
20 hear?

CHAIRPERSON: Okay can you hear me now? You can – (bad audio).

ADV PRETORIUS SC: For part of when you were apparently talking Chair you were on mute but even when you unmuted you were still not audible.

CHAIRPERSON: Okay can you hear me now?

ADV PRETORIUS SC: We can hear you now.

CHAIRPERSON: Okay all right. I was saying earlier on that there were a few seconds when my connection stopped and I did not hear what the Ambassador was saying. I wanted him to go back so that I do not lose anything of importance. I had heard some part and then I think there may have been about maybe 20 seconds or so. Or maybe – Ambassador do you want to just summarise your last
10 answer. I did hear that you – I did hear that the fact that you said you called the meeting, Njenje was the one who was answering most of the time. You made it clear to them that they were entitled to investigate if they wanted to investigate but you had a problem with the – with them intercepting people’s communications without the directive of a Judge but you made it clear to them that otherwise they could investigate. You also – I heard you also say that there was an issue of conflict of interest on the part of Mr Njenje and you remember having told him when you are
20 – when he was appointed that he should make sure that there was no conflict of interest. If I have – If I have heard everything of importance in what you said they can just tell me the parts that you think I did not hear.

AMBASSADOR CWELE: Ja the las part I said when we employed Mr Njenje other – everything is correct Chair.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: We told him he must stop his business interests.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: Because he could not do business while he is in charge of State Security.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: And he agreed. Same thing was said to Moshe but in this respect I said I was then
10 disappointed in that meeting after the discussion – lengthy discussion that there was – he was still pursuing some business mining in business and – and they now using the same people who are his business partner to intercept them. I said that is wrong. It should not happen because that is a conflict of interest. That is why we spend a lot of discussion on that but I summarise it like that at the end
Chair like you are correctly putting it.

CHAIRPERSON: Okay no that is fine. Mr Pretorius I said earlier on if we go into after lunch maybe thirty minutes but
20 we can go even to three if it becomes necessary.

ADV PRETORIUS SC: Thank you Chair. Well –

CHAIRPERSON: Did you hear me Mr Pretorius?

ADV PRETORIUS SC: I am just going to go as far as I can in the time allotted and any decision will be yours Chair.

CHAIRPERSON: But – but I – I want you to use your own

judgment whether you are able to do justice to the issues. You must tell me when you think there is need for more time otherwise we are not going to be able to do justice to the issues because the bottom line.

ADV PRETORIUS SC: Absolutely Chair.

CHAIRPERSON: Ja – the bottom line is that we must do justice to the issues.

ADV PRETORIUS SC: Ambassador there were two issues discussed at that meeting so far at least according to your
10 evidence. The first issue was the injunction from yourself that if there was to be an interception of communications it should be done according to the law. In other words a judge's directive should be obtained. Correct?

AMBASSADOR CWELE: Yes. That is correct.

ADV PRETORIUS SC: Now the version of the three persons concerned is that there was no such discussion at that meeting.

AMBASSADOR CWELE: I am not sure what is their version but I called the meeting and that was the reason.

20 **ADV PRETORIUS SC:** All right.

AMBASSADOR CWELE: I – that is the first thing I put when I – that is why I was saying Mr Chair the constraint I have I put this in my several statement I do not have access to these documents. I do not have access to the records of those minutes because the record of those

minutes will clearly indicate and if I remember correctly some of the- that meeting was recorded. So we have asked for these minutes and – but I called the meeting about this alleged interception. That was the main reason I called.

ADV PRETORIUS SC: Yes we have heard your version Ambassador.

AMBASSADOR CWELE: The issue of business interest arose while we were discussing the issue of interception.

10 **ADV PRETORIUS SC:** I will come to the issue of the business interests in due course.

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: But as I understand it the conclusion on your evidence was that they were perfectly authorised, entitled to continue with the investigation provided if there was an interception to be conducted that would be done with a judge's approval in terms of the legislation. Is – do I understand the position correctly?

AMBASSADOR CWELE: That is correct.

20 **ADV PRETORIUS SC:** There would be therefore no need for them to take further steps by going directly to the President to reverse any negative decision that you had communicated to them. They could just simply go back to Johannesburg or Pretoria and continue the investigation. Correct.

CHAIRPERSON: It looks like

ADV PRETORIUS SC: We have all frozen Chair.

CHAIRPERSON: Well you are not frozen but I think the Ambassador is. I do not know whether the technicians will do anything. I think the technicians will – will – should work on it. Registrar are you able to get hold the technicians and see if they are working on it. Zonaka. It looks like she cannot hear me.

ADV PRETORIUS SC: Now the problem maybe one in
10 China Chair.

CHAIRPERSON: Oh – oh ja maybe.

ADV PRETORIUS SC: Or somewhere between.

CHAIRPERSON: Ja. I wonder whether – one second. Is he back? He is on his way. Zonaka can you hear me now?

REGISTRAR: Yes I can DCJ.

CHAIRPERSON: Are you able to get hold of the technicians to check whether it is a problem in China or on our side?

REGISTRAR: I will do.

20 **CHAIRPERSON:** Maybe Mr Pretorius maybe we should use this time when they are attending to the technical problems to take the tea break.

ADV PRETORIUS SC: Okay there – the Ambassador is back but Ambassador you are on mute.

AMBASSADOR CWELE: I am back Chair. It was an

internet connection that was the problem.

CHAIRPERSON: Oh (inaudible).

AMBASSADOR CWELE: Ja it was an internet connection.

CHAIRPERSON: Oh okay all right. Okay. Let us continue. Well if he is back let us continue we will take it quarter past eleven.

ADV PRETORIUS SC: Let us just recap Ambassador. There were two issues discussed at that meeting according to the evidence. The one was the investigation into the
10 Gupta's and any interception that might be involved in that investigation and the other was the conflict of interest as you describe it in relation to Director Njenje. In relation to the first issue as I understand it the conclusion of the meeting was that the SSA officials at the highest level were perfectly entitled and authorised to continue with the investigation provided that if there was to be any interception of electronic communications that would be done with the approval of a judge in terms of the Regulation – in terms of the legislation. Is that the
20 position?

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: That being so there would be no need for the top 3 to go over your head to the President in relation to their concern that the investigation was being halted.

AMBASSADOR CWELE: I was not aware that they went to the President. I only read that later. They never informed me that they went to President.

ADV PRETORIUS SC: Yes.

AMBASSADOR CWELE: But they had the rights – they used to meet the President without me anyway.

ADV PRETORIUS SC: Yes. Well Ambassador the only point I am making is that there was no need – if they were concerned there was no need for them to be concerned
10 about the investigation and their ability to continue the investigation. There was no need to address the President on that issue. Correct.

AMBASSADOR CWELE: No according to me there was no need. I was not even aware that they went to see the President on that issue.

ADV PRETORIUS SC: Right.

AMBASSADOR CWELE: But as I have read your statement they did not see the President only on that issue.

20 **ADV PRETORIUS SC:** Well let us deal with the second issue.

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: And that is the conflict of interest issue. Was your communication to Njenje that unless and until he seized his personal business interests or

terminated his personal business interests he could not conduct the investigation.

AMBASSADOR CWELE: No. I did not expect Mr Njenje to be involved in business. At the end while he said yes I will tell you it was about the mining company, the business. And at the end he said no he was not directly involved it was somebody who was holding his shares in that company who was directly involved. But I said even if you are not directly involved now that you are involved in that company
10 and we are then investigating your people, your business partners you cannot use state security resources to investigate your dispute you have with your business partners. That is what I said.

ADV PRETORIUS SC: But did you see his personal business affairs as being a hurdle or obstacle to the continuation of the investigation as such?

AMBASSADOR CWELE: No.

ADV PRETORIUS SC: And did you communicate it?

AMBASSADOR CWELE: It was his behaviour which was a
20 problem because eventually he said, no he was not directly involved. But it was him who was explaining how this relationship with the mining company how Gupta's got the stake in their companies and all sort of those things.

ADV PRETORIUS SC: Well ..

AMBASSADOR CWELE: At the end when I was saying but

– but I asked you not to be involved in business he say no I was not directly involved. I had my business partner who was doing these things for me. I said but why were you even dealing (inaudible) your business partners here – businesses.

ADV PRETORIUS SC: All right. On that issue there was nothing to preclude the investigation from continuing.

AMBASSADOR CWELE: No. No.

ADV PRETORIUS SC: All right.

10 **AMBASSADOR CWELE:** As I have said the investigation on what they alleged they were investigating I said any judge will easily give you a direction to do that investigation.

ADV PRETORIUS SC: Okay so again there was nothing that you communicated to them on your version at that meeting that would have required them to go and have a discussion with the President in relation to the continuation of the investigation.

20 **AMBASSADOR CWELE:** No except that I did express my great displeasure that they were doing business and at the same time they were part of the state security but there is nothing else which I said, yes.

ADV PRETORIUS SC: All right. So in a word the investigation as far as you are concerned at that meeting could continue without hindrance.

AMBASSADOR CWELE: I had no power. What I said should not happen. I want to be clear. What I categorically put should not happen is to intercept any citizen without following the legal prescripts of asking a judge. That one I put it very clear that it should happen. When it is our problem with investigation going on anyway that is why I encourage them to go to the judge if they want to continue with interception and get the direction.

ADV PRETORIUS SC: So as I understand your evidence
10 now is that you actually encouraged them to continue with the investigation.

AMBASSADOR CWELE: At no stage I stopped the investigation.

ADV PRETORIUS SC: No, no you put a positive spin on the – on your attitude.

AMBASSADOR CWELE: I said

ADV PRETORIUS SC: To an extent to go ahead – you get the directive from the judge.

AMBASSADOR CWELE: I said

20 **ADV PRETORIUS SC:** You have encouraged the – I am sorry Ambassador.

CHAIRPERSON: Hang on. You are both speaking at the same time. Okay.

ADV PRETORIUS SC: If I can just finish my

CHAIRPERSON: Question okay.

ADV PRETORIUS SC: I understand your evidence Ambassador you actually encouraged them to continue with the investigation amongst other things to go and get the directive from the judge.

AMBASSADOR CWELE: I am not sure I did say that if they continue with the investigation they must get the direction of the judge. I did say to them in my view there was going to be no difficulty from any judge from the reason they were giving me to grant them that direction.

10 **ADV PRETORIUS SC:** Yes. Well I am...

CHAIRPERSON: What – what was their response to this difficulty you said you had about this part of their investigation namely interception of somebody's communications without the judge's directive?

AMBASSADOR CWELE: Ja. Their story changed Chairperson their response was that no actually they were not doing interception. The DDG misinformed me. They were just doing 00:40:41. Not interception that was their response. But I said if they want to continue with any
20 interception they must go and get a direction of the judge.

CHAIRPERSON: So at the meeting you said to them you are understood that they were engaged in interception of communications and you wanted to know whether they had a directive from a judge permitting them to do that. And in response they said they were not doing interception they

were doing – I think did you say scoping – I am not sure?
Is that the sum total of their response?

AMBASSADOR CWELE: Ja. Like environmental scanning.

They were just scoping ja.

CHAIRPERSON: Ja. Okay.

AMBASSADOR CWELE: Ja. Let me – that is fine. Ja.
They said the DDG who informed me that they were
intercepting was wrong. And I asked them why did you not
bring him to the meeting because I requested you to come
10 with him. They said no they thought they would bring the
senior people. But they were denying that they were
intercepting but they were just scoping. Yes.

CHAIRPERSON: And scoping does not need a judge's
directive I guess.

AMBASSADOR CWELE: No.

CHAIRPERSON: Oh okay. And what was your response to
this? When they said this was that the end of this
discussion about interception or not?

AMBASSADOR CWELE: It ended when I asked them why
20 they did not bring the DDG who informed me that – who in
actually because that was the word from that DDG.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: And then they were invasive to
that answer, no we thought we should come as senior
leaders. But I did not ask Mr Maqethuka to come to the

meeting. I did not ask also Mr Shaiks to come to the meeting because the matter was with the SSA. Yes. It was really domestic bribes which was – yes.

CHAIRPERSON: Yes. Would this discussion about interception have been right at the beginning of the meeting more or less?

AMBASSADOR CWELE: It was – it was the first thing Mr Chairperson. I was chairing the meeting.

CHAIRPERSON: Yes.

10 **AMBASSADOR CWELE:** I told them I have had this meeting. I told them about the incidents what happened in the ANC fund raising dinner. The meeting I had with the Deputy Director General and what he said. And I asked them to respond. I asked Mr Njenje to respond to that.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: That is correct.

CHAIRPERSON: Okay. Mr Pretorius continue.

ADV PRETORIUS SC: Chair it is eleven – oh yes. I presume you take the short adjournment at eleven fifteen?

20 **CHAIRPERSON:** Ja.

ADV PRETORIUS SC: Ambassador the version and you are aware of this of the three – the top three is that at no stage during that meeting did any discussion about interception and the lawfulness of interception take place at this point.

AMBASSADOR CWELE: I have not seen that evidence. I have read all their statements so Chair unless you can highlight to me.

ADV PRETORIUS SC: No they –

AMBASSADOR CWELE: What is – what – yes.

ADV PRETORIUS SC: They do say or it is said that the – there was no discussion about interception. I can give you the reference if you like but you can – you can rest assured.

10 **AMBASSADOR CWELE:** Okay that is not true. That is not true. That was the first question they have to answer. That was the first thing I put to them.

ADV PRETORIUS SC: The second point of difference is that they concluded from that meeting that you did not wish the investigation and I stress investigation to continue.

AMBASSADOR CWELE: No that is not correct Chair.

ADV PRETORIUS SC: All right.

AMBASSADOR CWELE: I think I have explained that Chair.

20 **ADV PRETORIUS SC:** All right. And because of the conclusion that they drew they found it necessary to meet with the President and actually asked you or told you that they were going to do so.

AMBASSADOR CWELE: No they never asked me and I was not aware that they went to the President.

ADV PRETORIUS SC: Yes. But as I understand your evidence there would have been no need to complain about any attitude that you took to the President.

AMBASSADOR CWELE: I cannot speak about that – that will be their own judgment.

ADV PRETORIUS SC: Ja well I (inaudible).

AMBASSADOR CWELE: According to what I have said. I was not expecting – as far as I am concerned there was no need to go to the President.

10 **ADV PRETORIUS SC:** Right.

AMBASSADOR CWELE: On that matter.

ADV PRETORIUS SC: Yes. Would you accept that even if Mr Njenje was conflicted he denies it but even if he was that would not preclude the SSA from continuing with the investigation. Correct.

AMBASSADOR CWELE: No he never denied it Chair.

ADV PRETORIUS SC: Well...

20 **AMBASSADOR CWELE:** As I have said the meeting took I think from about half past six until about one or two in the morning.

ADV PRETORIUS SC: Ja. Ambassador the question is that...

AMBASSADOR CWELE: So he did not deny the conflict of interest.

ADV PRETORIUS SC: No he denied a conflict of interest.

He did not deny his business interest but I do not want to debate that with you at present. What I want to put to you is that even if there was a conflict of interest as understood by yourself that would not preclude the SSA from continuing with the investigation, correct.

AMBASSADOR CWELE: It should not preclude them from continuing with the investigation Chair.

ADV PRETORIUS SC: Right. He did...

CHAIRPERSON: Sorry Mr Pretorius. The two of you may
10 be speaking at cross-purposes. I think what the Ambassador wants to say and he must tell me if I misunderstand him. He wants to say to do with the question of whether Mr Njenje denied the conflict of interest at that meeting whereas I understand Mr Pretorius to be saying either at the hearing (bad audio) evidence before the commission which I think or you may have been speaking at cross purposes. Mr – Mr Ambassador do you want to comment on this?

ADV PRETORIUS SC: Chair you became inaudible once
20 again for a great deal of what you said so perhaps you could repeat it.

CHAIRPERSON: Yes okay. Let me check whether the Ambassador can hear me now.

AMBASSADOR CWELE: I can hear you now Chair.

CHAIRPERSON: Can you hear me? Okay all right.

AMBASSADOR CWELE: Ja I can hear you.

CHAIRPERSON: I will – yes I was saying to

AMBASSADOR CWELE: You are cutting.

CHAIRPERSON: Me that Mr Pretorius (Inaudible).

ADV PRETORIUS SC: Chair you are inaudible again or at least the connection is not relaying your ...

CHAIRPERSON: What I am saying. Okay. Can we take the tea break – can you hear that part?

AMBASSADOR CWELE: Ja we can hear that.

10 **CHAIRPERSON:** Oh okay can we take the tea break

ADV PRETORIUS SC: That is perfectly audible Chair.

CHAIRPERSON: Okay all right. Let us take the tea break until twenty five past and then the technicians can attend to the problem that we are having. Okay thank you. We adjourn.

AMBASSADOR CWELE: Thank you.

INQUIRY ADJOURNS

INQUIRY RESUMES

20 **REGISTRAR:** The Chair is ready... [speaker unclear – distortion present]

CHAIRPERSON: [No audible reply]

REGISTRAR: DCJ, can you hear us?

CHAIRPERSON: [Speaker unclear – distortion in video link] Registrar, I am here now.

REGISTRAR: Thank you, Mr Chair.

CHAIRPERSON: Can you hear me?

REGISTRAR: Yes, I can.

ADV PRETORIUS SC: Yes, we can hear you.

CHAIRPERSON: Can everybody hear me?

ADV PRETORIUS SC: Very clearly, Chair.

CHAIRPERSON: Okay, thank you very much. Let us continue. We – I have got somebody to attend to technical glitches from this side now. So, let us hope -if there are any problems, they can be sorted out quickly. Okay,
10 alright. Let us continue, Mr Pretorius.

ADV PRETORIUS SC: In the meeting that we had been discussing, at least as far as we are concerned, this morning, or, as far as you are concerned, this evening. Is it correct that you told Njenje that he could not use state resources to pursue private interests?

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: And you also said that in communicating this to Mr Njenje, you were discharging your responsibility as Minister to prevent the abuse of
20 state resources?

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: The implication of that is, that unless and until Mr Njenje abandoned his private interests, the investigation could not continue.

AMBASSADOR CWELE: No.

ADV PRETORIUS SC: State resources were being used for an improper purpose, as I understand what you said.

AMBASSADOR CWELE: I did direct him. You remember, I told you that at the beginning, there was an agreement that they will abandon any business interests. I showed disappointment that there was some link to business interests. I knew that ...[intervenes]

ADV PRETORIUS SC: Yes, it was ...[intervenes]

AMBASSADOR CWELE: ...the investigation.

10 **ADV PRETORIUS SC:** Yes. Well, it is more than disappointment on your version. And for the record, I am referring to SSA-05 at page 720, paragraph 74 and SSA-05, 720 at paragraph 35. The import of those statements was that the investigation was an abuse of private resources which had to be stopped and that was the reason for your intervention.

AMBASSADOR CWELE: Yes, I did say the abuse of the state resources was not acceptable. I still maintain that, but I did not say the investigation into the Gupta matter on
20 whether they alleged their investigating must stop.

ADV PRETORIUS SC: Well, you said that Njenje could not use state resources to pursue private interests. In other words. The use of state resources should be halted.

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: ...investigation.

AMBASSADOR CWELE: No. I did not say the investigation. I am saying. Him pursuing his business interest and competing with his business partners when they have got conflict must stop. That one I did say must stop.

ADV PRETORIUS SC: Ja. Well ...[intervenes]

AMBASSADOR CWELE: I did not say the investigation they were conducting must stop.

10 **ADV PRETORIUS SC:** But how does one conduct an investigation without the use of state resources? Does not one follow from the other?

AMBASSADOR CWELE: No, no. You will remember, Mr Njenje was a director. He was not involved in direct investigation in this case. My understanding. But his intervention and directing people that do this investigation was wrong because they knew it was conflicted.

ADV PRETORIUS SC: As part of the SSA, he would have at least remotely been connected with an investigation
20 which used state resources.

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: And you say that the use of state resources should be halted for as long as those private interests existed. That is your evidence.

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: Okay.

CHAIRPERSON: Okay. I am sorry. Can I understand this? Was your position, Ambassador, at that meeting that the investigation which was – which required the use of state resources should stop until such time that what you regarded as the conflict of interest had ended, had been terminated?

AMBASSADOR CWELE: No ...[intervenes]

CHAIRPERSON: What was the position? What had to
10 stop?

AMBASSADOR CWELE: The – what had to stop was what was alleged to be interception without a direction. The two – what had to stop was Mr Njenje to continue doing business interests while he is still in the State Security Agency.

CHAIRPERSON: Now the issue of interception.

AMBASSADOR CWELE: H'm?

CHAIRPERSON: You said that they had said to you they had not been – they had not conduct – they were not
20 conducting any interception.

AMBASSADOR CWELE: Yes.

CHAIRPERSON: And the matter ended when – that issue ended when you asked them why they had not brought along the DDG who had told and then they said to you: We thought it should just be the senior three who should come

to the meeting. You said that is where that issue ended?

AMBASSADOR CWELE: That is correct.

CHAIRPERSON: And you said that was quite early in the meeting because that was the first issue you raised.

AMBASSADOR CWELE: That is correct.

CHAIRPERSON: Okay. Now, why would you have said that should stop, the interception, in circumstances where they had said there has been no interception and ...[intervenes]

10 **AMBASSADOR CWELE**: [speaker unclear – distortion in video link]

CHAIRPERSON: ...you seemed to have accepted that?

AMBASSADOR CWELE: Yes. Now, I had to – not that I had accepted that. There are two versions.

CHAIRPERSON: Ja. Yes.

AMBASSADOR CWELE: The first version was that there was interception. That is what I have heard in a meeting a week prior.

CHAIRPERSON: H'm.

20 **AMBASSADOR CWELE**: ...in the coming(?) now, was that no, there was no interception. It was scoping(?).

CHAIRPERSON: H'm.

AMBASSADOR CWELE: I thought - interception without direction of that must stop.

CHAIRPERSON: Yes. Okay. And then on the issue of the

conflict of interest. You said it was Mr Njenje who had a conflict of interest from your information. Is that right?

AMBASSADOR CWELE: Yes.

CHAIRPERSON: Now... And from what you have told me. It seems that he was not the one directly involved in the investigation or conducting the investigation. It was somebody else who – in his department. Is that correct?

AMBASSADOR CWELE: Yes, Chair.

CHAIRPERSON: So ...[intervenes]

10 **AMBASSADOR CWELE**: But ...[intervenes]

CHAIRPERSON: Yes?

AMBASSADOR CWELE: But as I have told you.

CHAIRPERSON: Yes?

AMBASSADOR CWELE: When I had a meeting with his director, Deputy Director General ...[intervenes]

CHAIRPERSON: Yes.

AMBASSADOR CWELE: ...the way instructed when I asked Njenje why he had intercepted and did not do that. He said the way he instructed by top chain.

20 **CHAIRPERSON**: Yes.

AMBASSADOR CWELE: And above him was Mr Njenje who was supervisor. Yes.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: Yes.

CHAIRPERSON: Okay. So, now why – if Director Njenje

was not the one actually conducting the investigation, other than that he may have given instructions that somebody must conduct the investigation. Why would you link the termination of the conflict of interest to the abuse of state resources? Because it was going to be somebody else conducting the investigation.

AMBASSADOR CWELE: Yes, Chair. That is correct. As I have said. The meeting did not – was not a short meeting. Mr Njenje went at length explaining this relationship with
10 Guptas.

CHAIRPERSON: H'm?

AMBASSADOR CWELE: That is what then led to me to believe in that there was a conflict...

CHAIRPERSON: H'm, h'm.

AMBASSADOR CWELE: ...in his involvement on his partner in the mining(?) and the Guptas and the Guptas trying to rob them and asking for more stakes(?) and all these things. It was then when I asked him but why are you doing this, doing this business interest while they are
20 here? Then he changed: Oh, no, no, no, no. I am not directly involved.

But he was one who was explaining in detail how Gupta – how they got the state(?) first. How the Gupta wanted their state for free. How they wanted to increase. How other people were giving them better offers. I listened

and at the end I said: Oh, right. I think you are involved in something quite funny, and I am actually worried what will happen when this thing comes in the media. Because it was clear to me from his own explanation how they got the license was irregular.

How they were then involved with these Guptas, trying to ...[indistinct] each other with shares(?). Was something funny. They were in court. It did not ...[indistinct] all those things. And I became worried
10 because when things are in court, the inquiries then come to me as the Minister. They did not go to the DG. It is by the time how do you respond to these things when they come?

So that is why the meeting took so long and my unhappiness then was that there should not be business dealing where you have clearly demonstrated you were part of this company whether direct or indirectly. Now we are busy using state resources ...[indistinct] same people yet they were business partner, yet you are in court, yet it is
20 very not very clear how you all got this license.

So those were the people which were coming to me to say: Well, these things are wrong. And I did put them to them that these things are wrong, and they must stop. But not ...[indistinct] what they were calling the investigating the Guptas for. Yes.

CHAIRPERSON: But the – as I understand you. You say you asked – you said the abuse of state resources should stop. Is that correct?

AMBASSADOR CWELE: Ja.

CHAIRPERSON: Now in the context of that investigation, what was the abuse of state resources? Was it not the investigation?

AMBASSADOR CWELE: No, the abuse of state resources, Chair, is partly(?) being investigation. I will
10 explain why I have a problem.

CHAIRPERSON: H'm?

AMBASSADOR CWELE: If you say you are the business partner of Mr Pretorius.

CHAIRPERSON: H'm?

AMBASSADOR CWELE: Now Mr Pretorius who
...[intervenes]

CHAIRPERSON: On a lighter note. I will never go into business with him. [laughs]

AMBASSADOR CWELE: [Indistinct]

20 **CHAIRPERSON:** No, no I am just being light-hearted.

AMBASSADOR CWELE: [Indistinct]

ADV PRETORIUS SC: Thankfully, I have no business, Chair.

CHAIRPERSON: [laughs]

AMBASSADOR CWELE: [Indistinct] If Mr Pretorius say

now he wants 50% of your business, but he did not contribute anything. You got this business and ...[indistinct] away(?), rogue way you got it, but he demands now 50%. And you got Advocate Semanya who is giving you five times what this person is offering you for the 50%. And I said you are involved in ...[indistinct], directly or indirectly and that should stop.

And you cannot use our own state resources to pursue your own personal business interest. That is what I
10 said. That one should stop. Not that the investigation they are conducting according what they said should stop, but then him being the DDG and using his own ...[indistinct] of business interest to instruct officials to do interception, not investigation. I did not say investigation must stop.

CHAIRPERSON: If there was good reason for an investigation to be undertaken into the Guptas ...[intervenes]

AMBASSADOR CWELE: That is correct.

CHAIRPERSON: ...and he was the director of the branch.

20 **AMBASSADOR CWELE:** H'm?

CHAIRPERSON: What do you say he should have done? Let us say he became aware that there was a good reason to launch an investigation into the Guptas. It so happened that for argument sake he had conflict of interest.

AMBASSADOR CWELE: That is correct.

CHAIRPERSON: Should he have ignored whatever there was on the basis that if I say this investigation must be undertaken I will have – I will be accused of abusing state resources because of this conflict? Or should he have said: Look, I will not conduct the investigation myself, but let me get somebody else senior, but the investigation must still continue? What should he – how should he have dealt with that if your – if indeed there was a conflict?

AMBASSADOR CWELE: Yes. If there was a conflict, it(?)
10 be very careful. He will still continue with the investigation, but he will follow the due processes of the investigation because intelligence agencies are heavily regulated.

CHAIRPERSON: H'm?

AMBASSADOR CWELE: You would not allow or direct that there must be interception without a directive.

CHAIRPERSON: H'm?

AMBASSADOR CWELE: You will make sure that the investigation, whoever, junior official or senior official who
20 is doing it, is doing it properly.

CHAIRPERSON: H'm.

AMBASSADOR CWELE: That is what I will expect. Not that he should stop the investigation.

CHAIRPERSON: H'm. But ...[intervenes]

AMBASSADOR CWELE: Yes.

CHAIRPERSON: But at what stage then, if it did it that way, the way you have explained ...[intervenes]

AMBASSADOR CWELE: Yes ...[intervenes]

CHAIRPERSON: ...leave out for argument sake the issue of the interception and getting a judge's directive, because they disputed that. They said they had not been doing that. There are different versions. But if you leave that out and you look at everything else that needed to be done to pursue the investigation. Would it have been fine for
10 him to get somebody within his department to pursue that investigation? To do all the other things that are supposed to be done and to say it is your investigation. You go ahead. You can report back to me. Would that be acceptable?

AMBASSADOR CWELE: [Indistinct]... but you must remember, Chair.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: I never said they must stop the investigation.

20 **CHAIRPERSON:** Yes.

AMBASSADOR CWELE: I said if you want to intercept, please go to the judge. And Mr Pretorius say that – I even said I believe it would be very easy to get the judge granting permission for the reason you were mentioning what he ...[intervenes]

CHAIRPERSON: Yes, yes. So ...[intervenes]

AMBASSADOR CWELE: So... And two. I did not call the meeting because of conflict of interest. Primarily the meeting was around the interception without a direction(?). Yes, the issue of conflict of interest then arose because he himself was explaining this thing how – because when I asked him about this business interest, he did explain at length.

CHAIRPERSON: H'm, ja.

10 **AMBASSADOR CWELE:** But the main purpose of the meeting was not the conflict of interest, but it did arise.

CHAIRPERSON: H'm.

AMBASSADOR CWELE: Yes.

CHAIRPERSON: You see, I understood you to say you asked them to or him to stop the abuse of resources of state resources. So, I am trying to understand at a practical level. What was his approach ...[intervenes]

AMBASSADOR CWELE: [Speaker unclear – distortion present]

20 **CHAIRPERSON:** H'm.

AMBASSADOR CWELE: Because abuse(?) – if you allege to be intercepting without a direction as a ...[indistinct] feature(?) you know ...[indistinct] That is an abuse, you see? So that we understand this abuse.

CHAIRPERSON: H'm?

AMBASSADOR CWELE: There is abuse and then the issue of conflict of interest because arose during those discussion. I then raised but why are you involved in this ...[indistinct] with these people of ...[indistinct]

CHAIRPERSON: H'm.

AMBASSADOR CWELE: And now you are claiming that they are trying to rob you of your business when he ...[indistinct] to stop the business but will not have any conflict of interest maybe you are doing your investigation.

10 It is then he said: No, I ...[indistinct] involved indirectly, not directly.

CHAIRPERSON: H'm. Mr Pretorius, do you want to take it from there?

ADV PRETORIUS SC: Yes, thank you, Chair. Your evidence today and I will put your affidavits to you in a moment, Ambassador.

AMBASSADOR CWELE: Okay.

ADV PRETORIUS SC: As I understand it, is clear, that at the conclusion of that meeting they could not – that is the
20 top three – have been any under illusion that you opposed the investigation on principle. That they continue – could continue with your approval provided if there was interception they got the say so of the judge.

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: Right. The version on paper,

however, is somewhat different, but let me just conclude that proposition with one more that you confirmed before the break and that is that there would have been no need for the top three to approach the President to reverse your opposition to or any perceived opposition to the investigation. Correct? We have established that.

AMBASSADOR CWELE: No, there was no opposition to the investigation.

ADV PRETORIUS SC: Alright. Okay.

10 **AMBASSADOR CWELE**: Yes.

ADV PRETORIUS SC: That answers the question partly. But in the passages that the judge has just been dealing with. You made it very clear in your own words to Njenje: Mr Njenje, you cannot use state resources to pursue private interests. In other words. You were saying to Njenje this investigation is being conducted for the purpose of pursuit to the private interests and you cannot use state resources to do that. That is what you are saying here. Do you want to go to the passage?

20 **AMBASSADOR CWELE**: Yes.

ADV PRETORIUS SC: [No audible reply]

AMBASSADOR CWELE: Which passage are you referring to?

ADV PRETORIUS SC: I am referring to paragraph 34 on SSA-05 at page 720.

CHAIRPERSON: Just repeat the reference, Mr Pretorius.

Bundle ...[intervenes]

ADV PRETORIUS SC: SSA-05, page 720.

CHAIRPERSON: Bundle 5? Oh, this one?

ADV PRETORIUS SC: Yes.

CHAIRPERSON: 720.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: That will be black numbers?

ADV PRETORIUS SC: Yes.

10 **AMBASSADOR CWELE:** Oh, on 20?

CHAIRPERSON: Bundle 5, page 720. Bundle 5 is the one that has Exhibit 19. Are you looking at a hard copy or electronic copy?

AMBASSADOR CWELE: I am looking at the hard copy. My 720 talks about ad(?) paragraph 82 to 94, PAN Project.

ADV PRETORIUS SC: Yes. Ambassador, we are talking about the page references in the top left-hand corner of the bundle.

20 **CHAIRPERSON:** Look at the black page numbers. You see at the top of each page there are red numbers and black numbers.

AMBASSADOR CWELE: Oh. All mine are black.

CHAIRPERSON: Ja, use the black ones. Use the black numbers.

AMBASSADOR CWELE: The left-hand side?

CHAIRPERSON: Yes.

AMBASSADOR CWELE: It says SA-05-720.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: But we will ...[intervenes]

AMBASSADOR CWELE: [Indistinct]

CHAIRPERSON: We will just say 720. We will not start from SSA when we refer to pages.

AMBASSADOR CWELE: Okay. That is correct.

10 **CHAIRPERSON:** Paragraph 34, Mr Pretorius?

ADV PRETORIUS SC: Correct, Chair.

CHAIRPERSON: Yes, okay. Continue, Mr Pretorius.

ADV PRETORIUS SC: At the bottom of the paragraph:

“I even reminded Mr Njenje that conducting private business while at the helm of the Domestic Branch was against what we had agreed before his appointment, let alone utilising state resources to pursue private interests...”

20 **AMBASSADOR CWELE:** Ja, but you must read the whole of 34, *né*? Can I read it for you?

ADV PRETORIUS SC: Well ...[intervenes]

CHAIRPERSON: Ja?

ADV PRETORIUS SC: Perhaps – even ...[indistinct] you can ...[intervenes]

AMBASSADOR CWELE: No, that is very important because ...[intervenes]

CHAIRPERSON: Ja, let him read it Mr Pretorius.

ADV PRETORIUS SC: [No audible reply]

CHAIRPERSON: Okay, read it Ambassador.

AMBASSADOR CWELE: It says:

“The meeting with Mr Makashu(?) that you are refers to in these paragraphs was indeed called by me.

10 There is a Cape Town meeting.

It is untrue that I called the meeting because of the relationship between Guptas family and former President, Mr Zuma.

I reiterate. My primary concern related to business relationship Mr Njenje was having with Gupta and his alleged instruction to institute an illegal interception of that Gupta person.

20 I requested to be furnished with a directive of the judge authorising such interception which they did not have.

I mentioned to them that they must get a direction(?) if they want to proceed with such interception as law requires.

At no stage did I ever say or suggest that they

must stop any legal operation that they were pursuing.

I even reminded Mr Njenje that conducting private business while at the helm of Domestic Branch was against what we have agreed before his appointment...”

Just reminded, you see?

CHAIRPERSON: H’m.

AMBASSADOR CWELE: “...not alone utilising the state
10 resources to pursue private interests...”

So, if you read it correctly, then you will understand what I say.

CHAIRPERSON: H’m.

ADV PRETORIUS SC: Right.

AMBASSADOR CWELE: But if you extract just a sentence, at the end, you will not understand the contents.

CHAIRPERSON: Well, let me put this – check this, Ambassador. As I recall. The evidence of the top three before the Commission was that two of them made it clear
20 that they did not think you instructed them to stop the investigation.

ADV PRETORIUS SC: Right.

AMBASSADOR CWELE: That is correct, Chair.

CHAIRPERSON: I think there is one of them, I do not know which one, who ...[intervenes]

AMBASSADOR CWELE: [Indistinct]

CHAIRPERSON: ...whose recollection was that he would had ...[intervenes]

AMBASSADOR CWELE: [Indistinct]

CHAIRPERSON: Yes.

AMBASSADOR CWELE: Yes.

CHAIRPERSON: But where they were all unanimous. It was that your stand, your position during the meeting was that you were opposed to the investigation even though
10 two of them said you did not say to them they must stop it. So, I just wanted to say. That is what they said. But I think ...[intervenes]

AMBASSADOR CWELE: Can I ...[intervenes]

CHAIRPERSON: I think you have made your position that you were not opposed ...[intervenes]

AMBASSADOR CWELE: Yes.

CHAIRPERSON: ...to the investigation. And actually, as far as you are concerned, they could carry on the investigation as long as they did it in a lawful way.

20 **AMBASSADOR CWELE:** Yes.

CHAIRPERSON: And of course you have talked about the conflict of interest. Is that right?

AMBASSADOR CWELE: That is correct, Chair. May I assist the Chair?

CHAIRPERSON: Ja.

AMBASSADOR CWELE: In most of my statements and affidavit, I have raised the issue of accessed the documents.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: If Chair wants the truth ...[intervenes]

CHAIRPERSON: Yes.

AMBASSADOR CWELE: ...[indistinct] should be kept in the ministry.

10 **CHAIRPERSON**: Yes.

AMBASSADOR CWELE: Because the meeting was in Cape Town. They should be filed in Cape Town office.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: The transcript, the record of the meeting is what were tell the truth.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: Yes.

CHAIRPERSON: Okay, no, thank you very much.

20 **AMBASSADOR CWELE**: And Chair has got the power to ...[indistinct] I can tell you. That meeting happened, I think end of September of early October, but it was ...[intervenes]

CHAIRPERSON: Yes.

AMBASSADOR CWELE: ...not too long after that ANC meeting ...[intervenes]

CHAIRPERSON: Yes.

AMBASSADOR CWELE: ...in Durban(?)

CHAIRPERSON: Yes.

AMBASSADOR CWELE: It should have been probably around the 1st of October 2010.

CHAIRPERSON: Yes. Well, at a certain stage. I was going through your application for leave to cross-examine and I realised that you were complaining that, or you were making the point that you needed certain documents in order to be able to put your side of the story properly.

I made enquiries and was informed by the Legal Team that a communication had been sent to your attorney to say they must approach SSA directly to get documents. And as I understand the position. I was told that whether they did so or not, the Commission, I think, does not know, but I was told that the Commission did inform your lawyers to say they must approach SSA directly.

But insofar as there are documents that might been seen as critical. For myself, I certainly would ask the Secretary with the assistance of the Legal Team of the Commission to try and get that. You have made the point that this meeting was recorded and that there should be even a recording and so on. So, I think attempts should be made to try and get that.

UNIDENTIFIED SPEAKER: ...[Indistinct]

CHAIRPERSON: Oh, okay, alright. Okay, Mr Pretorius, continue?

ADV PRETORIUS SC: The meeting in Cape Town, was that recorded?

AMBASSADOR CWELE: That is correct, that is what I have said, it was recorded.

ADV PRETORIUS SC: And where would that recording be now?

AMBASSADOR CWELE: As I have said, the recordings of
10 the meetings, they are kept in the office where they are. The meeting was in Cape Town, minister's office.

ADV PRETORIUS SC: Well we will [inaudible – speaking simultaneously]

AMBASSADOR CWELE: We have really appealing and we have asking because we did not get any assistance from SAA in terms of reports.

ADV PRETORIUS SC: Alright. Ambassador, did you make it clear to Njenje that he was not permitted or authorised to use state resources to pursue private interests?

20 **AMBASSADOR CWELE:** I said I reminded him, if you read my statement, because I agreed.

ADV PRETORIUS SC: Yes, your words were:

“Let alone utilising state resources to pursue private interests.”

That was a reference to the investigation.

AMBASSADOR CWELE: That was a reference to what appeared, that he was still linked to the business.

ADV PRETORIUS SC: Well, the words are clear, I will not debate those. But in doing so, in making these communications, as I understand it, you were discharging your responsibility, and I use your words, to prevent or preventing abuse of state resources. That was your stance. You were intent on preventing the abuse of state resources and you were discharging that obligation in this
10 meeting.

AMBASSADOR CWELE: As I said, as a minister, you are answerable for whatever the services(?) are doing and we have had many instances where things went wrong and it was my duty to keep on telling the management on things which should not happen.

ADV PRETORIUS SC: Right.

AMBASSADOR CWELE: It was not the first meeting, in many meetings we were [indistinct] that, that we need to act professionally and also avoid abusing any of the state
20 resources because when you have got resources to Intelligence you have got powerful tools.

ADV PRETORIUS SC: You are also on record as having said – this is also in your affidavit at page 691 of bundle 5, you can go there, if you wish.

CHAIRPERSON: What is the page number, Mr Pretorius?

ADV PRETORIUS SC: 691.

CHAIRPERSON: 691.

ADV PRETORIUS SC: You are on record as saying, and I quote:

10 “I later confronted Njenje who could not give me the direction of the judge for the monitoring of the Gupta family. He could not produce it, making his conflict of business interests more untenable. I invite him to produce the directions for the covert surveillance of that operation.”

From that statement it appears firstly that you demanded the authorisation of the judge and you wanted to see it and his failure to do so made his alleged conflict of business interest untenable for you, not just something you should raise, but untenable. That is a very clear statement of opposition to the continuation of the investigation.

20 **AMBASSADOR CWELE:** No, you are wrong, I have explained that. The first thing we discussed I confronted him whether he had a directorship. Remember I told you what I had been informed by his deputy the previous week. He could not produce any. It was after long discussion this thing that they were doing, [indistinct] and not even from him, I think it came from one of the directors, not from him. When we started, I asked him, do you any direction to intercept this people? He said no.

ADV PRETORIUS SC: Well, they also told you that they were not intercepting, that is the ...[intervenes]

AMBASSADOR CWELE: That was later, yes. That came later.

ADV PRETORIUS SC: Yes, alright, let me ...[intervenes]

AMBASSADOR CWELE: And, if I remember well, it did not come from him.

ADV PRETORIUS SC: Yes, let me put the position to you.

AMBASSADOR CWELE: Ja.

10 **ADV PRETORIUS SC:** In your evidence this morning, Ambassador, giving the Chair the impression that you did not express any opposition in principle to the investigation and you made it clear to them that the investigation could continue, subject to the directive of the judge being obtained. The passages I am putting to you paint a different picture.

AMBASSADOR CWELE: Oh.

ADV PRETORIUS SC: The (indistinct – recording distorted) of you taking a stance that could well be
20 interpreted as being in opposition to the continuation of the investigation.

AMBASSADOR CWELE: No.

ADV PRETORIUS SC: [inaudible – speaking simultaneously] putting to you.

AMBASSADOR CWELE: These were my responses to my

statement, but as I have explained, at no stage – and they are also saying so, at no stage did I ever said they must stop the investigation.

ADV PRETORIUS SC: Well, let us look at paragraph 18 on page 705.

AMBASSADOR CWELE: 705?

ADV PRETORIUS SC: Yes.

CHAIRPERSON: I am sorry, Mr Pretorius, are you moving away from 690?

10 **ADV PRETORIUS SC:** Yes, Chair, I am now going to 705.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: There you say ...[intervenes]

CHAIRPERSON: And what paragraph?

ADV PRETORIUS SC: Paragraph 18.

CHAIRPERSON: Okay, alright, I have got it.

ADV PRETORIUS SC: Reads:

“I inquired whether the surveillance...”

And you there referred to surveillance, not interception.

20 “...was authorised by a designated judge as required by law. To this day I was never given a copy of the direction by the designated judge. My intervention was that no surveillance should be done unless authorised by law.”

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: So that statement is clear, that you

could not conduct any surveillance at all until and unless you produced to me that authorisation from the judge.

AMBASSADOR CWELE: Interception is part of surveillance, Mr Pretorius.

ADV PRETORIUS SC: Well, that is precisely the point but what you were talking about here was surveillance, not interception.

AMBASSADOR CWELE: Interception is part of surveillance.

10 **ADV PRETORIUS SC:** No.

AMBASSADOR CWELE: Surveillance is part of interception.

ADV PRETORIUS SC: Ambassador, you are far more knowledgeable on these issues than I am, as you now point out. But surveillance is far broader [inaudible – speaking simultaneously]

AMBASSADOR CWELE: No, interception, let me tell you what it is about. Let me just help you.

20 **CHAIRPERSON:** Hang on, Ambassador, let Mr Pretorius finish.

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: Surveillance is a far broader concept than interception.

AMBASSADOR CWELE: Interception is electronic surveillance, that is what it is, it is electronic surveillance.

ADV PRETORIUS SC: There could be surveillance that does not require the intervention of a judge.

AMBASSADOR CWELE: They may be found but interception is electronic surveillance, Mr Pretorius.

ADV PRETORIUS SC: Yes, I know that but what you say here and the DCJ can make up his own mind, I do not want to belabour this point, it is semantic, we are clear on the meaning.

10 “My intervention was that no surveillance should be done unless authorised by law.”

And there you were referring to the direction of a judge.

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: Right. You make it clear again at page 706, paragraph 21. There you say:

“I made it plain that any surveillance of the Gupta family must be authorised in law and that Njenje must stop doing private business whilst in office.”

AMBASSADOR CWELE: Yes.

20 **ADV PRETORIUS SC:** Right. And then at page 719, paragraph 32, you say ...[intervenes]

AMBASSADOR CWELE: Paragraph?

ADV PRETORIUS SC: 32, page 719. You say:

“I have pointed out that the only concern I had about the investigation of the Gupta brothers was whether the surveillance was authorised by a

designated judge. No such proof was furnished to me.”

AMBASSADOR CWELE: It is page 7...? I am just lost.

ADV PRETORIUS SC: 719.

CHAIRPERSON: Paragraph 32.

AMBASSADOR CWELE: Yes, I am in paragraph 32. Yes, what is the passage?

ADV PRETORIUS SC: You say there:

10 “I have pointed out that the only concern I had about the investigation of the Gupta brothers was whether the surveillance...”

And I stress the word surveillance.

“...was authorised by a designated judge. No such proof was furnished to me.”

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: Okay. In summary, it appears that the version that you are putting before the judge today differs at the very least in [indistinct] from the version that appears in the affidavits.

20 **AMBASSADOR CWELE**: No, it is still the same. All my statements are still the same.

ADV PRETORIUS SC: Alright, well we can look at the two and compare, Ambassador.

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: I want to put to you the version of

Mr Shaik who says you instructed that the investigation be stopped.

AMBASSADOR CWELE: I do not know how I could instruct the investigation to stop, to be honest.

ADV PRETORIUS SC: Yes, it would be quite improper for a minister to tell operatives or officials ...[intervenes]

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: ...to stop an investigation. Do you agree with that?

10 **AMBASSADOR CWELE**: I agree and I did not stop any investigation.

ADV PRETORIUS SC: Alright, okay.

CHAIRPERSON: Would it be part of – what role would you be permitted to play in regard to whether an investigation should or should not be conducted or should or should not be pursued? Would it be permissible for you to approve an investigation that it should be conducted or to oppose it even if you do not say it must stop? What would be acceptable for a Minister of State Security in a situation
20 where the leadership of SAA, as we know it now, thought that there is good reason to conduct a certain investigation?

AMBASSADOR CWELE: The Minister has got no role.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: The only role I just said as a

Minister is a supervision role.

CHAIRPERSON: Ja.

AMBASSADOR CWELE: So that things were done according to the law.

CHAIRPERSON: Ja.

AMBASSADOR CWELE: I do not authorise investigations, I do not direct investigation as a Minister.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: I get reports when the
10 investigations are done.

CHAIRPERSON: Ja.

AMBASSADOR CWELE: Yes, because I do get.

CHAIRPERSON: Yes. So if their version were to be true that – at least the version of two of them, that even though you might not have instructed that the investigation be stopped nevertheless you expressed very strong opposition, that would not be something that would be appropriate for you to have done, if it did happen.

AMBASSADOR CWELE: I did not express any opposition,
20 Deputy Chief Justice or Chairman, to the investigation. I put that (indistinct – recording distorted).

CHAIRPERSON: Ja. Okay, alright, Mr Pretorius?

ADV PRETORIUS SC: Yes. Just for the record, Chair, Shaik's evidence was clear that the Minister instructed that the investigations be stopped. Well, even if that became

clear from the context and what was communicated at the meeting.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: Mr Njenje said although he might not have said so in so many words, in effect the Ambassador was telling them to stop the investigation.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: Mr Maqetuka said:

10 “The only aspect on which I differ with Ambassador
 Shaik in his evidence before the Commission is the
 place where the meeting with the President took
 place.”

So the versions are compatible if not precisely the same in their description of the detail.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: I want to put the outcome to you, Ambassador. There were two consequences of that meeting. The first is that the top three went to see the President to discuss the continuation of the investigation.

20 Correct?

AMBASSADOR CWELE: I do not know, I said I was not aware of that meeting, it is what I wrote.

ADV PRETORIUS SC: Alright. There is no basis upon which, or knowledge, that you have to contradict that.

AMBASSADOR CWELE: Yes, correct.

ADV PRETORIUS SC: The second thing is the investigation to all intents and purposes stopped.

AMBASSADOR CWELE: Mr Pretorius, really, who stopped the investigation?

ADV PRETORIUS SC: That is precisely the point. Three persons who were intent ...[intervenes]

AMBASSADOR CWELE: Let me start with this ...[intervenes]

CHAIRPERSON: Okay, Ambassador, you asked him the
10 question, Ambassador, let him respond. Mr Pretorius, you are responding ...[intervenes]

ADV PRETORIUS SC: Three persons intent on pursuing an investigation meet with you in Cape Town, hear what you have to say, decide they have to got the President to clarify whether this investigation can continue or not and conclude after meeting you and after meeting the President that the investigation should stop and it does stop despite their keenness and despite their intent to conduct the investigation. It stopped.

20 **AMBASSADOR CWELE:** What I can say, it was not stopped by me. I do not know who stopped it. The (indistinct – recording distorted) because it was not stopped by me. The statement of Mr Shaik is the only statement. The other two directors were very clear that there was no instructions from me to stop the investigation.

I will ask if you can go – that is why we ask to cross-examine these people because we are going to expose the lies of this person(?) that I instructed the investigation to stop. He is the only one who is saying that but even him, he say even if I instructed, they were not going to stop. So why did they stop? So because clearly others were clear that at no stage did I said they must stop the investigation. I can go through their statements, if you want to.

ADV PRETORIUS SC: Well, so can we and we will do so,
10 Ambassador, but for the present, you make the point precisely, they did stop the investigation.

AMBASSADOR CWELE: Not by me.

ADV PRETORIUS SC: Well...

CHAIRPERSON: One second, Mr Pretorius. If, Ambassador, you wanted to refer to certain statements or evidence by them, I want to give you that opportunity because it is a very important part of the issues that we are looking at if you particularly wish to draw to my attention certain statements which support what you are
20 saying, that is fine.

AMBASSADOR CWELE: Okay. Maybe in general terms I will go then to maybe Maqetuka's statement.

CHAIRPERSON: Ja.

AMBASSADOR CWELE: If you read Njenje's statement, first one because there are so many versions of these

statements. Njenje, I think, is only one who wrote one statement. Others wrote two or three. And he never even mentioned the meeting in Cape Town, nè? When we come to Maqetuka, I hope – I have read these things but I am trying to get what is the documents. But, Maqetuka, whatever, in his first statement ...[intervenes]

CHAIRPERSON: Well, one second, Ambassador. Mr Pretorius, are you able to assist the Ambassador to tell him where to find Mr Maqetuka's affidavit?

10 **AMBASSADOR CWELE:** I think I will find it EXHIBIT PP3.

CHAIRPERSON: EXHIBIT PP3, what bundle is it, are you able to...?

AMBASSADOR CWELE: Go to annexure MM1, the first statement.

CHAIRPERSON: Oh, okay. PP3, I have got it. Yes?

AMBASSADOR CWELE: I am just trying to go to the point.

CHAIRPERSON: Yes, I see that on this one you will not find black numbers for pagination but you can use the red numbers for this one.

20 **ADV PRETORIUS SC:** They had not been invented by that stage, Chair.

CHAIRPERSON: Ja.

AMBASSADOR CWELE: I will try and get it but...

CHAIRPERSON: Well, I can tell you that I see in paragraph 4, Ambassador, where Maqetuka's statement,

which I think is the first one, in paragraph 4 he said – no, not paragraph 4, paragraph 7, at the end, he says ...[intervenes]

AMBASSADOR CWELE: It is the same, ja.

CHAIRPERSON: Ja, is that the paragraph you are looking for?

AMBASSADOR CWELE: Yes.

CHAIRPERSON: Okay, read the relevant part that you want to draw my attention to.

10 **AMBASSADOR CWELE**: Ja, paragraph 7, if you go to what starts with page 3 on top, where you reading from.

CHAIRPERSON: Yes, ja.

AMBASSADOR CWELE: It says:

“The meeting ended without resolving the matter. Later we learnt from the media that Minister has instructed us to stop investigation.”

We learnt from the media. I do not which we were learning from.

20 “I have to state that I do not recall him having given such an instruction. To put it very clear, that I did not give that instruction.”

So Mr Pretorius, you say they are collaborating. Certain statements of Mr Maqetuka is trying to collaborate what Mr Shaik was saying. But it is even there he does not say that I said I must stop the investigation.

CHAIRPERSON: Yes. Okay, alright. Thank you. Mr Pretorius?

AMBASSADOR CWELE: So the conclusion is wrong, Chair, Mr Pretorius' conclusion is wrong.

CHAIRPERSON: Mr Pretorius?

ADV PRETORIUS SC: Let us deal with the first statement of Mr Maqetuka which appears at page 12 of that bundle of EXHIBIT PP3.

CHAIRPERSON: Are you referring to an annexure to his
10 statement?

ADV PRETORIUS SC: I am referring to his first statement at the beginning of the bundle, Chair.

CHAIRPERSON: Oh.

AMBASSADOR CWELE: That is correct.

CHAIRPERSON: Ja?

AMBASSADOR CWELE: Paragraph?

CHAIRPERSON: That starts from what paragraph?

ADV PRETORIUS SC: Well, the investigation into the Gupta affairs is dealt with at page 12, paragraph 52, but I
20 want to refer the Ambassador to paragraph 58 on page 14.

CHAIRPERSON: No, it looks like, Mr Pretorius, you and I – there is something wrong with your file references. You said you are looking for Mr Njenje's statement, Mr Pretorius, is that right?

ADV PRETORIUS SC: Mr Maqetuka.

CHAIRPERSON: Mr Maqetuka and you are using the bundle that we were using just a few minutes ago when the Ambassador was looking for a page?

ADV PRETORIUS SC: Yes, we are in EXHIBIT PP3. I will come to Njenje in a moment, Chair.

CHAIRPERSON: Okay, no, no, no, I am looking – I think we were not – I do not think we were in that one, I do not know if it is a duplication. Okay, I have taken another one now that has got PP3. The other one has got – you said
10 page 12, I think I have got the right one, now.

ADV PRETORIUS SC: Ja and if you go to page 14?

CHAIRPERSON: Page 14. Yes, I have got page 14. Have you got it, Ambassador?

AMBASSADOR CWELE: Yes, Chair.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: Paragraph 58:

20 “Minister Cwele stated that he had called us to the meeting because he had been told that Mr Njenje was conducting an investigation into the relationship between the Gupta family and the former President which he believed to be irregular. He paused there and looked around at us to, I believe, gauge our reaction.”

Then there is an interlude at paragraph 59. Paragraph 60 reads:

“After the presence of the Minister’s officials had been sorted out Minister Cwele stated that he objected to the Gupta investigation because in his view it was not being pursued *bona fide* but was rather being pursued by Mr Njenje in order to protect his own business interests which were in conflict with those of the Guptas.”

Do you see that?

AMBASSADOR CWELE: Yes.

10 **ADV PRETORIUS SC**: Then over the page, paragraph 61:

“Mr Cwele never responded to this...”

And that is what was set out in paragraph 60.

“...and it was clear that we would not be able to resolve the issue with the Minister. I therefore told Minister Cwele that there were no purposes in debating the issue any further and that it was our intention to take the matter up with the former President directly.”

Paragraph 62:

20 “I do not remember the Minister categorically and directly instructing us to stop the investigation. However, he made it quite clear by his attitude to the investigation that it should be stopped. He was not interested in the merits of the investigation and sought only to question Mr Njenje’s motives for

pursuing it.”

Do you see, that is his version.

AMBASSADOR CWELE: Okay, let us start in paragraph 58.

CHAIRPERSON: Five eight?

AMBASSADOR CWELE: Paragraph 58 on page 14.

CHAIRPERSON: Okay.

AMBASSADOR CWELE: Yes, Chair, I have explained the reason why I called the meeting. I did not call the meeting
10 because of the relationship between Guptas and the President, I called the meeting because of the alleged illegal interception. So I just want to put that on record because that is what he says and also on page 60, the way that paragraph is written, I have tried to explain to the Chairperson that know that Njenje’s business was in conflict with the Gupta’s business, they were business partners according to what he said in that meeting. At page 61 I have explained Chair, no one said they are going to the President and as I said if you want me to get the
20 transcript of that meeting because at one stage some of them deemed the meetings took very short and because of a disagreement people walked out. It is not true. We finished the meeting correctly, very late, after lengthy discussions.

CHAIRPERSON: H’m.

AMBASSADOR CWELE: And I summarised what was my concern and what should happen, as I have explained to the Chairperson that they were going to see the President, I am just trying to put that.

CHAIRPERSON: Would the information be - would there be any declassification necessary to obtain the transcript or the minutes and so on, as far as you know?

AMBASSADOR CWELE: All the document, why I cannot get all of them they are tagged there as classified
10 document, even the transcript recording.

CHAIRPERSON: Okay, no, that is fine.

AMBASSADOR CWELE: But maybe to conclude.

CHAIRPERSON: H'm.

AMBASSADOR CWELE: He still say he did not give any instruction, I do not know where this thing Mr Pretorius gather, they gave instruction.

CHAIRPERSON: Well, he read earlier on you may recall, he read a passage where, as I recall, one of them said in his statement or affidavit that you in effect, stopped or
20 instructed them to stop, even though I am putting notes now in my own words, even though you did not expressly give the instruction. He so - Mr Pretorius said refer to a passage where somebody - one of them was saying, in effect, your opposition was such that even though you were not saying stop this thing, to them, it was clear that you

were actually saying they must stop it without expressly saying so that that is my understanding of a passage that he read.

But an another one, I think it is Maqethuka says he has no recollection of you giving an instruction to stop and then of course, I think Mr Moshaik is saying no, you did actually give the instruction but I think maybe we have given the matter enough consideration, maybe we should move on Mr Pretorius.

10 **ADV PRETORIUS SC:** Yes, well, if we could just clarify, Mr Njenje's evidence that was clarified in the transcript to be his evidence of 26 November 2019 and the passages appear at SSA 5 page 303 to 304.

CHAIRPERSON: Okay.

AMBASSADOR CWELE: Which document now?

ADV PRETORIUS SC: The same, Bundle SSA 5 the document before you Ambassador. Do you want to go to 105.

20 **AMBASSADOR CWELE:** 104 to 105, is it a transcript statement?

ADV PRETORIUS SC: No, I am sorry, we must look at the figure the page numbers at the top of the page, it is page 303, my apologies.

CHAIRPERSON: That cannot be the same bundle then Mr Pretorius?

ADV PRETORIUS SC: Yes, Chair.

CHAIRPERSON: Because the same bundle goes up to 161.

ADV PRETORIUS SC: It is bundled 5, SSA 05, I am referring to.

CHAIRPERSON: Okay, Bundle 5, what page again?

ADV PRETORIUS SC: 303.

CHAIRPERSON: Okay.

AMBASSADOR CWELE: Is that page with the SSA
10 805305 on the left?

ADV PRETORIUS SC: 303 on the left, yeah.

AMBASSADOR CWELE: Okay.

CHAIRPERSON: The black numbers, use the black numbers ambassador, page 303. Have you got it?

AMBASSADOR CWELE: Yeah, they all black, Chair.

CHAIRPERSON: Well I have got black and red, have you got the right bundle?

ADV PRETORIUS SC: There is no red ink in China.

CHAIRPERSON: Okay, alright but you are on the right
20 page. Okay, continue Mr Pretorius.

ADV PRETORIUS SC: On page 303 halfway down the page. The issue is raised by you Chair, about whether Minister Cwele clearly instructed the three to stop the investigation. The Chairperson says and I am going to go, just to the outcome of the discussion at the bottom of the

page says:

“So, you say he might not have put it in so many words but as far as you are concerned, that was the effect of what he was saying, Director Njenje on page 304, that is correct, Chair.”

So that is Njenje’s version. The outcome must be seen. Ambassador Cwele against the background of your raising, whether as an abuse of resources or otherwise, your opposition to the investigation continuing whilst the conflict
10 of interest, as you alleged continued. That matter was not resolved at the meeting, according to Mr Maqethuka and according to Mr Njenje, and according to Mr Moshaik, and that is why they went to see the President.

AMBASSADOR CWELE: I do not know why they went to see the President but I want to put it here because now, I was not given a chance to cross examine these gentlemen. If you said they record what happened when they met with the President they didn’t discuss the issue of the meeting in Cape Town, if you read what I think is Mr Moshaik they
20 discussed the issue of some ...[indistinct] report, that is the first thing.

So if he is not correct that they went there in my own view just because there was some concerns in the meeting in Cape Town. No one, I repeat no one told me that they were going to see the President and I want to say

Mr Chairperson you can always be evasive of this matter, the truth will come from those transcripts.

CHAIRPERSON: H'm, h'm.

AMBASSADOR CWELE: Yes, because they themselves they are clear that I never instructed most of them but when they come but Mr Moshaik say this, oh ja, the Minister is angry, oh ja, maybe he said it not in ways but by expression, I don't know what that means. Two of them agreed that I never gave such instruction.

10 **ADV PRETORIUS SC:** That's not entirely correct but Ambassador let's move on, I just want to put one proposition to you, when this investigation was initiated the top three were intent for reasons that they explained on pursuing the investigation where evidence, you agree with that at least?

AMBASSADOR CWELE: Yes I am listening.

ADV PRETORIUS SC: Do you agree with that proposition, they wanted this investigation to be pursued?

AMBASSADOR CWELE: Yes I am listening.

20 **ADV PRETORIUS SC:** No, do you agree with that?

AMBASSADOR CWELE: [laughing] I don't know, I was not in that meeting, I cannot comment on that.

ADV PRETORIUS SC: Well you sat in a meeting with them for several hours ambassador, you must have concluded that they wanted this investigation to continue,

it was you who raised objections to it continuing.

AMBASSADOR CWELE: No, I never raised Mr Pretorius any objection or a legitimate investigation to continue, I repeat I have said ...[indistinct – distorted]

ADV PRETORIUS SC: The point I am making [parties speaking simultaneously]

CHAIRPERSON: Hang on, hang on, hang on, don't speak at the same time, let the ambassador finish Mr Pretorius.

AMBASSADOR CWELE: Thank you sir. I am saying the
10 answer I give for Mr Pretorius at no stage did I never stop any legitimate investigation.

ADV PRETORIUS SC: You have stopped ...[intervenes]

AMBASSADOR CWELE: I never gave any instruction and I pointed out to you even in their statements where they clearly say I never gave such instruction.

ADV PRETORIUS SC: They left that meeting with the clear understanding that you opposed the investigation, that is their evidence, but I don't want to go there because the record is clear Ambassador and we can debate for
20 many days the nuances of the language, what I want to put to you, which you seem to be unwilling to concede is that the top three wanted this investigation to continue, and that was made clear to you in the meeting.

AMBASSADOR CWELE: Yes, but I never stopped any investigation, that is what I am saying.

ADV PRETORIUS SC: I am not dealing with that issue at the moment Ambassador, what I am putting to you is that they were intent on pursuing this investigation to finality.

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: You concede that, good. After meeting with you and after meeting with the President the investigation was stopped, would you concede that?

AMBASSADOR CWELE: No. The investigation was not stopped after meeting with me. If you look Mr Pretorius, I
10 will tell you why, If you look [laughing] at their statements they were clear that even if - this is what they said, even if ...[indistinct] and Maqethuka even I was against they were going to continue.

ADV PRETORIUS SC: Yes.

AMBASSADOR CWELE: This is true.

ADV PRETORIUS SC: And then finally – not but ...[intervenes]

AMBASSADOR CWELE: I was answering you, I am still answering you.

20 **CHAIRPERSON:** Yes continue Ambassador.

AMBASSADOR CWELE: For whatever reason they went to the President because they have this belief if they read their documents that if the President says stop they will proceed with the investigation.

CHAIRPERSON: Yes okay, Mr Pretorius ...[intervenes]

AMBASSADOR CWELE: Their ...[indistinct] statements is there, you can go through it if you give me time I can go through those statements.

ADV PRETORIUS SC: Ambassador I made it very clear and their evidence is very clear that after the meeting with you and after the meeting with the President that investigation stopped.

AMBASSADOR CWELE: Do you want me to refer to the statement Mr Pretorius?

10 **ADV PRETORIUS SC:** I know the statement you are referring to ...[intervenens]

AMBASSADOR CWELE: ...[Indistinct] you are saying I am not speaking the truth.

CHAIRPERSON: Hang on one second Mr Pretorius and Mr Ambassador, let me ask this question before you refer to the statements ambassador, in terms of time if we talk about time do you know roundabout when after you had met them that investigation stopped, do you know about how long it took before you got to know that the
20 investigation was no longer being pursued because I assume you must have been told at some stage that it was no longer being pursued.

AMBASSADOR CWELE: I was never told that it is not being pursued Chair.

CHAIRPERSON: Yes. This – but I guess that wouldn't

you need to know from time to time what was going on in order for you to have to play your oversight role, would they not be needing to give you reports from time to time of certain investigations maybe at least, maybe not all of them.

AMBASSADOR CWELE: Mr Chair yes what normally happens, once they have concluded their report and they give me a report, I never received any report until they left.

CHAIRPERSON: But before they conclude an
10 investigation would they not generally speaking give you updates from time to time regularly, particularly maybe with regard to certain investigations, maybe not all of them, certain important ones.

AMBASSADOR CWELE: Yes if there is an important investigation they will give that if they produce a report.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: Then I will ...[indistinct – distortion] there was never a report on this matter Chair.

CHAIRPERSON: Yes, and you – did you ever get to know
20 whether an investigation had stopped or until you left the position of Minister of State Security you didn't know whether that was still going on or not?

AMBASSADOR CWELE: I didn't know.

CHAIRPERSON: Oh, okay. Mr Pretorius.

ADV PRETORIUS SC: Well it seems that you are in no

position Ambassador from what you are saying now to comment on the proposition that the top three concluded after their meeting with you and – and I stress this – after their meeting with the President the investigation should stop and it was stopped.

AMBASSADOR CWELE: I have stated my position Mr Pretorius, I never stopped any investigation, I repeat that.

ADV PRETORIUS SC: That is a different point Ambassador. I put it to you again please, are you able to
10 dispute the evidence that the top three stopped the investigation after they had met with you and with the President?

AMBASSADOR CWELE: I don't know when they stopped the investigation.

ADV PRETORIUS SC: You don't know, alright.

AMBASSADOR CWELE: Yes, I have said that.

ADV PRETORIUS SC: What you do know and what you do say is that you enquired as to whether they had the designation from the judge and you never received that
20 designation?

AMBASSADOR CWELE: I did say, I still say that.

ADV PRETORIUS SC: Okay.

AMBASSADOR CWELE: Following my meeting with the Deputy Director of ...[indistinct].

ADV PRETORIUS SC: Let's move on then to another

issue and that is the principal agent network plan. We have been told in evidence and I don't think there will be any difference between us Ambassador that the establishment of a principal agent network is an accepted practice in Intelligence Agencies worldwide?

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: It is properly done.

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: Right and what it is, is the
10 recruitment of Principal Agents outside the agency who in turn handles sources and agents in order to accumulate intelligence, more or less, I am again ...[intervenes]

AMBASSADOR CWELE: It depends, it would depend on the nature of the operation. If it is a deep cover operation it should not link to the agents at all, so if it is a deep cover.

ADV PRETORIUS SC: Right.

AMBASSADOR CWELE: But if it is not a deep cover it should be part of the intelligence system.

20 **ADV PRETORIUS SC:** And whilst you were a Minister of the State Security Agency a plan was established, a principal agency network was established?

AMBASSADOR CWELE: No.

ADV PRETORIUS SC: Was it established before you?

AMBASSADOR CWELE: Before me.

ADV PRETORIUS SC: Alright. You had concerns about the implementation of the project whilst you were Minister, is that correct?

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: And you state these concerns in your evidence? In fact you say that the work to clean up the PAN Programme was initiated by you soon after your appointment?

AMBASSADOR CWELE: ...[Indistinct – distorted]

10 **ADV PRETORIUS SC:** Do you want that reference?

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: Page 717 of Bundle SSA 05 at paragraph 26.

CHAIRPERSON: Page 717?

ADV PRETORIUS SC: 717 yes Chair.

CHAIRPERSON: Thank you.

AMBASSADOR CWELE: The ...[indistinct] page?

CHAIRPERSON: Ja, the black pages.

20 **AMBASSADOR CWELE:** Okay which paragraph specifically?

ADV PRETORIUS SC: Paragraph 26

AMBASSADOR CWELE: 26, yes. Yes I am there.

ADV PRETORIUS SC: You say there that the work to clean up the programme was initiated by yourself soon after your appointment?

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: Right. And your concern as appears at page 754 of the same bundle, paragraph 2.1 was that ...[intervenes]

AMBASSADOR CWELE: [distorted]

CHAIRPERSON: What page is that Mr Pretorius?

ADV PRETORIUS SC: 754.

CHAIRPERSON: Okay.

AMBASSADOR CWELE: 754, yes which paragraph?

10 **ADV PRETORIUS SC:** One of the concerns as appears from the summary of the PAN investigation which we will come back to later was that there was an overspending of allocated budget and the subsequent use of rollover funds and budget savings, which was just one of the concerns.

AMBASSADOR CWELE: May I just get there, I think I am on the wrong page. Page?

CHAIRPERSON: 754.

AMBASSADOR CWELE: 754.

20 **ADV PRETORIUS SC:** Yes it is not your affidavit, it is merely a summary of the PAN investigation.

AMBASSADOR CWELE: Oh I thought I was going to my affidavit. Yes?

ADV PRETORIUS SC: You express your concerns differently and perhaps we should go straight there Ambassador can I take you to a different passage. If you

go to page 689 of your affidavit, at para 13.

CHAIRPERSON: That's 689 of Bundle 5 but that happens to be his affidavit. 689.

AMBASSADOR CWELE: Yes I am there Chair.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: We see in paragraph 13 they did in fact task Njenje to investigate the activities of what was called the Principal Agent Network PAN programme, but did hold the view that the PAN Programme required closer
10 scrutiny, in particular one of the elements of my concern was that the PAN programme started with a relatively small budget which ballooned almost tenfold over a short space of time and with questionable acquisition of operational, moveable and fixed assets. The State Security Agency has since stopped the programme and recouped some of the assets.

AMBASSADOR CWELE: That's right.

ADV PRETORIUS SC: That is correct is it?

AMBASSADOR CWELE: That is correct Chair.

20 **ADV PRETORIUS SC:** You make several references in your affidavits Ambassador to the activities that required scrutiny in the PAN programme, would it be fair to say that there was a need to investigate criminal activity?

AMBASSADOR CWELE: Yes Chair, let me just answer, as I said the PAN programme investigation I asked it to be

instituted well before the three gentlemen were involved, for the reasons ...[indistinct] they found the investigation going and I asked them to continue and I briefed them on the investigation. There were different, but of course you are correct that my concern this was not supposed to be a deep cover operation it was supposed ...[indistinct] cover operation ...[indistinct]. I was concerned about the budget ballooning, I was concerned because the first person who raised the matter with me was the CFO, the then CFO even
10 before I was still ...[indistinct] just before I got appointed, but he was concerned, the CFO of MIA was concerned about the way of funds which were not accounted and the demand for budget and that this programme was taking the operational budget ...[indistinct] the provinces and other operations, so it was like siphoning the budgets of the Domestic Branch or ...[indistinct].

So that was my concern. We ...[indistinct] at this establishment, yes it was authorised by the Minister, the then Minister, then I then said because this thing is
20 ballooning and there is no accountability of money like the agency do it is all investigation, there were several investigations. Our first one was an audit, the second one was a counter-intelligence operation and the third one which completed in 2013 was what I tasked the Inspector General to do because at that time we were clear that

there was some disciplinary things which needed to be done and ...[indistinct] that there will be criminal charges that may need to be charged.

ADV PRETORIUS SC: Alright, there was an internal audit conducted which raised issues concerning mal-administration and non-compliance with directives, do you recall that?

AMBASSADOR CWELE: Alright.

ADV PRETORIUS SC: And the internal audit has in fact
10 recommended a full and independent forensic audit be conducted.

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: Right, and pursuant to that internal audit Director Njenje appointed an investigation team during 2010 to investigate maladministration and allegations of financial irregularities, is that correct?

AMBASSADOR CWELE: That was the certain investigation which was the counter-intelligence.

ADV PRETORIUS SC: Right, now we have a summary of
20 that investigation which has now been declassified and it appears at page 754 and following, do you see that?

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: Now we can go into the text of the summary if you wish but I could put it to you at a high level that this report has not one but many allegations of

criminal activity, you must be aware of this report, it was presented to you apparently.

AMBASSADOR CWELE: I am just trying to see what is the date of the report.

ADV PRETORIUS SC: Okay. I don't think it is there.

CHAIRPERSON: There is no date ...[intervenes]

AMBASSADOR CWELE: But I think there were many update report Mr Pretorius. I start getting all these reports I took a vision because it was clear that we may have to
10 pursue criminal investigation.

ADV PRETORIUS SC: Yes, but just for completeness if you look at page 754, para 1. It reads:

“The purpose of this report is to provide a summary of the findings as contained in the final report of the PAN programme investigation with reference SSA/6/4/5 dated May 2012, that was presented to the Minister of State Security and the Acting Director General on 19 June 2012.”

Do you see that?

20 **AMBASSADOR CWELE:** On page 64?\

CHAIRPERSON: Page 754.

ADV PRETORIUS SC: 754 paragraph 1.

CHAIRPERSON: Using the black numbers on the left hand corner. Have you found it?

AMBASSADOR CWELE: Ja.

CHAIRPERSON: Okay, he is reading from paragraph 1.

AMBASSADOR CWELE: H'm.

CHAIRPERSON: Mr Pretorius maybe it is convenient to take the lunch break now, it is one o'clock so if he wants to refresh his memory he can do that.

ADV PRETORIUS SC: Thank you Chair.

CHAIRPERSON: Ja, let's do that. Ambassador let's – and Mr Semenya let's take the lunch break, we will resume at two'clock.

10 We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Am I unmuted now?

UNKNOWN: Yes, you are DCJ.

CHAIRPERSON: Okay, alright. Mr Pretorius, Mr Semenya and Ambassador, I hope you were informed privately why I was delayed. Today it looks like a very abnormal day. First of all my Registrar is sick and she could not come here.

20 Then the technical glitches. Then other things that happened outside the Commission which affect the Commission never the less, so but it is okay. Now we can continue. Thank you.

ADV PRETORIUS SC: Ambassador, we were dealing with the summary of the PAN report which appears in bundle

SSA05 at page 754 and following. We dealt with paragraph 1. I would like to refer you to paragraph 2.3 please.

AMBASSADOR CWELE: [indistinct]

CHAIRPERSON: Bundle 5, remember where there was the summary of the PAN report of the findings.

AMBASSADOR CWELE: Page seven hundred and?

CHAIRPERSON: 754. Black numbers, left top corner.

AMBASSADOR CWELE: Ja, I have gone back to it now.

CHAIRPERSON: Okay.

10 **AMBASSADOR CWELE**: Yes. I am just trying, I do not know whether I missed my ...[intervenes]

CHAIRPERSON: That is the report that Mr Pretorius had started asking you questions on just before we adjourned.

AMBASSADOR CWELE: Okay, I think I am ... seven ...[intervenes]

CHAIRPERSON: 754.

AMBASSADOR CWELE: Yes.

CHAIRPERSON: Paragraph 2.3.

AMBASSADOR CWELE: Yes.

20 **CHAIRPERSON**: Okay, Mr Pretorius?

ADV PRETORIUS SC: It reads Ambassador as follows:

“During the course of the investigation, the investigators identified numerous incidents of breach of the state security agency’s regulatory framework as well as the irregular

authorisation and utilisation of funds. The result of the investigation indicates that there is sufficient indication to institute criminal investigations against the following persons, as well as against certain persons still unknown ...”

And then there is listed a number of 14 persons. We do not need to mention the names for the present. Do you see that?

10 **AMBASSADOR CWELE**: That is correct.

ADV PRETORIUS SC: The report goes into further detail including the illegal bugging of the work of the internal auditors in the board room at SSA, but if one goes to page, I am going to try and cut this down, but if one goes to page 760 under the head operational project, paragraph 5.3 on page 761 reads:

20 “All indications are that criminal offences in terms of the Prevention and Combating of Corrupt Activities Act 2004 as well as the Public Finance Management Act have been committed.”

Do you see that?

AMBASSADOR CWELE: That is paragraph?

ADV PRETORIUS SC: 5.3 on page 761.

AMBASSADOR CWELE: 761, yes.

ADV PRETORIUS SC: And then paragraph 5.4 refers to a series of incidents and concludes:

“There are strong indications that offences in terms of the Prevention and Combating of Corrupt Activities Act 2004 have been committed.”

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: You see that?

AMBASSADOR CWELE: Ja.

10 **ADV PRETORIUS SC:** And then under paragraph 6, the conclusion in paragraph 6.1 having referred to certain incidents is the following. It reads:

“It is clear that forgery and uttering, fraud and various offences in terms of the Prevention and Combating of Corrupt Activities Act 2004 as well as the Companies Act 2008 have been committed.”

You see that?

AMBASSADOR CWELE: That is correct.

20 **ADV PRETORIUS SC:** Similar comments are made in relation to other circumstances, in paragraph 6.2, 6.3, 6.4. You see that?

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: Then in paragraph 9.1 ...[intervenes]

CHAIRPERSON: Mr Pretorius.

ADV PRETORIUS SC: Yes Chair.

CHAIRPERSON: I do not know whether the problem is on my side only, but you were frozen initially but now I think I have lost connection. Can you hear me or not?

ADV PRETORIUS SC: I can hear you perfectly Chair.

CHAIRPERSON: Oh, okay. [indistinct] will help me here.

ADV PRETORIUS SC: Now you have frozen Chair. Can you hear me Chair?

10 **CHAIRPERSON:** I can hear you yes, it is just that I do not see you. Oh ...[intervenes]

UNKNOWN: The technician is on the way to sort it out DCJ.

CHAIRPERSON: Ja, the technician seems to have sorted it out for now. Can you hear me Mr Pretorius?

ADV PRETORIUS SC: Yes, I can Chair.

CHAIRPERSON: Okay, alright. Let us continue. Maybe start two or three sentences back because you were frozen when you were still speaking.

20 **ADV PRETORIUS SC:** Right, in paragraph 6 there are at least four conclusions in relation to different circumstances along the lines of forgery and uttering, fraud and various offences in terms of the Prevention and Combating of Corrupt Activities Act and other acts having been committed.

I am summarising at a high level Ambassador.

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: Alright. If I can go then to paragraph 9.1 and I have just extracted by way of example some of the findings in the report. Just to illustrate what you have already clearly conceded Ambassador Cwele, that we had to do here with criminal conduct.

If one goes to paragraph 9.1 there is a section that deals with liaison with law enforcement agencies. 9.1
10 reads:

“During a meeting at OR Tambo airport with the Minister of State Security on 9 November 2010 it was resolved that the CSU matter ...”

That is the matter we are talking about:

“Will be referred to the national prosecuting authority forthwith for a criminal investigation into the alleged irregularities in the PAN program.”

Was that decision made as recorded there?

20 **AMBASSADOR CWELE:** Yes, the decision was preferred to law enforcement agencies.

ADV PRETORIUS SC: Right. Then in paragraph 9.6 after a series of procedural matters had occurred, the following appears:

“On 23 February 2011 the investigation team

met with representatives of the SIU and it was resolved that the SIU will conduct a pre-assessment investigation commencing on 28 February 2011.”

Do you recall that happening?

AMBASSADOR CWELE: Correct.

ADV PRETORIUS SC: A pre-assessment investigation is an investigation conducted to take place before the president to issue a proclamation directing the SIU to
10 continue with its investigations and other work in relation to particular matters, is that correct?

AMBASSADOR CWELE: Yes, I am listening.

ADV PRETORIUS SC: Right.

AMBASSADOR CWELE: I do not know about the pre-assessment in that context. Let me say why I was pausing. The pre-assessment sir, was explained that after initial investigation, they estimated that there was some amount which was supposed to be paid.

That was my understanding. The primary
20 investigation.

ADV PRETORIUS SC: Yes.

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: There were discussions about the amount to be paid. That amount was reduced significantly in the course of time.

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: Bear with me a moment Chair.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: Would you please Ambassador, go to page 786 of Bundle 5. Now these documents are the fruits of investigation that took place over the weekend and this affidavit was only very recently obtained, and I hope it has reached you.

If not, I am going to have to read ...[intervenes]

10 **AMBASSADOR CWELE:** No, I do not have. Mine ends at 783.

ADV PRETORIUS SC: Alright. My apologies. Chair, do you have page 786 in your file? Chair ...[intervenes]

UNKNOWN: It seems the DCJ has been disconnected. Could we please have a moment to sort that out.

ADV PRETORIUS SC: Yes. Ambassador I am informed that it was sent to your attorney at 10H41 this morning. I do not know ...[intervenes]

AMBASSADOR CWELE: I have not received it Chair.

20 **ADV PRETORIUS SC:** I am sorry?

AMBASSADOR CWELE: I have not received it.

ADV PRETORIUS SC: Alright, well I will give you the just of it, because I do not think it is controversial.

AMBASSADOR CWELE: No, I do not have any mail.

ADV PRETORIUS SC: Right.

CHAIRPERSON: Can you hear me?

UNKNOWN: Yes, we can DCJ.

CHAIRPERSON: Okay, thank you. Okay Mr Pretorius, continue. These ...[intervenes]

ADV PRETORIUS SC: Do you have an affidavit of Peter Henry Bishop at page 786? It is Bundle 5.

CHAIRPERSON: That is the same bundle, have you got it ambassador?

AMBASSADOR CWELE: No, mine ends at 783.

10 **CHAIRPERSON:** Oh.

ADV PRETORIUS SC: It was sent this morning. This is a product of an investigation that took place over the weekend. It was sent this morning to the Ambassador's attorney, but I believe has not reached the Ambassador, so ...[intervenes]

CHAIRPERSON: Ja.

ADV PRETORIUS SC: Be that as it may Chair, I can just place we should not be controversial and if there is controversy then we can deal with it but ...[intervenes]

20 **CHAIRPERSON:** Ja, ja.

ADV PRETORIUS SC: But if I could just place the facts attested to by Peter Bishop.

CHAIRPERSON: Ja, okay.

ADV PRETORIUS SC: During March 2011 he says Ambassador, he served as a member of the executive

committee of the Special Investigating Unit and was appointed as the acting project [indistinct] and head of operations.

Do you know that or are you able to comment?

AMBASSADOR CWELE: No, I cannot comment because I do not have anything which says that.

ADV PRETORIUS SC: No, I understand.

CHAIRPERSON: Ja.

AMBASSADOR CWELE: Ja.

10 **ADV PRETORIUS SC:** Paragraph 4 reads:

“On 31 March 2011 I prepared and forwarded an overview to the then head of the national intelligence agency, Mr LG Njenje of the SIU’s business proposal to assist the NIA with a preliminary assessment of alleged irregularities in relation to the Covid support unit’s principle agent network program.”

He then continues to say:

20 “The business proposal came about after several meetings were held in March 2011 between members of NIA and my office. That the meetings NIA requested that the SIU appoint a dedicated capacity to firstly identify, investigate and redress improprieties, including fraud, corruption and

maladministration within NIA's Covid support unit principle agent network program. Two, facilitate the recovery of any losses incurred. Three, facilitate the laying of criminal charges where evidence collected support such improprieties / allegations."

He then continues to say:

10 "The purpose of conducting that pre-assessment once a government agency requests the SIU's assistance, is to establish whether grounds exist to apply for a presidential proclamation for purposes of investigating such alleged irregularities."

Then paragraph 7:

20 "After I had forwarded the overview of the SIU's assessment to Njenje, I received a call from one of the NIA members that had met with me and requested if I could amend the costing. I subsequently discussed this with the then head of the SIU, Mr Willie Hofmeyer who agreed that we reduce the project cost."

That issue you seem to have some knowledge of Ambassador?

AMBASSADOR CWELE: Yes, I did hear about that.

ADV PRETORIUS SC: Yes, then paragraph 8:

“Shortly after I had received ...”

I am going to start again, I am sorry:

“Shortly after I had advised NIA that the SIU would consider reducing the said project costs, I received another phone call from NIA who advised that NIA’s management had advised that the investigation should rather be dealt with by the inspector general of intelligence. The SIU had no further dealings thereafter with the NIA with regards to the PAN investigation.”

10

Does that record of the facts in so far as they are alluded to by Mr Bishop, accord with your own understanding of the situation?

AMBASSADOR CWELE: I think some of them, I know that there was ... I did receive ... like I said, there were many reports and updates I was receiving on this matter. Even this one which you have just read earlier on. That is why I was asking what was the date of it, because there were many reports.

20

Not only that one.

ADV PRETORIUS SC: Ja.

AMBASSADOR CWELE: I am aware that there was approach to NPA, there was approach to police, there was approach to SIU. I remember during one of the

discussions that the issue of the SIU initially was the cost and then I was informed that they were negotiating them down.

I cannot remember what was the finalisation of it. The rest of the statement I cannot comment on.

ADV PRETORIUS SC: Now the essence of what is said in the papers and in the summary to which I have just referred, is that the and in the affidavit of Mr Bishop is that the SIU was a law enforcement agency finally tasked to
10 conduct the investigation and to deal with criminal prosecutions.

That is the first point. That is clear from the documentation. The second point is that it was taken away from them on the instructions of the NIA. That is the SSA.

AMBASSADOR CWELE: I do not know about that.

ADV PRETORIUS SC: Well ...[intervenes]

AMBASSADOR CWELE: You say the instruction came from the top management. I was not in top management.

ADV PRETORIUS SC: No, I understand that.

20 **AMBASSADOR CWELE:** Yes.

ADV PRETORIUS SC: But here I need to put to you how that came about, according to the witnesses. The first issue is that the investigation was taken away from SIU and instead the matter was referred to the office of the inspector general of intelligence.

You know that because you made that referral.

AMBASSADOR CWELE: No, I am aware of the investigation. I directed the investigation that we should also approach the inspector general, not because there was investigation by law enforcement agencies.

ADV PRETORIUS SC: Well, what happened ...[intervenes]

AMBASSADOR CWELE: The issue, the reason ... yes sir. Yes sir. The reason why I asked the inspector general, as I was saying there were several issue. First the reports
10 somehow they were not clear. They were somehow contradicting while they were agreeing on many issues.

As you remember, the second thing was that there was also the issues what do we start with. Other reports were suggesting we start with disciplinary measures so that we can get some of them becoming state witnesses because we needed state witnesses in the case which we did not have.

So there were these type of contradictions. You must also remember that intelligence is not given as
20 evidence in courts. I asked an independent assessment by an independent board, which is inspector general which could assist us also on taking matters forward, while they were reporting to the law enforcement agencies.

I am aware because the inspector general did release the report, I think it was beginning of 2013.

ADV PRETORIUS SC: Ja, let us not confuse the issue with respect Ambassador. The fact is that there were serious allegations of criminality, in an internal report.

AMBASSADOR CWELE: I am saying ...[intervenes]

ADV PRETORIUS SC: We have agreed on that.

AMBASSADOR CWELE: The investigation by the inspector general was not because there was something done by law enforcement agencies. It was to assist ...[intervenes]

10 **ADV PRETORIUS SC:** No ...[intervenes]

AMBASSADOR CWELE: With our own reports which we had. That is all what I am saying.

ADV PRETORIUS SC: Let us take it step by step. The first proposition is that a number of allegations of serious criminality were tabled in an internal investigatory report of the SSA. Is that correct?

AMBASSADOR CWELE: Yes, Mr Bishop. If you remember this report ...[intervenes]

ADV PRETORIUS SC: Mr Pretorius.

20 **AMBASSADOR CWELE:** Started very early. It was started by me. I was [indistinct] of corruption here. I am the one who started this thing when I was appointed. I will come back when I am dealing with my statement on this matter so that you understand clearly.

ADV PRETORIUS SC: Right, okay.

AMBASSADOR CWELE: Even, let me finish. Even the top officials you are relying on, they said the report by the time it was implemented was almost 70% done. There were issues, I am telling you so that you understand what were the challenges.

We did recover a lot of assets even before the three gentlemen were appointed. Not that we were sitting down and just conducting investigation. We stopped funding this program and we tried to get, identify the assets they were
10 having so that we do not lose them.

These were things which were done internally by the SSA, mainly by NIA who were giving me progressive reports on a regular basis and we will have discussion after each and every report on the best way forward on what are the gaps and what needs to be closed.

ADV PRETORIUS SC: Ambassador, the point I was attempting to make was that an internal investigation report which we have just summarised, tabled allegations of serious criminality. Is that correct?

20 **AMBASSADOR CWELE:** That is correct. Many reports were pointing towards criminality.

ADV PRETORIUS SC: The second point that we have established is that the, in the law enforcement agencies were approached and these approaches culminated in a referral to the special investigation unit. Now I am not too

concerned with the sequence of events. You may differ, but the matter came before the special investigation unit.

We have agreed that, have we?

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: According to Bishop, the matter was then taken away from them. In fact they had to return all the documentation to the NIA. Can you dispute that?

AMBASSADOR CWELE: I never had any interaction with Mr Bishop. I do not know how can I answer that.

10 **ADV PRETORIUS SC**: Can you dispute it is the question.

AMBASSADOR CWELE: I cannot dispute something I do not know.

ADV PRETORIUS SC: Alright, good.

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: The matter was not again referred to any law enforcement agency after it had been removed from the SIU. Would not have gone to the inspector general of the intelligence, but it did not go back to a law enforcement agency.

20 **AMBASSADOR CWELE**: The inspector general issue was not related to the reporting to the law enforcement agencies. That is the duty of an accounting officer, not the minister.

ADV PRETORIUS SC: Alright, so but the proposition I am making to you is that the matter never returned to the law

enforcement agency network. That was the end of it, once it had been taken away from the SIU.

AMBASSADOR CWELE: I am not aware, because I have heard that they were engaging NGA, they were engaging the police, they were engaging the SIU. The last thing I heard about SIU was that the costs were high and they were negotiating to bring the prices down.

ADV PRETORIUS SC: Yes, but I, we have agreed that you cannot dispute that at the stage the matter was removed by
10 the NIA officials from the SIU, we know that. I cannot understand why that creates difficulty for you Ambassador?

AMBASSADOR CWELE: It was not removed by me. You can ask that to the people who removed it. It was not removed by me.

ADV PRETORIUS SC: Ja, well that is where I am coming to Ambassador. The further fact that appears from the evidence that we have obtained is that there have been no criminal prosecutions since then. In fact the PAN report 1 has given rise to no criminal prosecution whatsoever.

20 You do not know that?

AMBASSADOR CWELE: I do not ...[intervenes]

ADV PRETORIUS SC: Well Minister, you were the one keeping a close eye on these matters to the extent that you were instrumental in referring it to the IGI.

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: You should have known
...[intervenes]

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: Let me finish please. You should have known that the law enforcement agencies were no longer involved. It had been removed from them and it was never returned to their jurisdiction. You should have known that.

AMBASSADOR CWELE: How would I have known?

10 **ADV PRETORIUS SC:** Because you are a minister.

AMBASSADOR CWELE: No Mr Bishop. I have told you the issue, sorry. No listen.

CHAIRPERSON: Let him finish Mr Pretorius.

AMBASSADOR CWELE: Yes.

CHAIRPERSON: Yes, Ambassador?

AMBASSADOR CWELE: I am saying the issue of reporting to law enforcement agencies was not done by me. It was the duty of the accounting officers. I was briefed and I heard that they were discussing with the police, they were
20 discussing with the NPA and they were discussing with the SIU so that they can close the case.

So that was the duty of the accounting officers. Yes, while they were there, I was getting brief on these things, even after the final report I got from the inspector general I did discuss with the management of the agency

which was existing.

That was now in 2013, long before the three gentlemen have left.

ADV PRETORIUS SC: Long after?

AMBASSADOR CWELE: In 2013. You remember I said the final report of inspector general came in 2013.

ADV PRETORIUS SC: 2014?

AMBASSADOR CWELE: 2013.

ADV PRETORIUS SC: Minister, sorry Ambassador Cwele.

10 **AMBASSADOR CWELE:** Yes sir.

ADV PRETORIUS SC: I am not sure that it is a reasonable answer that the decision to refer to a law enforcement agency was not yours. You had a supervisory duty ...[intervenes]

AMBASSADOR CWELE: I supported it.

ADV PRETORIUS SC: Let me finish.

AMBASSADOR CWELE: I supported it.

20 **ADV PRETORIUS SC:** Let me finish please. You had a supervisory duty. You kept a close eye on operations to the extent that you dealt very, very firmly with the failure earlier to obtain the directive of a judge. I simply find it difficult to accept with respect, that you would not have known two things.

One, that the PAN 1 investigatory issues were removed from the SIU and never returned to any law

enforcement agency and two, that no prosecutions were ever conducted, let alone successfully arising out of the PAN 1 investigations.

You must have known.

AMBASSADOR CWELE: Let me help you. I think it was Njenje's statement. Remember, no Makatuka's statement, I cannot remember exactly, but if you go through Makatuka's statement, it clearly said that you heard that it was stopped when he has left himself.

10 Remember, he was the DG. The accounting officer. So now you are blaming me that I did not know that it was stopped. I did not know that it was stopped.

ADV PRETORIUS SC: Well, I have confined ...[intervenes]

AMBASSADOR CWELE: Because some people decided to stop it.

ADV PRETORIUS SC: I find it extraordinary that the Minister of State Security who keeps a close eye on operation management issues, is very concerned about legality. Receives a report with the allegations, most
20 serious allegations contained in PAN 1, recommends himself that it goes to a law enforcement agency.

It is then removed, never returns to a law enforcement agency and there are no prosecutions. You must have known that.

AMBASSADOR CWELE: As I said, there were a lot of

outstanding issues when we took this thing to inspector general. One amongst them was the risk assessment. Risk assessment was just to say what is the likelihood, is there anything which will compromise the agents or national security by going to court so that we prepare ourselves for it, because you know why?

When things go to court, the judges in our experience they were not keen to say anything is going to be secret. We were not going to hide any corruption. All
10 what we wanted was to get a risk assessment so that we know that we have covered everything.

We are not shocked as we move forward. That was the only thing which was outstanding from the SSA. We ...[intervenues]

CHAIRPERSON: Ja, continue Ambassador.

AMBASSADOR CWELE: I said that was one of the things which was outstanding and that is what Mr Njenje was supposed to provide, and the issue of what we start with, we have explained whether we start with disciplinary
20 issues.

We try and get more witnesses from the people who were there, because at some stage some of the reports were saying people are willing to be witnesses, but other reports were saying they are not willing to be witnesses, and that is why we then said let them take it through the

law enforcement agencies and law enforcement agencies will do their own investigation and assist with the way forward.

ADV PRETORIUS SC: Is the purpose of a risk assessment to understand what the consequences of a criminal prosecution would be for state security?

AMBASSADOR CWELE: No.

ADV PRETORIUS SC: Alright.

AMBASSADOR CWELE: It was not an issue of criminal
10 prosecution. Remember, we were the one who were concerned that our resources were abused. The issue of risk assessment, when you take things to court even now you were showing me things of names of people who are blocked and so on.

Because in our experience, they were not prepared ... that is why I was saying you cannot take intelligence to court. You can share intelligence with law enforcement agencies. Like crime intelligence. The intelligence is accepted in courts.

20 But if you bring the type of strategic intelligence NIA brings, it always cause a problem, because you do not know what else you are going to compromise in your own operation. That was the risk assessment, not to say we want to prevent the corruption.

To say are there any risk, we should just be aware

of them and put, normally where there are risk, you put mitigation. How are you going to deal with it.

ADV PRETORIUS SC: So a risk assessment and the absence of a risk assessment would not prevent the matter being referred to a law enforcement agency for its investigation?

AMBASSADOR CWELE: I agreed with the matter being referred to law enforcement agencies, I said that.

ADV PRETORIUS SC: So having agreed that the matter
10 should go to a law enforcement agency, in particular this case the SIU, the matter is removed from their jurisdiction and never returns to a law enforcement agency and secondly no prosecutions result at all, despite the investigations and despite the content of the report.

Those I have asked that question several times. You have given what I do not hear as a clear answer.

AMBASSADOR CWELE: My recollection Mr Pretorius, is that after I received the report of the inspector general, I had a meeting with the top management then to say here is
20 the report, then we have to find a way of moving forward with the report.

ADV PRETORIUS SC: Ambassador, but that was in 2014 according to your evidence.

AMBASSADOR CWELE: 2013, it was not 2014. I do not know where you get ...[intervenues]

ADV PRETORIUS SC: I thought I heard that.

AMBASSADOR CWELE: No, I said 2013.

ADV PRETORIUS SC: Let me put to you the evidence of Mr Njenje of which you are now aware Ambassador.

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: Njenje said that once the matter was still in the hands of the law enforcement agencies, he received a call from you, asking to meet you at OR Tambo international airport.

10 **AMBASSADOR CWELE:** Okay, which document are you referring to?

ADV PRETORIUS SC: I am referring to Exhibit PP3, para 23, at page LN06.

AMBASSADOR CWELE: 23, page?

ADV PRETORIUS SC: LN06.

CHAIRPERSON: L for Lulu, N for Nellie Mr Pretorius?

ADV PRETORIUS SC: I am sure it is LM06.

AMBASSADOR CWELE: Mine says [indistinct].

20 **ADV PRETORIUS SC:** I may have the wrong reference, just bear with me please. I have a profuse apology from across the table Chair. PP2, my apology.

CHAIRPERSON: PP2?

ADV PRETORIUS SC: PP2. LN06.

AMBASSADOR CWELE: Njenje ...[intervenes]

ADV PRETORIUS SC: Yes.

AMBASSADOR CWELE: LN?

ADV PRETORIUS SC: 06.

AMBASSADOR CWELE: 06, yes.

ADV PRETORIUS SC: The bottom of the page, paragraph 23.

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: I am going to read it.

CHAIRPERSON: Before you read it, excuse me ... Mr Pretorius. PP, the bundle is PP and then it is Exhibit PP2.

10 Is that right?

ADV PRETORIUS SC: Yes Chair. It is behind a divider marked 2.

CHAIRPERSON: You know, these pagination arrangements that we had before can be quite, very confusing now that we are used to just a sequential pagination. Sequential ...[intervenes]

ADV PRETORIUS SC: [indistinct] Chair.

CHAIRPERSON: Okay. Did you say LN06?

ADV PRETORIUS SC: Yes Chair.

20 **CHAIRPERSON:** Okay, I am there.

ADV PRETORIUS SC: Right. Paragraph 23, may I put it on record?

CHAIRPERSON: Ja.

ADV PRETORIUS SC: Mr Njenje says the following Ambassador:

“I got a call from Minister Cwele, asking that we meet at OR Tambo international airport. At the meeting, he told me about his meeting with President Zuma, where the latter expressed strong opposition in us taking Arthur Frazer to court. He said there were concerns of national security. I was gobsmacked and all my attempts to something sensible from Minister Cwele drew a blank.”

10 I am reading as it appears:

“He finally said it is the president’s decision. I had the misfortune of having to go to my team of dedicated investigators and convey this decision by the president.”

AMBASSADOR CWELE: That is what he says.

ADV PRETORIUS SC: Yes, and what do you say?

AMBASSADOR CWELE: I say this is not correct. If you check my statement, I am just trying to ...[intervenes]

ADV PRETORIUS SC: You do not mention in your reply,
20 you do not mention the airport meeting at all.

AMBASSADOR CWELE: Okay, just help me. I have got so many replies on this. I will try to find that, but they are all the same.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: I am just trying to get a response

to paragraph ...[intervenes]

ADV PRETORIUS SC: Look at SSA5. 05 page 692 to 693.

AMBASSADOR CWELE: 692, yes. Yes, I hope you have read my statement.

ADV PRETORIUS SC: Yes, yes.

AMBASSADOR CWELE: In paragraph 24. It says, can I read it for you?

CHAIRPERSON: Ja, read it.

AMBASSADOR CWELE: “There were various reports
10 about PAN program. The investigation
suggestion from investigators was that we
follow disciplinary and the court routes as
appropriate for alleged transgressors. The
sequencing of the proceeding was still to be
finalised. The risk assessment report on the
impact on national circulate in relation to
matters that were going to court was still
outstanding. The agency promised to furnish
me with the risk assessment. In my
20 recollection, the final report of the SSA
investigation team was submitted around
November 2012, about a year after Njenje has
left the agency.”

I hope you underlined that:

“There were several contradictions in various

reports of NIA investigation team. At about June 2013 I requested the inspector general to conduct an investigation into PAN program of NIA with specific terms of reference. The investigation was concluded in 2013.”

CHAIRPERSON: Well, Ambassador Mr Pretorius’s proposition or question is do you agree with this version that there was a meeting between you and Mr Njenje at OR Tambo international airport at which meeting according to
10 him, you told him that you had had a meeting with President Zuma where President Zuma had expressed strong opposition to taking Mr Arthur Frazer to court and that you said there were concerns of national security and that you said the president had made a decision which as I understand it, was that that route should not be pursued.

So his request is for your version on this issue.

AMBASSADOR CWELE: No, that is not correct Chair. As far as I could remember, yes we had several meetings at the airport on this matter. Some of the meetings were in
20 my office, others were at the airport. If I remember, in one of the meetings when they were talking and consulting with the law enforcement agency, I did raise the issue where is the risk assessment, because it was the concern because remember we were reporting even to the president.

The president never expressed any concern about

pursuing the matter. He was also saying but we must be careful and do the risk assessment like we have promised in our own report. So that would be my answer Chairperson.

CHAIRPERSON: Mr Pretorius?

ADV PRETORIUS SC: The timing of the referral to the SIU and its recall from the SIU was in and about March 2011. That is according to the affidavit of Peter Bishop.

AMBASSADOR CWELE: I hear that.

10 **ADV PRETORIUS SC:** You as a minister with supervisory responsibility, had already directed that the matter should go to law enforcement agencies.

AMBASSADOR CWELE: Yes, I agree that we should also involve law enforcement agencies.

ADV PRETORIUS SC: The matter was removed from law enforcement agencies.

AMBASSADOR CWELE: I did not remove any matter from law enforcement agency, I have said that.

20 **ADV PRETORIUS SC:** But it was removed by the head of the NIA or the senior officials with NIA. The question is why? The only rational explanation for that is that they received an instruction from above and that could only have been yourself and the president.

AMBASSADOR CWELE: That is totally incorrect. I will tell you why.

ADV PRETORIUS SC: Let me finish, let me finish.

AMBASSADOR CWELE: Yes.

CHAIRPERSON: Allow Mr Pretorius to finish.

AMBASSADOR CWELE: Okay.

ADV PRETORIUS SC: That is the only rational explanation for what we know occurred.

AMBASSADOR CWELE: Okay. That is totally incorrect. Mr Pretorius, I have told you I was not aware of a stoppage of investigation. As I have said, the final report even from
10 the SSA, came in 2012 well after Mr Njenje has left. So in my view there was no stopping of the work they were doing.

That is why I asked you this report they are telling me now, what is the date because I had so many reports. My recollection was that the final report was well after Mr Njenje left. So the notion that the things were stopped is not correct.

ADV PRETORIUS SC: Well, once again Minister Cwele or Ambassador Cwele, according to your evidence you had
20 several meetings with the leadership of the NIA or the SSA. You had a concern about the progress of the consequences of the PAN investigation.

You met at OR Tambo airport, you met at your offices. Having instructed the matter to be taken to the SIU or to law enforcement agencies, are you telling me you

never made a query as to the fate of that process and you never received an answer?

That is extraordinary.

AMBASSADOR CWELE: Ja, that will be extraordinary if I instructed. I agreed with the accounting officer reporting the matter to the law enforcement agencies. Not that I instructed, I supported that very strongly.

CHAIRPERSON: Mr Pretorius?

ADV PRETORIUS SC: And Minister Cwele, I would like to
10 put one more paragraph to you which appears on SSA05
page 766. This is, I am reverting to the summary once
more.

AMBASSADOR CWELE: Seven?

ADV PRETORIUS SC: 766. SSA05.

AMBASSADOR CWELE: Oh, this is the report with no
date?

ADV PRETORIUS SC: Yes.

AMBASSADOR CWELE: Okay. 766?

ADV PRETORIUS SC: Yes.

20 **AMBASSADOR CWELE:** Yes.

ADV PRETORIUS SC: It reads:

“During 2011 the investigation team also made
a presentation in regard to the CSU matter ...”

That is the PAN investigation:

“To the Minister of Justice and Constitutional

Development, Minister J Radebe in Cape Town on instruction and in the presence of the Minister of State Security.”

Did you instruct that such a meeting take place and was it held in your presence?

AMBASSADOR CWELE: No, I do not recall instructing the minister, with the Minister of Justice to be honest.

ADV PRETORIUS SC: No, it is an instruction to the investigation team to make a presentation to the Minister
10 of Justice and Constitutional Development.

AMBASSADOR CWELE: No. I do not remember making any instruction.

ADV PRETORIUS SC: Alright, it continues:

“Minister Radebe indicated that he has heard and seen enough and that it is a *prima facie* case that must be dealt with by law enforcement. The minister also indicated that his department will render such assistance as may be required.”

20 Did that occur?

AMBASSADOR CWELE: It might be correct, but I do not recall this meeting from the head.

ADV PRETORIUS SC: If I may just summarise
...[intervenes]

AMBASSADOR CWELE: I cannot give you that.

ADV PRETORIUS SC: Yes, the major summarise then
Ambassador Cwele:

“PAN 1 produced the most serious allegations
of criminal conduct. The matter was referred
to law enforcement agencies, in particular the
SIU. The matter was retrieved from the SIU
and they heard nothing more of it, nor did any
other law enforcement agency. There were no
criminal prosecutions to date that have
emanated from PAN 1.”

And you must have known about that.

AMBASSADOR CWELE: Well, as I said Mr Pretorius, it
will be strange, even the DG said he was not aware that
the matter has been stopped. You were giving an
impression that I was aware. I was not aware. If you read
Makatuka’s statement, he say he was not aware, he only
read it when he, after he has left.

ADV PRETORIUS SC: We are talking about you as the
minister.

20 **AMBASSADOR CWELE:** My understanding, let me finish.
My understanding we were continuing with work. I was
continuing to get briefing until somewhere in 2012, even
after Mr Njenje has left. The team was still working. Did
not stop.

I was not made aware that there is anything which

is stopped by that side on the law enforcement agency. I was not. Even after receiving the final report from the SSA, and the final report from the inspector general, I called the management to continue with the work.

ADV PRETORIUS SC: Now we hear your response, I might just remark that Ambassador Makatuka had left the agency. He found out, it seems rather extraordinary that a hands on minister with great concern who directed the matter to go to the law enforcement agencies in the first place did not
10 know about it.

AMBASSADOR CWELE: Ja, but Mr Makatuka did you read how did he found out?

ADV PRETORIUS SC: My point is that you should have known.

AMBASSADOR CWELE: Yes, if you read that ...[intervenes]

ADV PRETORIUS SC: I do not want to belabour the point, yet again.

AMBASSADOR CWELE: Yes.

20 **ADV PRETORIUS SC:** Chair ...[intervenes]

CHAIRPERSON: Ambassador Cwele.

AMBASSADOR CWELE: Yes Chair.

CHAIRPERSON: Did you mention how Ambassador Makatuka finally find out? Do you want to mention that?

AMBASSADOR CWELE: I must go to my notes now,

because you see, okay. If you go to page 89 of Makatuka
...[intervenes]

ADV PRETORIUS SC: PP3.

AMBASSADOR CWELE: [indistinct]

CHAIRPERSON: Is it Exhibit PP3?

AMBASSADOR CWELE: I think it was, I am just trying to
find out now.

CHAIRPERSON: If you, maybe we might not need to go
and check. If you just read, if you have got the paragraph
10 ...[intervenes]

AMBASSADOR CWELE: I have just wrote summary. I say
in that P002 ...[intervenes]

CHAIRPERSON: Ja.

AMBASSADOR CWELE: Makatuka confirmed that when
they came in the investigation was already well on its way.

CHAIRPERSON: Hm.

AMBASSADOR CWELE: Because I am the one who
started it. He then say on paragraph 9:

20 “Minister Cwele agreed with law enforcement
agencies.”

He then, after 9 it then say:

“He was not aware until Njenje gave evidence
that it was stopped.”

CHAIRPERSON: Okay. That ...[intervenes]

AMBASSADOR CWELE: So I just want to say this things

of strangeness that I did not know, even the accounting officer he was not aware. Until they gave evidence that it was stopped.

CHAIRPERSON: Okay, Mr Pretorius?

ADV PRETORIUS SC: Ambassador, do you dispute that the investigation was stopped?

AMBASSADOR CWELE: I did not stop the investigation. I do not dispute, from what I have read, Mr Njenje stopped the investigation. I was not aware that he stopped the
10 investigation.

ADV PRETORIUS SC: Is it not a matter of concern to you as a former minister that arising out of the PAN investigation, there has been no conclusion of a criminal investigation and no prosecution, is that a matter that concerns you?

AMBASSADOR CWELE: Yes, I left the state security agency early in 2014. I do not know what happened thereafter.

ADV PRETORIUS SC: Is it a matter that concerns you
20 Ambassador?

AMBASSADOR CWELE: It will concern me, but what will console me, Mr Pretorius, is that we stopped the funding of the agency, of that program under my supervision. Two, we recovered most of the assets, whether is it houses, whether is it cars.

We recovered those on behalf of the state, because that was a priority to us, to minimise the risk while we are still trying to deal with issues of evidence either for, for disciplinary case and for criminal cases.

ADV PRETORIUS SC: Ambassador Cwele, I assume you accept the proposition that where there is an allegation of serious criminal conduct involving the abuse of state resources, it should be fully investigated by law enforcement agencies and prosecuted.

10 **AMBASSADOR CWELE:** That is correct.

ADV PRETORIUS SC: Do you accept that proposition?

AMBASSADOR CWELE: I agree, thank you.

ADV PRETORIUS SC: Good. Chair.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: I know that the Commission is pressed for time.

CHAIRPERSON: Ja.

20 **ADV PRETORIUS SC:** I have, I would in the ordinary course have dealt with issues regarding the restructuring of SSA and the Ambassador's version in relation to that. I also would have dealt with the allegations made against Mr Shaik, and certain other issues, but those can be dealt with by reference to the evidence, given your own time constraints and given the fact that I have expired or my time has expired.

CHAIRPERSON: Well, how much time do you think that might need?

ADV PRETORIUS SC: Chair, it would need another half hour really but I will just place, I can cut it short by [indistinct] to the Ambassador.

CHAIRPERSON: No, half an hour might still be fine but I think we will just need to adjourn a bit. I need to talk to the evidence leaders who are going to come in later. I think it should be fine. So let us just take a short
10 adjournment, maybe ten minutes and then we will try and finalise properly.

ADV PRETORIUS SC: Thank you Chair.

CHAIRPERSON: Okay, we adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Please bring my pens Letho. Hello is – can you hear me?

REGISTRAR: Yes DCJ.

CHAIRPERSON: Okay all right. We can continue. Mr
20 Pretorius, Mr Semenya, Ambassador I have spoken to the evidence leaders who must come in after we have finished with Mr Cwele – with Ambassador Cwele. Mr Pretorius we can continue – I can let – we can continue for another thirty minutes or so if that will be enough. I just want to make sure that even though we have time constraints the issues

are dealt with properly. So let us continue.

ADV PRETORIUS SC: The principle issues or the appearance of the Ambassador have been dealt with. These are collateral issues but nevertheless I would want to deal very briefly with two of them.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: Ambassador we can deal with this very briefly if you care to or are comfortable to do. The amalgamation of the SSA and the various components of the
10 SSA in 2009 took place by way of proclamation, do you agree to that?

AMBASSADOR CWELE: No.

ADV PRETORIUS SC: I am sorry.

AMBASSADOR CWELE: No I do not agree with that.

ADV PRETORIUS SC: What happened in 2000 and – well would you go please to the proclamation of 11 September 2009.

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: Which appears in Bundle PP3
20 MM159 right at the end of the bundle.

AMBASSADOR CWELE: Or maybe before I go there I will tell them – let me just say there were proclamations but there was a legislative process to establish the new agencies. That is the point I just wanted to make.

ADV PRETORIUS SC: No but – all right. I think we are

going to have to go the long route.

AMBASSADOR CWELE: Okay let me before you go to the long route may I just – in the last – previous session I referred to a session I want to so that you put it on record where I was speaking about the issue of statement of Maqethuka. I just want so that you have it on record. Remember I said I did not know where it is. It is in Exhibit PP3 just for the record.

CHAIRPERSON: Ja.

10 **AMBASSADOR CWELE:** And if you go to – is written PP3 MM022 and number 89 and 90.

CHAIRPERSON: That is PP?

AMBASSADOR CWELE: That is PP3

CHAIRPERSON: Ja.

AMBASSADOR CWELE: Mr Maqethuka MM022.

CHAIRPERSON: Okay.

AMBASSADOR CWELE: It is among the first bundle. There is a statement by Maqethuka.

20 **ADV PRETORIUS SC:** Do you agree with those statements?

AMBASSADOR CWELE: Yes I just want to take you very quickly. But – in the first statement of Mr Maqethuka which is MM1 he never mentioned the issues of the Pan Program. I just want to put that for record. He was then called for this statement which he made which is the PP3 – his second

statement. And at the beginning he goes on issue where he was asked by the commission to sort of elaborate on issues. It was to canvass on his views on some of the matters. In point number 7 among those things is an issue and 8 is an issue of the Pan Program. That is page 002 for your reference. Now this is his second statement where he is canvassed for views. If you lack 5.7 it goes with the Pan Program and 5.8 the interference. But kindly know that in his first statement he never mentioned anything about this.

10 Let me come to the – the issues on this which I have raised.

ADV PRETORIUS SC: Well just before you go on Ambassador.

AMBASSADOR CWELE: On point 3.

ADV PRETORIUS SC: Are you suggesting that there was anything unsatisfactory or untoward in him making a further statement?

AMBASSADOR CWELE: No I am just saying in his original statement he never mentioned anything about – but he was asked. He say I was canvassed.

20 **ADV PRETORIUS SC:** (Inaudible).

AMBASSADOR CWELE: Yes but let me go to the point I am making. In page 222.

CHAIRPERSON: In the same bundle?

AMBASSADOR CWELE: Yes. It is table 89. .89 in the same – same document.

CHAIRPERSON: 1.

AMBASSADOR CWELE: It is PP3 – PP3 MM022.

CHAIRPERSON: Oh that is page 22.

AMBASSADOR CWELE: Yes.

CHAIRPERSON: Oh I think ...

AMBASSADOR CWELE: If you look at point number 89.

CHAIRPERSON: Hang on, hang on Mr – Ambassador.
When you give the page just say 22. The MM we normally
do not mention it but now when you mentioned it – it
10 confuses me because we normally do not mention it. Just
22 will do.

AMBASSADOR CWELE: Oh my apologies.

CHAIRPERSON: No, no that is fine. Well it looks like for
some reason my bundle does not have pages 17 to 23 but
read

AMBASSADOR CWELE: I can read it.

CHAIRPERSON: Ja read it – ja read it.

AMBASSADOR CWELE: Ja. On the point number 89 he
say – that is Maqethuka.

20 “I wish to stress that by the time we are
brought into the amalgamation of
intelligence services the expenditure on all
Pan Projects had already been suspended.
The investigation has virtually been
complete and criminality has been

established.”

And then he said the matter was referred to Njenje by Njenje to Peter Bishop. It was referred by Njenje. In 00:07:38 he say

10 “In fact Minister Cwele had himself taken a view that the investigators and the legal team headed by Mr so and so has exhausted all avenues of investigation and it – it – that it is now up to the law enforcement agency to act against those implicated.”

“I was unaware 00:08:08 I was unaware until I heard Mr Njenje’s evidence before the commission that is the Director General now that after my departure from SSA he was instructed by Minister Cwele to withdraw the Pan Program.”

1. Remember Mr Njenje left first and Mr Maqethuka left after Mr Njenje. So that is the point I was trying to illustrate in my previous thing when he was – Mr Pretorius say, why
20 were you not aware? Even the accounting officer was not aware. So that is the point I was making. I was just making so that you can have a reference from it because I spoke to it. Then we can come to your questions Mr Pretorius. I hope – I hope I have made my point clear on that.

ADV PRETORIUS SC: Well not entirely Ambassador. Do

you agree with the sentences contained or the sentiments expressed or the views set out in paragraph 89 and 90? Are they correct?

AMBASSADOR CWELE: I will tell you what I agree with.

ADV PRETORIUS SC: Do you agree with them?

AMBASSADOR CWELE: I agree – no I said I agree that most of the investigation have started and they done by the time they arrive. I have said that before. That is what I agree with.

10 2. I agree that I supported the issue of criminal investigation. Yes.

ADV PRETORIUS SC: So what do you not agree with in paragraphs 89 and 90? What is wrong there?

AMBASSADOR CWELE: I (inaudible) agree with them I was pointing to you because you were saying as a Minister I was not aware that investigation was stopped.

ADV PRETORIUS SC: Yes.

AMBASSADOR CWELE: The point I was raising – I can listen – can I finish?

20 **CHAIRPERSON**: Ja finish.

AMBASSADOR CWELE: Because 00:10:00.

CHAIRPERSON: Ja finish.

AMBASSADOR CWELE: The point I was raising that I was not aware even the accounting officer say he was not aware until Mr Njenje appeared before you. Remember Mr

Maqethuka was the accounting officer.

ADV PRETORIUS SC: Ambassador my proposition was not an argument it was a question. What in paragraphs 89 and 90 do you not agree with?

AMBASSADOR CWELE: I said I told the things I agree with.

ADV PRETORIUS SC: Is there anything you do not agree with.

AMBASSADOR CWELE: In 89 – I may not agree with the
10 language and all those type of things. That is why I am saying I agree that most of the investigation started before that. I put that – I can take you through my statements because I have made statements on these matters.

ADV PRETORIUS SC: I am referring to this statement to which you have drawn our attention Ambassador. Do you agree that criminality had been...

AMBASSADOR CWELE: Do you want me to go to my statement because I have responded to that statement.

CHAIRPERSON: Hang on – hang on. Okay. Mr Pretorius I
20 think to the extent that it is important to establish whether Ambassador is – or agrees with the contents of those paragraphs I think just take them one – sentence by sentence and let us hear if he agrees with each sentence. I think that will be easier. And Ambassador you listen to what he will be reading and indicate if you agree. If you do not

agree with how it is put but you agree with the substance
you can say you agree with the substance but you would
have put it in differently if you want to say that. Because I
think Mr Pretorius wants to be sure whether you are – you
have the same version as the version put in here in regard
to the paragraph. So going to your statement is not going
to help for now. It is not going to help. Later before we
finish if you need to put it to draw attention to how you put
it in your statement that – that will – can be done. But he
10 just wants to know which parts if any in these paragraphs
you take issue with. Mr Pretorius go ahead.

AMBASSADOR CWELE: Maybe before this Chair if you
may.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: As I said yes I can refer you I
have responded to these paragraphs.

CHAIRPERSON: No it is fine.

AMBASSADOR CWELE: In my – on my statement.

CHAIRPERSON: It is fine. Even if you have responded it
20 is oral evidence now.

AMBASSADOR CWELE: Okay.

CHAIRPERSON: So – ja you have got to deal with it orally
for now. Mr Pretorius just go ahead in regard to the
paragraphs in question.

ADV PRETORIUS SC: Thank you Chair. Ambassador

paragraph 89 it is said as follows:

“I wish to stress that by a time we were brought in to amalgamate the intelligence services the expenditure on all Pan Projects had already been suspended.”

Do you agree with that?

AMBASSADOR CWELE: Agree.

ADV PRETORIUS SC: All right. The sentence continues.

10 “The investigation had virtually been completed.”

Do you agree with that?

AMBASSADOR CWELE: Not 100%. That is why I say I will refer most of it has been done but there were still issues. Yes.

ADV PRETORIUS SC:

“Criminality had been established.”

AMBASSADOR CWELE: Criminality was established at some stage yes not in – not into 00:13:43.

ADV PRETORIUS SC:

20 “The matter was then referred by Mr Njenje to Peter Bishop at the special investigating unit.”

AMBASSADOR CWELE: I agree with that.

ADV PRETORIUS SC: Paragraph 90.

“In fact Minister Cwele had himself taken the

view that the investigators and the legal team headed by Advocate Willem Hanekom had exhausted all avenues of investigation and that it was now up to the law enforcement agencies to act against those implicated.”

AMBASSADOR CWELE: I do not fully agree with that. I agree – as I have told you. There were many reports – there were many outstanding issues and I supported the
10 issue of involving the law enforcement agencies.

ADV PRETORIUS SC: Okay.

AMBASSADOR CWELE: Not that everything – not that the investigation was virtually complete. The final report came in 2012.

ADV PRETORIUS SC: All right. And why is it relevant to whether you as a Minister with supervisory duties which you executed in detailed fashion – why is it relevant that Mr Njenje learnt after his departure that something happened after his departure? Why is that relevant?

20 **AMBASSADOR CWELE:** Not Mr Njenje Mr Maqethuka. That is what those statements of Mr Maqethuka.

ADV PRETORIUS SC: Yes. I am sorry let me put it again. Why is it relevant that Ambassador Maqethuka heard that Mr Njenje had received an instruction from you after his departure from the SSA? Why is that relevant?

AMBASSADOR CWELE: It is very relevant. I have said earlier

ADV PRETORIUS SC: Why though?

AMBASSADOR CWELE: It is the duty of the...

CHAIRPERSON: Hang on Mr Pretorius.

AMBASSADOR CWELE: Yes.

CHAIRPERSON: No I was saying to Mr Pretorius he must give you a chance.

AMBASSADOR CWELE: Oh.

10 **CHAIRPERSON:** Yes go – go ahead Ambassador.

AMBASSADOR CWELE: I was saying it is very relevant because it is the duty of the accounting officer to report the criminal case where he is 00:15:56. It is not the duty of the Minister in terms of the PFMA.

ADV PRETORIUS SC: No. No. Ambassador.

AMBASSADOR CWELE: What – you do not allow me to speak – ask me questions.

CHAIRPERSON: Let him finish.

AMBASSADOR CWELE: And you do not even listen.

20 **CHAIRPERSON:** Ja he will let you – he will let you finish Mr – Ambassador. Continue Ambassador.

AMBASSADOR CWELE: The point is relevant then here is an accounting officer. You remember the so called Super GG was the main accounting officer. He say he was not aware that the investigation was stopped.

ADV PRETORIUS SC: No please Ambassador if you would hear my question. I know it is late in China but what is said here is that after his departure from the SSA Mr Njenje was instructed by you to withdraw the Pan 1 Report from the SIU.

AMBASSADOR CWELE: He could not. Mr Njenje left before – before Mr Maqethuka.

CHAIRPERSON: Oh.

AMBASSADOR CWELE: He was the first to leave. It is not
10 probable.

ADV PRETORIUS SC: Well let us – Ambassador let us go slowly because it is clear that we are in a semantic quagmire here. What he says

AMBASSADOR CWELE: Well.

ADV PRETORIUS SC: Let me finish Ambassador. He says

“I was unaware until I heard Mr Njenje’s
evidence before the commission that after
my departure from the SSA he was
instructed by Minister Cwele to withdraw the
20 Pan 1 Report from the SIU.”

Do you understand what is being said there? Where is that sheet now. You hear that Ambassador.

CHAIRPERSON: Ambassador can you still hear us? It looks like he is frozen. Ambassador. Ja it looks like he is frozen.

ADV PRETORIUS SC: Well I am going to move on Chair the point is clear.

CHAIRPERSON: Ambassador. Can you hear us now? Okay I think you must unmute yourself. Hello. Can you hear us?

AMBASSADOR CWELE: Ja I can hear you now Chair.

CHAIRPERSON: Oh okay all right. Mr Pretorius.

ADV PRETORIUS SC: Just give me the page. Ja I have moved on but I can go back if – if you like. Paragraph 90
10 second sentence reads Ambassador Cwele.

“I was unaware until I heard Mr Njenje’s evidence before the commission that after my departure from the SSA.”

In other words Ambassador Maqethuka had left.

“He was instructed by Minister Cwele to withdraw the report from the SIU.”

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: So I do not understand why the fact that someone who had left the SSA did not know what had
20 happened is indicative of an explanation why the Minister – the sitting Minister should not know what is going on when these matters were directly under his instruction and supervision. But anyway I have put the question. I do not understand your answers and I am happy to move on.

AMBASSADOR CWELE: No, the answer is clear,

Mr Pretorius. You are refusing to say Mr Njenje left before Mr Maquetuka. Well, he saw.

ADV PRETORIUS SC: Your point is?

AMBASSADOR CWELE: The point is. He, as an accounting officer, he says he was not aware until Mr Maquetuka appeared before your Commission that the investigation was stopped.

ADV PRETORIUS SC: I understand that point.

AMBASSADOR CWELE: Thank you.

10 **ADV PRETORIUS SC:** Nevertheless, it does not explain why – we do not know why he knew, why he did not know, but we do know that you were a Minister seized of those matters directly under your control. You gave instructions to the Law Enforcement Agencies, you gave instructions for the IGI to investigate, and you do not know that it was withdrawn. That is extraordinary, Ambassador.

AMBASSADOR CWELE: It is not. You keep on saying I gave instruction to sent to Law Enforcement Agency. I supported that the matter should be referred to. Because I
20 am not the one who refers the matter to the Law – I did not give instruction. I have dealt with that point.

ADV PRETORIUS SC: Right. I refer to your affidavit in due course. Let us move on, if we may, to ...[intervenes]

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: ...PP-3. Have you got that in front

of you, page 159?

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: This is the proclamation which effected an amendment to the Public Service Act which in effect amalgamated the National Intelligence Agency and the South African Secret Service into the State Security Agency. On your advice ...[indistinct]

AMBASSADOR CWELE: H'm?

ADV PRETORIUS SC: Now, in paragraph 12 of SSA-05,
10 712.

AMBASSADOR CWELE: Paragraph?

CHAIRPERSON: Paragraph 12 of...?

ADV PRETORIUS SC: SSA-05, 712.

CHAIRPERSON: Is that the same bundle?

ADV PRETORIUS SC: No, it is a different bundle, Chair.
We are not going to SSA-05.

CHAIRPERSON: Okay, that is Bundle 5.

ADV PRETORIUS SC: Ja

CHAIRPERSON: And what is the page on Bundle 5?

20 **ADV PRETORIUS SC**: 712.

CHAIRPERSON: Yes? Are you still looking for it, Ambassador?

AMBASSADOR CWELE: Ja, I am just trying. There are just so many files here.

CHAIRPERSON: Ja, well, that is alright. 712 is the page

and it is Bundle 5.

AMBASSADOR CWELE: Bundle 5... 712?

CHAIRPERSON: Ja. Black numbers, top left. Almost there.

CHAIRPERSON: Okay.

AMBASSADOR CWELE: [speaker unclear – distortion in video link] 702 or 712?

CHAIRPERSON: 712.

AMBASSADOR CWELE: Yes, I am there.

10 **CHAIRPERSON**: Okay. Mr Pretorius.

ADV PRETORIUS SC: In paragraph 12 to which I am referring, Ambassador, refers to the very legislative process to which you referred earlier. It reads:

“Mr Maquetuka, having served as the Director General of the department, must know that there is a long and complex process involving many stakeholders which result, ultimately, in a bill that classed by both Houses of Parliament.

20 In summary, a process of amalgamating various structures of Intelligence would include a business case for the suggested change that must be approved by both Ministers of Finance and of Public Service and Administration, drafting of a bill by the

department, certification of the bill by state law advisors(?), consideration of the bill by Cabinet, submission of the bill by Parliament, consideration of the bill by Parliament, and if passed, is signed into law by the President...”

So, that is precisely the legislative process that should have taken place before the proclamation effected the amalgamation.

AMBASSADOR CWELE: Mr Pretorius, I fully agree with
10 the statement up to there. Unfortunately, I do not know who the Minister is who signed there. That is not my signature. But the first starting point you do is to develop a business case and that business case must be approved because we are changing the structure of a department. Must be approved by Minister of Public Service as well as the Minister of Finance.

After you have done that, you notify Parliament just for information. After you have done that, then you start the drafting process of the legislation. Clearly, this
20 proclamation probably followed. Remember, the President after election, he reorganises departments and these things are done by proclamation and not by legislation. The legislation follows because there are these processes which needs to be followed.

You prepare the legislation, you send it for

consultation, you send it to Cabinet, then you send it to Parliament. That is my understanding of the process.

ADV PRETORIUS SC: That is a democratic process as enjoined by the Constitution that must take place before the amalgamation.

AMBASSADOR CWELE: The proclamation is not amalgamation.

ADV PRETORIUS SC: Well ...[intervenes]

AMBASSADOR CWELE: The proclamation will in turn of
10 the organisation of the Department of State. It is done after each and every election.

ADV PRETORIUS SC: No, Ambassador. If you read the proclamation ...[intervenes]

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: ...it affects(?) the amalgamation. The schedule is actually amended by this proclamation not by any subsequent legislation after the democratic procedure that you outlined has been followed.

AMBASSADOR CWELE: It was. It was eventually
20 amended. I told you about the process in that paragraph. That was my understanding.

ADV PRETORIUS SC: No, Ambassador ...[intervenes]

CHAIRPERSON: Let us go to the proclamation. Mr Pretorius, can you find it easily or not?

ADV PRETORIUS SC: Yes, page 159, PP-3 ...[intervenes]

CHAIRPERSON: 159?

ADV PRETORIUS SC: Yes.

ADV PRETORIUS SC: That is dated 2009, Ambassador.

AMBASSADOR CWELE: That is correct.

CHAIRPERSON: I am sorry. That is 159 of... It cannot be of the same bundle because I have got something else at 159.

ADV PRETORIUS SC: Of PP-3, Chair.

CHAIRPERSON: Ja, we were at Bundle 5.

10 **ADV PRETORIUS SC:** No, no, no. Bundle PP-3, Chair.

CHAIRPERSON: Ja, you remember you said let us go to Bundle 5 for that passage that you are reading about the process.

ADV PRETORIUS SC: Yes, it is PP-3.

CHAIRPERSON: Ja, but you did not say so earlier. Sp, that is why I was looking ...[intervenes]

ADV PRETORIUS SC: Apologies, Chair.

CHAIRPERSON: I was looking at the wrong bundle. Okay, I am at PP-3 now. What page again?

20 **ADV PRETORIUS SC:** 159.

CHAIRPERSON: 159. Okay, alright. I am thee.

ADV PRETORIUS SC: That is the proclamation to which we are referring. It amends the Public Service Act, and it is dated 2009.

AMBASSADOR CWELE: My understanding of this

proclamation is that proclamation the President issues, is not issues by me.

ADV PRETORIUS SC: No, that is correct. It says it issued on your ...[intervenes]

AMBASSADOR CWELE: The President, after each and every election, issues a proclamation and asked the Minister of the Public Service to reorganise the department. It happens in each and every election, Mr Pretorius. After each and every election.

10 **ADV PRETORIUS SC:** It is a matter of law and Ambassador we can argue to late today and even later on your part as to its meaning, but that is a matter of law, and the Chair will decide. This proclamation says what it says, and it is dated 2009. That is all I am putting to you.

AMBASSADOR CWELE: What is the date?

ADV PRETORIUS SC: 59 of 2009. Do you see that?

AMBASSADOR CWELE: H'm.

ADV PRETORIUS SC: 4 September 2009 is the date of its signature by the President and the Minister who is the
20 Minister of Public Service and Administration. I must correct something I put to you. It was not on your advice. It was on the advice of the Minister of Public Service and Administration.

AMBASSADOR CWELE: Mr Pretorius, I was in government. I was in government in most of the

departments where I was serving. There were changes. I know that after each and every election, the President will announce which departments he wants, how he wants to reorganise the state. But anyway, it is not my proclamation. Maybe let me just put it like that, but I am aware of that.

And that is a long process which is done by the Minister of Public Service and consulting the relevant department as you change – make changes. Then that is followed after that by a process of legislation, as I have
10 put in my statement.

ADV PRETORIUS SC: Ambassador ...[intervenes]

AMBASSADOR CWELE: And if you say that is a matter of law, I am not a lawyer, but that is my understanding what has been happening in each – after each and every administration when there are changes.

ADV PRETORIUS SC: Ambassador, the Constitution makes it very clear that reorganisation of the State Security Agency can only take place through legislation. It
20 may be so that other departments can be reorganised, but not the SSA. Do you know of that?

AMBASSADOR CWELE: Mr Pretorius, I have said there was a legislative process which was followed. The proclamation was proclaiming which departments are going to be fault(?). That is the wish of the President. It is not a

wish of the minister. I am not involved with that.

ADV PRETORIUS SC: Alright.

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: It seems that this is a matter of stamina, Ambassador Cwele. [laughs] I am going to see if I can last it out. In 2009, the proclamation was issued by the President. Under the hand of the President, amalgamating and reorganising the State Security Agency. Do you accept that?

10 **AMBASSADOR CWELE:** I see that.

ADV PRETORIUS SC: Right.

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: In 2013, the General Intelligence Laws Amendment Act purported or regularised that change but only in 2013. Do you agree with that?

AMBASSADOR CWELE: It did not accord(?). It, actually, regularised that.

ADV PRETORIUS SC: Well, there is doubt about that.

20 **AMBASSADOR CWELE:** It went through Parliament. It was signed into legislation.

ADV PRETORIUS SC: Let us accept your view on the evidence for the moment. The matter was regularised by the General Intelligence Laws Amendment Act in 2013. Do you accept that?

AMBASSADOR CWELE: I accept it.

ADV PRETORIUS SC: Alright. I do not need to take that any further then. Then, finally, you were at pains to take to task Mr Shaik. Your evidence on affidavit was quite clear that there was an SSA Intelligence report adverse to him and that you invited him to respond to it. So far, I think, we are in agreement.

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: You say in your affidavit he failed to do so.

10 **AMBASSADOR CWELE:** That is correct.

ADV PRETORIUS SC: Well, I – we have done some investigation on that, Ambassador. In fact, he did do so.

AMBASSADOR CWELE: Not to me.

ADV PRETORIUS SC: He was, on his version, instructed to make an explanation to Ambassador Maquetuka.

AMBASSADOR CWELE: That is not true.

ADV PRETORIUS SC: I am just looking for the relevant... If you will just bear with me for a moment, Chair. These documents, again, where it is out of more recent
20 investigations.

CHAIRPERSON: Okay. Which bundle are you using now? It is still PP-3, mister ...[intervenes]

ADV PRETORIUS SC: We are now back on Bundle SSA-5, Chair.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: You have Bundle 5, page 768?

AMBASSADOR CWELE: ...six, eight.

CHAIRPERSON: Ja, Bundle 5, page 768.

ADV PRETORIUS SC: Is that SSA-05, 768?

ADV PRETORIUS SC: No, SSA-768.

AMBASSADOR CWELE: Ja, let me open it. Yes, we...
768?

ADV PRETORIUS SC: Yes.

AMBASSADOR CWELE: Yes. Yes.

10 **ADV PRETORIUS SC:** You have that?

AMBASSADOR CWELE: Yes. Is on a matter?

ADV PRETORIUS SC: Yes, it is addressed to
Ambassador Maquetuka.

AMBASSADOR CWELE: Yes?

ADV PRETORIUS SC: It is not marked secret at all, but...

AMBASSADOR CWELE: Is it marked secret?

ADV PRETORIUS SC: No, it is not. I will come to the
secret ...[intervenes]

20 **AMBASSADOR CWELE:** [speaker unclear – distortion in
video link] At the bottom.

ADV PRETORIUS SC: Yes, it is been declassified though.
It reads:

“Report to of the Director of State Security
Agency Foreign Branch... [That is Mr Shaik]
...to the Minister of State Security on his

involvement with the J&J Groups purchase of the ICOP Mobile Satellite System...”

Do you see that?

AMBASSADOR CWELE: I see that.

ADV PRETORIUS SC: He says:

“The above-mentioned heading has reference. Attached, please find the report as requested by the Minister on 12 Jun 2011, and as further specified that this report be forwarded to him through your good office.

10

I trust that you find this in order...”

Do you accept that that letter was sent?

AMBASSADOR CWELE: I see the letter was sent. I do not know what this report of the J&J Group is purchasing. It is not a report that ...[intervenes]

ADV PRETORIUS SC: Well ...[intervenes]

AMBASSADOR CWELE: It is not the report I am referring to.

ADV PRETORIUS SC: No, but it is a report that you mentioned. It is a report of Ambassador Shaik, explaining the concerns raised in the SSA report and that report by Ambassador Shaik is at page SSA-05, 769 and following. In other words ...[intervenes]

20

AMBASSADOR CWELE: It is the first time I am seeing this report. It was never sent to me by Mr Shaik nor

Mr Maquetuka.

ADV PRETORIUS SC: Well, that is ...[intervenes]

AMBASSADOR CWELE: The report... Let me finish. The report I gave Mr Shaik, it was submitted to me by the Director of the Domestic Branch, Mr Njenje earlier that year of 2010. And the report had serious allegations. I do not see that report attached here. It had very serious allegations against Mr Shaik. I gave Mr Shaik the ...[indistinct] of the report. I said: Please respond to me
10 to this, because it is quite serious on you. He promised that he will respond, but there was never any report coming back except for verbal denial.

ADV PRETORIUS SC: Well, this is precisely what I am putting to you, Ambassador. And again, I understand, it is late in the day, especially for you.

AMBASSADOR CWELE: No, I am very fresh. I am very fresh.

CHAIRPERSON: [laughs]

ADV PRETORIUS SC: I put it to you at page 768 of SSA-
20 05 and what is annexed thereto is the very report of Mr Shaik. It was forwarded to Ambassador Maquetuka to be forwarded to you. He cannot help it if it was not done, or you did not receive it. He did it.

CHAIRPERSON: Okay, okay, okay. I think maybe you might be talking at cross purposes. So, as I understand

what Mr Pretorius is saying, Ambassador, and what you are saying. You are saying, you gave Mr Shaik a certain report ...[intervenes]

AMBASSADOR CWELE: Yes.

CHAIRPERSON: ...that contains serious allegations against him.

AMBASSADOR CWELE: Yes.

CHAIRPERSON: And you are saying that this report that Mr Pretorius is referring to, is not that report. Mr Pretorius
10 is saying that this report that start at page 769 is Mr Shaik's response to the report that you gave him which you say contains serious allegation against him. Let me first check. Mr Pretorius, is my understanding of what you are saying correct?

ADV PRETORIUS SC: Yes, Chair.

CHAIRPERSON: Yes. Ambassador, that ...[intervenes]

AMBASSADOR CWELE: That is not true. I am just reading this report now, Mr Chair.

CHAIRPERSON: Okay?

20 **AMBASSADOR CWELE**: It is was never sent to me, first of all. To get the seriousness. If you mention – remember, I asked that the report which was given to me by SSA be declassified. I did not speak about his response, that his response must be... Because I never received his response. That report is not here. I do not know which

report is this one.

CHAIRPERSON: Yes. No, but ...[intervenes]

AMBASSADOR CWELE: But I think that there is something about him in this report.

CHAIRPERSON: No, listen, Ambassador. I think you said you have not seen this report before.

AMBASSADOR CWELE: Yes.

CHAIRPERSON: So, you have not read it, I would imagine.

10 **AMBASSADOR CWELE**: Yes.

CHAIRPERSON: So, what Mr Pretorius is saying is that, in effect, Mr Shaik has said he did respond to the report you say you gave him, and he says he sent that report of his response to Mr Maquetuka to pass it on to you. So, I think at this stage, what is important is, that we know whether you ever received this report and maybe you might not be able to say without having read it, whether you received it or not.

AMBASSADOR CWELE: Okay. Mr Chairperson.

20 **CHAIRPERSON**: Ja?

AMBASSADOR CWELE: I have just glanced through this report.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: Chair, Mr Shaik alleges in his statement that I asked him to report to the DG on the

report. I never asked that. I asked him to respond to me because it was me who was giving the report. I told him that the report was serious, and I have to report it even to the Head of State because of this nature, but I wanted to give him a chance because it was serious. It was not about the purchase.

CHAIRPERSON: Okay, I think ...[intervenes]

AMBASSADOR CWELE: It was nothing(?) deeper, Mr Chair.

10 **CHAIRPERSON**: I think to – the way to deal with this, Mr Pretorius, because Ambassador Cwele says he has not read it. Let us leave it and give him a chance after the hearing today to read it and then send an affidavit where he will say, one, whether he ever received this report. Two, whether he regards it as a response to the serious allegations that he says were contained in the report that he gave to Mr Shaik but let him read it first after today's hearing and then he can respond. I think that is the best way.

20 **ADV PRETORIUS SC**: If I could just place two matters on record, Chair?

CHAIRPERSON: Ja?

ADV PRETORIUS SC: The first is that there is a full explanation on oath by Mr Shaik. The second is that Mr Shaik's version is that this report of his, that is

Mr Shaik's, in response to the allegations raised against him is a full explanation of all the circumstances, and that he, in fact, did supply the report or intended to supply the report, his explanation, that is, to the then Minister, Ambassador Cwele. We have asked the State Security Agency to provide us with a declassified version of the first report not Mr Shaik's response which we have here of the first report.

AMBASSADOR CWELE: Yes. ...[indistinct]

10 **ADV PRETORIUS SC**: So, my suggestion, with respect Chair, is that we get that declassified.

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: We give that to the Ambassador, together with the response and it can be dealt with on paper.

CHAIRPERSON: Ja, that is fine. Is that fine, Ambassador.

AMBASSADOR CWELE: That is fine with me. We have been asking for that, Mr Chair ...[intervenes]

20 **CHAIRPERSON**: Yes.

AMBASSADOR CWELE: ...since 2019.

CHAIRPERSON: Yes. Okay, no, that is alright.

ADV SEMENYA SC: Chair ...[intervenes]

CHAIRPERSON: Oh, Mr Semanya?

ADV SEMENYA SC: May I ...[intervenes]

CHAIRPERSON: Yes.

ADV SEMENYA SC: [speaker unclear – distortion in video link]

CHAIRPERSON: We kind of forgot about you. [laughs]

ADV SEMENYA SC: I know. I am ...[indistinct] and listening to all of this, Chairperson.

CHAIRPERSON: Yes, yes.

ADV SEMENYA SC: To me, we have written several letters including with the application to cross-examine.

10 **CHAIRPERSON:** Ja.

ADV SEMENYA SC: There is a report implicating Mr Shaik ...[intervenes]

CHAIRPERSON: Ja.

ADV SEMENYA SC: ...which is classified in the possession of ministry. So that report, which is not in front of you, as we speak.

CHAIRPERSON: H'm.

ADV SEMENYA SC: So, to say there is a response to it. It is a non-answer, with respect.

20 **CHAIRPERSON:** Well, as I understand the position. What Mr Pretorius is saying, Mr Semenya, is that I think in one of his affidavits, mister, or Ambassador Cwele alluded to having become aware of certain serious allegations against Mr Shaik. And my understanding ...[intervenes]

ADV SEMENYA SC: Correct.

CHAIRPERSON: And my understanding would be that, ahead of today's hearing, Mr Pretorius would have raised those issues with Mr Shaik and that what Mr Shaik probably has done, is to say to Mr Pretorius: I did respond to those allegations. Here is a document in which I responded. But we do not have the other – the report to which he was responding.

So, the best way is, therefore, to try, as Mr Pretorius suggests, and see that report, a copy of which
10 Ambassador Cwele gave to Mr Shaik can be obtained. And then that report plus this response by Mr Shaik to that report or to the allegations in that document can then be studied by Ambassador Cwele.

And then he can put up an affidavit, where he says: I have read this response. Yes, I agree it is a response to the allegations. Or: No, I do not think it is. And I had not received it before. Or something along those lines. Then we look at what will be in the affidavits. So, that is the suggestion.

20 **ADV SEMENYA SC:** And I go along with the suggestion, Chairperson. The only point we are making.

CHAIRPERSON: Ja?

ADV SEMENYA SC: The contents of that report is that according to Mr Shaik the relationship deterioration between themselves and the Minister at the time was a

major problem.

CHAIRPERSON: Yes.

ADV SEMENYA SC: Then the ...[indistinct] in his affidavit. No, Mr Shaik, our difficult – my difficulties with you related to your conduct with Foreign Services – Intelligence Services. It is that document which you wanted classified, and it is still not at hand.

CHAIRPERSON: Ja.

ADV SEMENYA SC: That ...[indistinct] [speaker unclear –
10 distortion in video link]

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

ADV PRETORIUS SC: If I may just say? We have asked for that document to be declassified. The SSA have come back to us, saying that their offices are closed, and we have got other explanations, but we are pressing them.

CHAIRPERSON: Ja.

ADV SEMENYA SC: Thank you.

CHAIRPERSON: Okay. Mr Pretorius.

20 **ADV PRETORIUS SC:** I have no further questions, Chair.

CHAIRPERSON: Okay. Mr Semenya, do you have any re-examination?

ADV SEMENYA SC: Yes. Yes, Chair. Can I put some few questions to the witness?

CHAIRPERSON: Yes. Yes, you may do so. Ambassador,

your counsel will ...[intervenes]

ADV SEMENYA SC: Your line is breaking for me, Chair.

CHAIRPERSON: Oh, okay. Can you hear me now?

ADV SEMENYA SC: [No audible reply]

CHAIRPERSON: Can you hear me now, Mr Semenya?

ADV SEMENYA SC: Yes, Chair. Your line is breaking. I do not know if you can hear me?

CHAIRPERSON: I can hear you quite well. I think maybe my ...[intervenes]

10 **ADV SEMENYA SC:** Your line has frozen completely in...

CHAIRPERSON: Oh. The people helping me ...[intervenes]

ADV SEMENYA SC: I cannot hear you at all, Mr Chair.

CHAIRPERSON: Okay.

ADV SEMENYA SC: Yes.

CHAIRPERSON: Can you hear me now?

ADV SEMENYA SC: [No audible reply]

CHAIRPERSON: No? Let me get my staff to help me. They say I am frozen.

20 **ADV SEMENYA SC:** But ...[intervenes]

CHAIRPERSON: Can you hear me now?

ADV SEMENYA SC: Yes, you are frozen.

REGISTRAR: You are audible, DCJ. You are not frozen. We can hear you. I am not sure. The problem might be on Mr Semenya's side.

CHAIRPERSON: Oh. Can you see me, and can you both see me and hear me?

ADV SEMENYA SC: ...once you advice I do.

REGISTRAR: I can see you. I can hear you.

CHAIRPERSON: Mr Semenya?

ADV SEMENYA SC: [speaker unclear – distortion in video link]

CHAIRPERSON: I can hear you quite well. Can you hear me quite well?

10 **ADV SEMENYA SC:** [No audible reply]

CHAIRPERSON: Mr Semenya.

ADV SEMENYA SC: I can. I can. Can I perhaps move ...[indistinct] radio(?), but I will continue on the mic.

CHAIRPERSON: But I can see you well.

ADV SEMENYA SC: Okay. [Indistinct] as well ...[intervenes]

CHAIRPERSON: Yes, I can hear you. I can see you.

ADV SEMENYA SC: Okay, thank you, Chair. Let me proceed.

20 **CHAIRPERSON:** Okay, alright. Okay, Ambassador, your counsel is going to put some questions to you in re-examination. That is just intended to clarify issues where he thinks there is a need for clarification. Mr Semenya.

RE-EXAMINATION BY ADV SEMENYA SC: Yes, Ambassador. As you know ...[intervenes]

AMBASSADOR CWELE: Yes.

ADV SEMENYA SC: As you know, the characters of Messrs Shaik, Njenje and Maquetuka. Are they type of persons who would succumb to a blatant illegally [speaker unclear – distortion in video link] ...from the minister?

AMBASSADOR CWELE: No, not. No.

CHAIRPERSON: Mr Semenya.

ADV SEMENYA SC: Did you hear me?

AMBASSADOR CWELE: I said no, not at all.

10 **CHAIRPERSON:** Did you hear the answer, Mr Semenya?

ADV SEMENYA SC: Okay. If there was ...[indistinct]
[speaker unclear – distortion in video link]

AMBASSADOR CWELE: Yes, I did.

CHAIRPERSON: Okay. It looks like there are some technical glitches. Can you hear, Mr Semenya?

ADV SEMENYA SC: [No audible reply]

REV STEMELA: The problem is with Mr Semenya's line, DCJ. You are clear, but the connection of Mr Semenya is the one that has a problem.

20 **CHAIRPERSON:** Ja.

REV STEMELA: Maybe he should stop the video?

[Background discussions]

CHAIRPERSON: Oh, okay. The – my technician says the problem would be maybe on Mr Semenya's side or the Ambassador's side and not this side, but the Ambassador, I

think, we can hear him. Mr Semenya?

ADV SEMENYA SC: [No audible reply]

CHAIRPERSON: It looks like there is a problem on Mr Semenya's side. Maybe we should adjourn.

ADV PRETORIUS SC: [Indistinct] ...Chair.

CHAIRPERSON: Yes?

ADV PRETORIUS SC: It may not entirely be satisfactory, but Mr Semenya may put his questions to Ambassador Cwele, and we have no objection to them
10 being responded to in writing.

CHAIRPERSON: Yes, I was going to check with him whether he will be fine with that because we have done that sometimes and everybody agrees. But we need to hear him and hear what he has to say.

AMBASSADOR CWELE: May I suggest, Chair?

CHAIRPERSON: Yes?

AMBASSADOR CWELE: I think his video is consuming his data. Maybe if he switch off the video, maybe we can hear him.

20 **CHAIRPERSON:** Well, we do not ...[intervenes]

AMBASSADOR CWELE: Because I can hear everybody.

CHAIRPERSON: Including him?

AMBASSADOR CWELE: Sometimes he breaks. I think his video is one which is consuming the data.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: Maybe you could allow him to switch on and speak. Maybe we can hear him better.

CHAIRPERSON: Ja, the only thing is just whether we do not know whether he can hear us now or he does not.

AMBASSADOR CWELE: He did request earlier on to switch off the video.

CHAIRPERSON: Ja, that is on his side. He can switch it off on his side, as long as we can hear him.

AMBASSADOR CWELE: Yes.

10 **ADV SEMENYA SC:** That is right, Chairperson. Now I can hear everyone. Can I proceed?

CHAIRPERSON: Oh, okay, alright. You may proceed, ja.

ADV SEMENYA SC: The next question, Ambassador, was this. If there were instructions of the nature alleged i.e. you stopped an investigation. Would there not be a report filed with the service?

AMBASSADOR CWELE: Maybe there will be a report, but like I said, there was no way, as I know them, that they could be stopped just because some minister said they
20 must stop illegal investigation if it was illegal.

ADV SEMENYA SC: And if there was such a report, it would even state the reasons why that instructions was given, would it not?

AMBASSADOR CWELE: It will. If you instruct people, then you must make it in writing, that report, that you are

making such instruction.

ADV SEMENYA SC: Well, are there such a recordal by any of the three that you were to – they were to stop investigating the Gupta family?

AMBASSADOR CWELE: No, I do not have any record of that.

ADV SEMENYA SC: Was there such a report written>?

AMBASSADOR CWELE: No.

ADV SEMENYA SC: Okay, okay. Now, let us go to the
10 Pen(?) report. Was there any recordal that you gave an instruction for it to be stopped?

AMBASSADOR CWELE: I only saw it now. There was never any report. As I said, the Pen thing continued i.e. after the – Mr Njenje left, the investigation continued.

ADV SEMENYA SC: Ja, you spent some time with Mr Pretorius on this. First, I am going to put it in leading's(?) way and if it is objectionable, Mr Pretorius will take me up. Firstly, it is Mr Njenje who leaves the service. Is that right?

20 **AMBASSADOR CWELE:** That is correct.

ADV SEMENYA SC: And it is Mr Maquetuka who leaves later, right?

AMBASSADOR CWELE: That is correct.

ADV SEMENYA SC: And it is Mr Maquetuka who is the accounting officer in that space. Is that right?

AMBASSADOR CWELE: That is correct.

ADV SEMENYA SC: And if you had instructed Mr Njenje at that time before he left, he would clearly have spoken to Mr Maquetuka about it? Is that correct?

AMBASSADOR CWELE: Definitely. And particularly because they were meeting every Monday.

ADV SEMENYA SC: Yes, and that is why you are surprised – not surprised, when Mr Maquetuka says he hears about this very stoppage(?) for the first time in 2019.

10 **AMBASSADOR CWELE:** That is correct.

ADV SEMENYA SC: Is that not what you are clarifying?

AMBASSADOR CWELE: That is correct.

ADV SEMENYA SC: Okay. Let us go to the next point. Would you be responsible as the Minister of Intelligence Services to stop a law enforcement operatives like those in SIU?

AMBASSADOR CWELE: No, I would not. First of all, I do not instruct them to do the investigation. It were under – I have got no power at all to stop any investigation because
20 those are independent institutions.

ADV SEMENYA SC: Would you have the power to call on the record to be brought back to you as Intelligence Services?

AMBASSADOR CWELE: Not at all.

ADV SEMENYA SC: Would you have any power to stop

criminal prosecutions of those who may have been implicated and subject to criminal prosecution?

AMBASSADOR CWELE: I do not have that power at all.

ADV SEMENYA SC: Okay. And lastly. Are you saying at the production of that intelligence, it got pointing finger at Mr Shaik would help? Even the Commission are judging where the truth lies in respect of these matters?

AMBASSADOR CWELE: That is correct. That is why I have been asking access to that report.

10 **ADV SEMENYA SC**: Yes. Those are the questions I have for the Ambassador, Chair.

CHAIRPERSON: Thank you very much, Mr Semenya. Ambassador?

AMBASSADOR CWELE: Yes, Mr Chair?

CHAIRPERSON: We have come to the end of your evidence. Before I thank you and excuse you and Mr Semenya. Is there anything that you feel you had not had a chance to deal with properly that you want to say before I excuse you?

20 **AMBASSADOR CWELE**: Thank you very much, Chair. Let me first say. I am very grateful to you that at last you gave me the chance to give my own version.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: This matter has been paining me since 2019 when it was first raised with the Commission.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: And since then, I have been writing statement and requesting to question these statements.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: Instead, I was not. Instead, I suffered a lot, Chairperson ...[intervenes]

CHAIRPERSON: H'm.

AMBASSADOR CWELE: ...during that period. I had a
10 sense that whatever responding to, the gentlemen were given a chance, please respond to this. That is why I was raising the sequence of events. The first thing I responded was the statements.

CHAIRPERSON: H'm.

AMBASSADOR CWELE: It was the three statements. And later on, as I said, Mr Maquetuka had three statements. Mr Goshe, two statements.

CHAIRPERSON: H'm.

AMBASSADOR CWELE: So, but that as may be, I am
20 grateful that you have given me this chance because this matter, as much as it is painful, as I have said to you, in matters of Intelligence I can only respond to you at a high level ...[intervenes]

CHAIRPERSON: H'm.

AMBASSADOR CWELE: ...for the reason you know.

CHAIRPERSON: H'm.

AMBASSADOR CWELE: And I have been stating that in my – but I am grateful that you have given us this chance. I am grateful that you said that you are going to look at this document which were troubling me.

CHAIRPERSON: H'm, h'm.

AMBASSADOR CWELE: And the records which I said we should really look into.

CHAIRPERSON: Ja.

10 **AMBASSADOR CWELE:** Because they will speak for themselves.

CHAIRPERSON: Okay.

AMBASSADOR CWELE: What were the... [speaker unclear – distortion in video link] I want to put it, lastly, that as much as they received that report, I still gave Mr Shaik the benefit of the doubt. That is why I took it to him. I asked him to respond to me directly not to anybody else. It was only when he was not giving me the report that I really became concerned. So, I thought I should just bring
20 those issues. I think I have clarified the issue of the meeting in Cape Town, and if you get the transcript of that recording, it will tell a different story.

CHAIRPERSON: Okay.

AMBASSADOR CWELE: ...from what Mr Mo Shaik was saying. It is very important, lastly, Chair, that Mr Mo Shaik

talk about that investigation happened after 2011 events. I insist, that is incorrect. The investigation was happening in 2010. I know this for a fact because the first incident happened in 2010 at the end, you see, of the ruling party in Durban. That conference was in September in 2010. Immediate after that, that is when I called them, not in 2011 as Mr Mo Shaik in his statement is putting.

CHAIRPERSON: Okay.

AMBASSADOR CWELE: ...I really like. That is why we
10 were saying. If we are giving a chance to interact(?) with these people, they are going to expose some of the marginations(?) they were saying in respond to this. I thank you very much, Mr Chairperson.

CHAIRPERSON: Okay, no. Thank you very much, Ambassador. Thank you very much, Mr Semenya. I will now excuse both of you. I will also excuse you, Mr Pretorius because it has been a long day for you as well. And I will adjourn for about ten minutes. And then when we resume, the counsel for Mr Gigaba, Mr Solomon will
20 cross-examine Ms Mngoma. So I will take an adjournment of ten minutes.

AMBASSADOR CWELE: Thank you, Chair.

CHAIRPERSON: We adjourn.

ADV PRETORIUS SC: Thank you. Thank you, Ambassador.

AMBASSADOR CWELE: Thank you.

INQUIRY ADJOURNS

[REDACTED]

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[REDACTED]

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[REDACTED]