

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

05 OCTOBER 2020

DAY 276



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Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 05 OCTOBER 2020

CHAIRPERSON: Good morning Mr Seleka.

ADV SELEKA SC: Morning DCJ.

CHAIRPERSON: Good morning everybody. Where is the other light that makes – makes – ensures that it is not so dark – it is very dark.

ADV SELEKA SC: Ja I think it stands here as I recall.

CHAIRPERSON: Where is it? Why is it not there? Reverend where is the other light that is usually there?

10 **Am I the first one to notice there is a light missing?**

ADV SELEKA SC: No you are not the first DCJ. I think there might be – yes I thought – the explanation DCJ is that the light is here when there is a witness here present with us. This time around there is not a witness Mr Nick Linnell is ...

CHAIRPERSON: Okay. Alright. Are we ready?

ADV SELEKA SC: We are ready indeed DCJ.

CHAIRPERSON: Okay. Please administer the oath to the witness.

20 **ADV SELEKA SC:** Thank you.

CHAIRPERSON: I must just say for the record I have authorised that this witness is – his evidence via video link or whatever technologies used without being in the venue physically. It may be necessary later on to arrange for him to confirm in person in Johannesburg that his evidence that

he gave via video link was true and correct but let us have the oath administered in the meantime.

REGISTRAR: Please state your full names for the record.

MR LINNELL: Nicholas Hugh Linnell.

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

MR LINNELL: I am prepared to do that.

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

10 **MR LINNELL:** I do.

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

MR LINNELL: So help me God.

REGISTRAR: Thank you.

CHAIRPERSON: Thank you Mr Linnell. You may start Mr Seleka.

20 **ADV SELEKA SC:** Thank you Chairperson. Mr Linnell you can hear me?

MR LINNELL: I can hear you Counsel.

ADV SELEKA SC: Thank you. Chairperson the bundle we are using today is Eskom Bundle 06 Exhibit U16.

CHAIRPERSON: Well the bundle is Eskom Bundle 06?

ADV SELEKA SC: Eskom Bundle 06 correct.

CHAIRPERSON: The Exhibit will be something else inside the bundle.

ADV SELEKA SC: Okay.

CHAIRPERSON: Ja. Okay alright.

ADV SELEKA SC: It is – well it is already marked on the spine. Mr Linnell you have been provided the bundle by way of electronic email?

MR LINNELL: I have.

ADV SELEKA SC: Yes thank you.

10 **CHAIRPERSON:** You will just have to raise your voice Mr Seleka.

ADV SELEKA SC: Yes thank you DCJ. Mr Linnell just housekeeping matters at the beginning. Confirm with me the bundle we find your – your statement which was submitted to the Parliamentary Portfolio Committee dated 21 November 2017. That starts on page 1 of the – of the bundle.

CHAIRPERSON: Are you using red numbers or black numbers?

20 **ADV SELEKA SC:** I am using the red numbers. Thank you DCJ.

CHAIRPERSON: We have recently been using black numbers. Is there a reason to change to red numbers for consistency?

ADV SELEKA SC: Ja. I have realised the different work

streams arrange their files differently DCJ.

CHAIRPERSON: Well we should all use the same because otherwise it is going to be confusing to whoever reads the transcript because they will – they might think we are using the black numbers then sometimes red numbers. We should be consistent. I think let use black numbers.

ADV SELEKA SC: Black numbers.

CHAIRPERSON: Unless there is a particular reason.

ADV SELEKA SC: Okay.

10 **CHAIRPERSON:** Why they should be – they would – if there will be a problem but let us use black numbers so that what will be made clear is that we used red numbers up to a certain point.

ADV SELEKA SC: Okay.

CHAIRPERSON: From a certain point we used black numbers throughout.

ADV SELEKA SC: Okay.

CHAIRPERSON: Ja.

ADV SELEKA SC: Okay DCJ. Mr Linnell the pagination on
20 the documentation is as follows: At the top right hand corner there is a pagination in red but there is also a pagination in black at the left top corner of the documents.

MR LINNELL: I see that.

ADV SELEKA SC: So we – yes you can see that. We will...

MR LINNELL: Yes I can.

ADV SELEKA SC: Yes. We will use the pagination numbers on the left – the top left hand corner.

MR LINNELL: Alright.

ADV SELEKA SC: So that is – okay thank you. So that statement then is on page 4 left hand corner.

MR LINNELL: Yes I have got that.

ADV SELEKA SC: Got that and it is – it is until page 12. The last page is page 12.

10 **MR LINNELL:** Right.

ADV SELEKA SC: You confirm – ja the date of it is 21 November 2017. You see that last page?

MR LINNELL: Correct. 21 November 2017.

ADV SELEKA SC: Thank you. Then it has your name Nicholas Linnell below the date.

MR LINNELL: Correct.

ADV SELEKA SC: Yes. You confirm this to be your ...

MR LINNELL: Correct.

ADV SELEKA SC: You confirm this to be your statement.

20 **MR LINNELL:** It is my statement. Correct it is my statement.

ADV SELEKA SC: Thank you Mr Linnell.

CHAIRPERSON: Is it identical or in any way different from the affidavit – because there is an affidavit?

ADV SELEKA SC: Yes. I just...

CHAIRPERSON: Or is the position that the unsigned one which you have referred to was used in [00:08:34] and then the affidavit was used for the commission?

ADV SELEKA SC: Correct Chair.

CHAIRPERSON: Oh okay alright.

ADV SELEKA SC: Yes.

CHAIRPERSON: You confirm that Mr Linnell?

ADV SELEKA SC: Did you hear the Chairperson Mr Linnell?

10 **MR LINNELL:** Yes absolutely.

CHAIRPERSON: You confirm that?

MR LINNELL: [00:08:48] of the three statements correct.

CHAIRPERSON: Okay.

ADV SELEKA SC: Yes. Okay if we could go then to the affidavit which is on page 29. Just to also place it on record.

MR LINNELL: I have got page 29 correct.

ADV SELEKA SC: Yes it starts with a schedule of documents and we have a list there on that page and the
20 affidavit itself starts on the next page; page 30.

MR LINNELL: Correct.

ADV SELEKA SC: And it runs up to page 42.

CHAIRPERSON: You confirm that Mr Linnell?

ADV SELEKA SC: I think he is still going there.

MR LINNELL: Mr Chairman that is correct page 42 is the

last page of the affidavit.

CHAIRPERSON: Ja.

MR LINNELL: Prior to the annexures.

CHAIRPERSON: Ja.

ADV SELEKA SC: Thank you. Thank you Mr Linnell so that is – that you also confirm to be your affidavit before the commission?

CHAIRPERSON: Your voice is going down Mr Seleka.

MR LINNELL: I do confirm that. Your voice is going down.

10 **ADV SELEKA SC:** That you also confirm to be your affidavit before the commission?

MR LINNELL: I do confirm this is my affidavit.

ADV SELEKA SC: Thank you Mr Linnell.

CHAIRPERSON: I am sorry. Mr Seleka, I think you asked him to confirm that this is his affidavit before the commission but it is actually written in the Parliament of the Republic of South Africa Portfolio Committee at page 30.

ADV SELEKA SC: On page 30 yes Chairperson.

20 **CHAIRPERSON:** Ja that is where it starts is it not?

ADV SELEKA SC: Correct Chairperson.

CHAIRPERSON: It says in the Parliament of the Republic of South Africa.

ADV SELEKA SC: Yes.

CHAIRPERSON: It says Portfolio Committee.

ADV SELEKA SC: Yes. Mr Linnell can you go page 30 of the bundle which will be the first page of your affidavit?

MR LINNELL: To which page?

ADV SELEKA SC: Page 30.

MR LINNELL: Okay. I am there thank you.

ADV SELEKA SC: Yes. You will see at the top of the page your heading there it is in the Parliament – in the Parliament of the Republic of South Africa Portfolio Committee on Public Enterprises [National Assembly] and
10 then [Corporate Governance in Eskom]. You may need to explain whether in fact this is an affidavit you submitting before this commission or is it an affidavit you are submitting before the Parliamentary Portfolio Committee?

MR LINNELL: Mr Chairman this – this affidavit was initially presented to the Parliamentary Committee. I resubmitted the same document to this commission.

CHAIRPERSON: Okay alright. So that is the affidavit that has the South African Police Stamp of 9 March 2018. Okay alright.

20 **ADV SELEKA SC:** Thank you Chair.

CHAIRPERSON: There is some noise that comes through. I do not know whether it is – ja that noise; that sound. What is that? It is like somebody is chewing.

ADV SELEKA SC: Ja.

CHAIRPERSON: I think it is somebody out there. Okay

there is has stopped. Alright.

ADV SELEKA SC: Mr Linnell then you also have provided.

CHAIRPERSON: Ja that is much better; the lighting. Ja that is much better. Thank you.

ADV SELEKA SC: Thank you Chair. Mr Linnell you also have provided this commission with a supplementary affidavit which was also the statement you made – supplementary statement I beg your pardon which you had submitted to the Portfolio Committee; that is on page 26.1.

10 **CHAIRPERSON:** What page is that?

ADV SELEKA SC: Page 26.1.

MR LINNELL: Mr Chairman I have that – I have the same document Counsellor is referring to but not in the pagination of the bundle but I have that document that he is referring to. It is titled the Supplementary Statement, is that correct?

ADV SELEKA SC: It is dated 29 November 2017.

CHAIRPERSON: It is a document that starts at page ...

MR LINNELL: That is correct.

20 **CHAIRPERSON:** 26.1 and goes up to page 28 and it says at the end at page 28 signed on 29 November 2017 at Cape Town. And then Mr Linnell's name appears after that.

ADV SELEKA SC: You can see that Mr Linnell?

MR LINNELL: That is correct Chair.

ADV SELEKA SC: Yes.

MR LINNELL: I have got that document.

ADV SELEKA SC: And then lastly Mr Linnell.

CHAIRPERSON: No I am sorry; I am sorry; I am sorry. I may – I do not want to confuse anybody. There are actually two supplementary statements. There is a supplementary statement and then there is a second supplementary statement.

ADV SELEKA SC: That is the next one.

CHAIRPERSON: I may have looked at a wrong page. The
10 supplementary affidavit – statement starts at page 26.1.

ADV SELEKA SC: Yes.

CHAIRPERSON: And goes up to 26.4 is that right?

ADV SELEKA SC: Correct Chairperson.

CHAIRPERSON: And it is dated – it says it is signed on the 29 November 2017 at Cape Town. It is not actually signed but it has got Mr Linnell's name. Okay.

ADV SELEKA SC: Yes. Mr Linnell do you follow?

MR LINNELL: I do basically there is the three statements referred to are my statements.

20 **ADV SELEKA SC:** Yes. Then you have what the Chairperson was referring to earlier the second supplementary statement that you find on page 27 of the bundle. It is a two page document. Page 27 to page 28.

MR LINNELL: I have got that correct.

ADV SELEKA SC: Thank you. It is also...

MR LINNELL: Chair I have that.

ADV SELEKA SC: Yes. So that – it is between ten lines that one is second – supplementary statement.

MR LINNELL: Correct.

ADV SELEKA SC: And at the end of it on the next page is signed on 29 November 2017 at Cape Town. Below that is your name Nicholas Linnell.

MR LINNELL: That is correct Mr Chairman.

ADV SELEKA SC: You then have also provided us lastly
10 with what you refer to as additional submissions and that is found on page 518 of the bundle. Page 518.

MR LINNELL: Correct I have got that Mr Chairman.

ADV SELEKA SC: Yes that is until page 525 of that bundle.

MR LINNELL: That is correct.

ADV SELEKA SC: Thank you Mr Linnell. Mr Linnell you understand the having done all that you understand the reason why you have asked by the commission to testify before it?

20 **MR LINNELL:** I do Mr Chairman.

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: Do you not want me to admit these statements and affidavits as exhibits?

ADV SELEKA SC: Oh yes indeed Chair. Thank you

Chairperson indeed.

CHAIRPERSON: Okay you tell me where we start and which one comes after which one.

ADV SELEKA SC: The index if the Chairperson goes to the index. So there is item 1.1 which is the first statement of Mr Nick Linnell. We will ...

CHAIRPERSON: I am sorry, I am sorry. Where do you say we start?

ADV SELEKA SC: In the index it will be 1.1 – Item 1.1.

10 **CHAIRPERSON:** Is that not the red one? Well my – the first statement by Mr Linnell on my bundle appears at black numbers page 4.

ADV SELEKA SC: Oh well what I am giving the Chairperson is the Item number on the index. Sorry.

CHAIRPERSON: Oh I am – do not worry about that.

ADV SELEKA SC: Oh should I not?

CHAIRPERSON: Just go to the actual affidvits.

ADV SELEKA SC: Oh okay.

CHAIRPERSON: Yes, ja.

20 **ADV SELEKA SC:** Okay.

CHAIRPERSON: Ja.

ADV SELEKA SC: No then...

CHAIRPERSON: Once you tell me the affidavit starts on page so and so I go there; I find it.

ADV SELEKA SC: Thank you; thank you.

CHAIRPERSON: Ja do not worry about the index.

ADV SELEKA SC: That is on page 4.

CHAIRPERSON: Yes.

ADV SELEKA SC: The first one – the statement. It is on page 4 to page 12. We will mark it Exhibit U16.1.

CHAIRPERSON: Mr Linnell's affidavit that starts at page 4 and goes up to page 12 is admitted and will be marked as Exhibit U17.1

ADV SELEKA SC: 16. 16 Chairperson.

10 **CHAIRPERSON:** Sorry?

ADV SELEKA SC: 16.

CHAIRPERSON: 16 not 17?

ADV SELEKA SC: No not 17.

CHAIRPERSON: Well I – I was beginning to think U17 sounds familiar. Have we not used it? So it is U16?

ADV SELEKA SC: 16 yes.

CHAIRPERSON: Ja. Yes okay. That is together with its annexures?

ADV SELEKA SC: Together with its annexures.

20 **CHAIRPERSON:** It is – ja and the annexures ja.

ADV SELEKA SC: Yes. Thank you Chairperson. The next one is his supplementary statement which starts on page 26.1.

CHAIRPERSON: Yes.

ADV SELEKA SC: 26.1 to page 26.4 and that we would

mark Exhibit U16.2.

CHAIRPERSON: The supplementary statement of Mr Linnell starting at page 26.1 is admitted and together with its annexures if any and will be marked Exhibit U16.2.

ADV SELEKA SC: The next statement is the second supplementary statement on page 27 to page 28 to be marked Exhibit U16.3.

CHAIRPERSON: The second supplementary statement of Mr Linnell that starts at page 27 is admitted then will be
10 marked as Exhibit U16.3.

ADV SELEKA SC: Then the next is the affidavit Chairperson. The index to the affidavit starts on page 29. The affidavit itself on page 30 and it runs up to page 42 that will be marked Exhibit U16.4.

CHAIRPERSON: Did we do 3? Did you do .3? Oh yes we did.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay. The affidavit of Mr Linnell starting at page 30 is admitted and will be marked as Exhibit
20 U16.4.

ADV SELEKA SC: Thank you Chairperson.

CHAIRPERSON: Together with its annexures.

ADV SELEKA SC: And then we also...

CHAIRPERSON: Did we cover all of them?

ADV SELEKA SC: I beg your pardon Chairperson? We

then also referred to Mr Linnell's additional submission which is on page 518 of the bundle.

CHAIRPERSON: Yes but what are those?

ADV SELEKA SC: It is his...

CHAIRPERSON: It looks like just a reference document. When I looked at it it looks like it is there to – for convenience to say what you find where.

ADV SELEKA SC: Yes

CHAIRPERSON: Is that right?

10 **ADV SELEKA SC:** He – he does provide additional answers to some of the questions raised arising from his affidavits Chairperson.

CHAIRPERSON: What page again?

ADV SELEKA SC: Page 518.

CHAIRPERSON: 518.

ADV SELEKA SC: Yes it is indeed not in the form of an affidavit. 518 until 5 – 525. Insofar as we may refer to it Chairperson we will be guided by the Chairperson whether we need to mark it as an Exhibit.

20 **CHAIRPERSON:** Ja. Ja I just reflect on it maybe we will see when we... just reflect on it maybe we will see when we...

ADV SELEKA SC: Yes.

CHAIRPERSON: Come to it at some stage.

ADV SELEKA SC: Thank you Chairperson.

CHAIRPERSON: Okay alright yes.

ADV SELEKA SC: Yes. Mr Linnell you would address the Chairperson and let us start off with a little bit of your background in regard to...

CHAIRPERSON: Just one second Mr Seleka. I think somebody is saying that they are going to go on strike today I must not have water here.

ADV SELEKA SC: I can give the DCJ mine it is not open.

CHAIRPERSON: No, no do not worry I am sure they will
10 organise. Okay alright. Let us continue.

ADV SELEKA SC: Thank you Chair. Mr Linnell you know we will focus mainly on your affidavit and let us start by you telling the Chairperson a little bit of your background in regard to your qualification and what you do.

MR LINNELL: Mr Chairman my – my – at the time of this – the events surrounding this inquiry I was in [00:26:30] of a company called CTNA Project Management and traded as The Project Office is a consulting and project management company and at the time it had offices here and in the – in
20 United Kingdom. My background prior to that was many years ago I practiced as an attorney in Zimbabwe and subsequent to that I worked in the corporate environment in South Africa. I hold a BL LLB Degree and B.Com Honours Degree and during the time of this incident I was a consultant with the Project Office.

ADV SELEKA SC: Yes. Were you admitted as an attorney in South Africa Mr Linnell?

MR LINNELL: No I am not.

ADV SELEKA SC: You know that you have been referred to as the legal advisor to Ms Dudu Myeni?

MR LINNELL: Mr Chairman it is – it is – that is often referred to – that title is often referred to me. I am uncomfortable with that. I was formally an attorney in the neighbouring country and so by profession I did train and
10 practice as an attorney but in South Africa I have never practiced as an attorney and I have not held myself out to be an attorney.

ADV SELEKA SC: Hm. You know coupled with that we understand that your introduction to the board members of Eskom you would have introduced yourself as a lawyer or that you were a lawyer at least – at the very least?

MR LINNELL: Mr Chairman that is correct I think the narrative was that I was a lawyer by profession and – or professional training I think the words but that was
20 followed by the statement that I am a consultant and that as the capacity in which I appeared before the committee – for the board.

ADV SELEKA SC: Now relative to the events you allude to – alluded to earlier which your testimony is really about could you tell the Chairperson when you faced – when you

were first contacted in regard to what was said to be the establishment of an inquiry at Eskom and who first contacted you in regard to that?

MR LINNELL: Mr Chairman it was the morning of the 6 March 2015 I received a call from Dudu Myeni. She, at the time, was the Chairman of South African Airways. The organisation now is doing a similar project. She asked me to urgently attend a meeting with the president, with the then president of South Africa in Pretoria. As a result of that, I
10 flew to Pretoria that same day and I met Ms Myeni at the presidency around midday.

ADV SELEKA SC: If you go to your affidavit, page 31 and that is the left-hand corner pagination, paragraph 5.

MR LINNELL: Yes.

ADV SELEKA SC: You there?

MR LINNELL: [No audible reply]

ADV SELEKA SC: And it reads:

“I was contacted on 6 March 2015 by Ms Dudu Myeni and asked to travel the same day to Pretoria
20 to attend an urgent meeting with the president.”

Is that what you are referring to?

MR LINNELL: That is correct, Mr Chairman.

CHAIRPERSON: It is sounds like you were asked to drop everything and fly to Pretoria the same day and that is what you did. Is that right?

MR LINNELL: That is correct, Mr Chairman.

CHAIRPERSON: H'm.

ADV SELEKA SC: And you say in paragraph 7 of your affidavit:

“On arrival at the presidency ...[intervenes]

CHAIRPERSON: I am sorry, Mr Seleka.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: Maybe before he gets to seven. Tell me Mr Linnell, did you know Ms Myeni by that time? How did
10 you know her? How come somebody could phone you in the morning and say drop everything and come to Pretoria and you do exactly that?

MR LINNELL: Mr Chairman, as I ...[intervenes]

CHAIRPERSON: Did you not have anything to do?
[laughing]

MR LINNELL: No, I did have something to do Mr Chairman.

CHAIRPERSON: Yes..

MR LINNELL: At the time I was engaged in a similar project at South African Airways in which time I would have
20 interfaced with Ms Myeni on a very regular basis. So I would have known her relatively well. And he(sic) phoned me and said could I attend an urgent meeting with the president that same day?

CHAIRPERSON: How long have you known Ms Myeni at... by that time? If you are able to remember.

MR LINNELL: I would say three or four years. I think, I stand corrected, three or four years Mr Chairman.

CHAIRPERSON: Yes. So you... had you been a consultant to the SAA or to her personally or to also another entity in which she was involved?

MR LINNELL: Mr Chairman, that is correct. Prior to looking... doing this contract at South African Airways, I did a similar one at Mhlathuze Water Board. Ms Myeni was the chairman on that Water Board at the time.

10 **CHAIRPERSON:** H'm. What actual... what job did you actually do for Mhlathuze Water Board? Now, obviously, I am looking for details. I just want present idea what you were doing. Were you acting like the board's legal advisor? What were you actually doing?

MR LINNELL: Mr Chairman, I acted as the coordinating party to an enquiry into alleged of the then chief executive officer which is very similar to the work that we are engaged with in this testimony today.

20 That... it was not in the capacity as a legal advisor. In that instance, as at SAA, here typically I would use a firm of attorney who would work alongside with me to provide any legal expertise required.

CHAIRPERSON: So was... were your services required whenever there were allegations of misconduct or poor performance or similar things by employees at Mhlathuze

Water Board? Is that what would give rise to the need for your services?

MR LINNELL: Just to reiterate. Mhlathuze Water Board, yes. Subsequent to that, there were a number of other contracts which were unrelated that, for example, internally internal disciplinary hearings or such matters as sexual misconduct and harassment and whatever. That there were different types of ... and there were small but...

CHAIRPERSON: H'm.

10 **MR LINNELL**: I did sign a waiver(?) [*connection not clear*] at Mhlathuze Water Board.

CHAIRPERSON: H'm. And at SAA, was it also work that went along the same lines that you did?

MR LINNELL: Mr Chairman, that is correct. I am sorry.

CHAIRPERSON: Yes.

MR LINNELL: Mr Chairman, at SAA that project commenced with an identical assignment which was the inquiry into the alleged misdemeanours against the then chief executive officer of that organisation. And I draw(?)
20 [*connection not clear*] inquiry. Again, its professional legal team next to me.

CHAIRPERSON: So you would have begun to do some work for SAA or Ms Dudu Myeni at SAA around what, 2013/2012, 2011 or thereabouts?

MR LINNELL: Mr Chairman, I think it was 2014.

CHAIRPERSON: Yes.

MR LINNELL: I stand corrected. I might have been *[connection not clear]* 2014.

CHAIRPERSON: Yes. And then at the Water Board would have been much earlier? Would have been earlier than that?

MR LINNELL: I think that started Mr Chairman about two years earlier.

CHAIRPERSON: Yes.

MR LINNELL: And then there was a gap in between.

10 **CHAIRPERSON:** Yes. Now I will ask you a question that might relate to something else that you are not going to testify here about but I heard a lot of evidence last year about the dismissal of certain managers or senior people at SAA and I think it was around to 2014 if I am not mistaken, 2015.

One of them was miss I think Thule Moshe(?)e if I am not mistaken. Another one was Dr Dojwa(?). Would those people be some of the people in which your... in respect of whom your services had been utilised?

20 **MR LINNELL:** Not directly related to their dismissals Mr Chairman but I was aware of both instances.

CHAIRPERSON: Yes.

MR LINNELL: I interacted with *[connection not clear]* Ms Ngese(?) and I never interacted with Dr Dojwa.

CHAIRPERSON: Yes.

MR LINNELL: But I was aware of both.

CHAIRPERSON: Yes.

MR LINNELL: Both instances but I was not directly
[connection not clear] ...[intervenes]

CHAIRPERSON: Report. Okay alright. Mr Seleka.

ADV SELEKA SC: Thank you, Chairperson.

CHAIRPERSON: Because now we know how and when
they... he got to know Ms Dudu Myeni...*[intervenes]*

ADV SELEKA SC: Yes.

10 **CHAIRPERSON**: ...and what it is was about.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: No, thank you Chair.

CHAIRPERSON: Ja, let us continue.

ADV SELEKA SC: And Mr Linnell, I do not know whether
you are aware that it has been reported that you and mister
or Mrs. Ms Dudu Myeni's Mr Fixer. Were you aware of that?

20 **MR LINNELL**: Mr Chairman, I have seen reference to that
been repeated(?) *[connection not clear]* correct Mr
Chairman.

ADV SELEKA SC: And were you the Fixer for Ms Dudu
Myeni? Do you understand what the concept means?

MR LINNELL: Mr Chair, I think it is an unreasonable
association or narrative to put to it. In the context that I was
engaged with a number of instances where things were fixed

in a proper sense and that might be fairly attributed. But the narrative itself is... it is probably unreasonable.

CHAIRPERSON: I should have asked this question earlier. How did Ms Dudu Myeni know you or your services? Was it through some advertising that you did or you made a presentation and to SAA or Mhlathuze Water Board? Because I see you live in Cape Town and Mhlathuze Water Board is in KZN and SAA had offices in Joburg.

MR LINNELL: Mr Chairman, at the time... the first time I
10 *[connection not clear]* was at Mhlathuze Water Board and I took over an assignment from a colleague. So... well ...*[intervenes]*

CHAIRPERSON: So you were recommended by a ...*[intervenes]*

MR LINNELL: A colleague.

CHAIRPERSON: A colleague. H'm.

MR LINNELL: *[connection not clear]* Mr Chairman.

CHAIRPERSON: Yes, okay alright.

ADV SELEKA SC: Thank you, Chair. Mr Linnell, you, I
20 guess, would also be aware that this inquiry that was intended to be undertaken at Eskom and you will talk more about it in due course ...*[intervenes]*

CHAIRPERSON: I am terrible sorry, Mr Seleka. I know I am interrupting you again. But I just want to ask this question before we go further.

ADV SELEKA SC: Yes.

CHAIRPERSON: You have said Mr Linnell that you were a coordinator and you would bring in, I think, attorneys or lawyers who play a role in SAA, Mhlathuze. And I know that in regard to Eskom too, you were said to be a coordinator. I think that is how you prefer to... refer to it and you would bring the lawyers to assist.

I kind of struggle with the need for a coordinator in these entities because I do not understand that there would be
10 services that you could provide which attorneys would not be able to provide.

Are you able to enlighten me what your understanding was why Ms Dudu Myeni or the Mhlathuze Water Board and SAA would have felt that there was a need for your services in circumstances where your knowledge large was legal and they would not be able to dispense with the need for attorneys. You would still bring attorneys to assist.

MR LINNELL: Mr Chairman, I think the lawyers(?)
[connection not clear] which I provided is distinct from what
20 they do. My experience and the extent(?), I would propagate my services for, would be to provide an independent oversight of an inquiry of that nature.

My experience is that, in any investigation it becomes, not my object(?) but it has a particular target or identify and direction. And services that I offer would provide objectivity,

it would question, it would request different angles to be pursued with interrogate(?) my answers given.

And I think in those instances where I have worked with those professional(?) organisations, they would have valued and they do value, I think, those added value services. They are different but they do add something to the task(?).

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: I must just say, I would need a lot of
10 persuasion to accept that there was a need but let us go on.
Yes.

ADV SELEKA SC: Yes. Thank you, Chair.

MR LINNELL: *[connection not clear]* [Indistinct]

CHAIRPERSON: Sorry?

MR LINNELL: May I follow that Mr Chairman?

CHAIRPERSON: Yes, yes.

MR LINNELL: Mr Chairman, I think it is a very distinct role that that services *[connection not clear]* In every instance and the *[connection not clear]* of that could be with the
20 people I have worked with. It does provide an added value service. It does question.

It does seek different *[connection not clear]* from it. It questions. It enables you to intimate(?) within the forensic(?) people and the attorneys. And it is not only an *[connection not clear]* provided services *[connection not*

clear]. It is part of providing project management services which my company has better associated with.

So it is not limited to the perception in that we might have in this instance.

CHAIRPERSON: Yes, continue Mr Seleka.

ADV SELEKA SC: Thank you, Chairperson. You know Mr Linnell, just on that line again. You would have seen in your bundle the interview conducted with Paulo Sullivan. And I want to just read from a page in regard to the interview
10 which is page 545. I am going to quickly read this. You go there Mr Linnell, 4, 5 ...[intervenes]

MR LINNELL: *[connection not clear]*

ADV SELEKA SC: Ja, 454. It says now:

“Nick Linnell is Mr Fix It for Dudu Myeni. Every time she gets into trouble, Nick Linnell has been running around, trying to put out fires and that includes at the Water Board in Richardsbay at SA Airways and as we now know here he has been assisting her in bullying the chairperson of Eskom and he pulled it
20 off. He makes it clear that Nick Linnell actually drew up the suspension letters which he then served on those three individuals.”

You want to comment to the Chairperson on this?

MR LINNELL: The person to whom you are referring *[connection not clear]* publishes those stories *[connection*

not clear] to where I form my functions. Maybe... well, maybe he did go and phrase Mr Fix It. I am not sure.

But certainly I have performed services, amongst others, *[connection not clear]* at state enterprises where she has in a functionary. So then it is correct to the extent that I solved or fix problems. If the brief is to perform a service I would hope(?) and expect to do that. That would be correct.

ADV SELEKA SC: So it would be correct when they say:

10 “Every time she gets into trouble, Nick Linnell has been running around, trying to put out fires and that includes at Water Board in Richardsbay, at SA Airways, and as we now know, that they are referring now to Eskom.”

MR LINNELL: Mr Chairman, that is a personal narrative of the individual *[connection not clear]* that if you took it in isolation. Yes, correct that I worked with Mhlathuze Water Board and SAA and again at Eskom. So if that would be interpreted as following(?) her around and fixing problems, to that extent it would be correct but that might not be the
20 right narrative to the functions I seek and performing.

ADV SELEKA SC: We will come back ...[intervenes]

MR LINNELL: They... *[connection not clear]* Mr Chairman, it purports to convey a meaning which is not correct.

ADV SELEKA SC: We will come back to the Eskom matter. Further on, on that same passage, on that same page the

two persons are talking in the interview

“You say he is not a lawyer. What exactly is he apart from being a Mr Fix It?”

Then the response is:

“He was a lawyer in Zimbabwe. At that stage is was Rhodesia. And he, in fact, was a magistrate in Rhodesia.”

Is that correct that you were a magistrate?

MR LINNELL: That is correct, Mr Chairman.

10 **ADV SELEKA SC**: I see. Now let us go back to the date, the 6th of March 2015. You are called by Ms Dude Myeni, as you say, to go to the president’s residence in Pretoria. And tell us then, you did go there. Is that correct?

MR LINNELL: I did Mr Chairman. Could you just *[connection not clear]* that is correct?

ADV SELEKA SC: Indeed, I will do so Mr Linnell. That is on page 31.

MR LINNELL: [No audible reply]

ADV SELEKA SC: Page 31.

20 **MR LINNELL**: Yes. Yes, Mr Chairman. The question was after that...?

ADV SELEKA SC: Ja.

CHAIRPERSON: You arrived at the presidency and what happened on the 6th of March 2015?

MR LINNELL: Mr Chairman, I was met there by Ms Myeni in

the expectation(?) of meeting the president. She got a couple of hours, we just sat there in one of the empty rooms and she briefed me on what she said was the... what would be the instructions of the president in respect of an inquiry at Eskom. If I... if you wish me to continue?

CHAIRPERSON: Yes. Ja, just turn ...[intervenes]

MR LINNELL: That lasted a number of *[connection not clear]*

CHAIRPERSON: Okay let us start. You arrive, you met
10 with Ms Dudu Myeni at the presidency. She started telling you why, what this was all about. Just relate the conversation between the two of you as it happened as far as you are able to remember.

MR LINNELL: Mr Chairman, I have to paraphrase that I cannot recall how it went but there would have been... there might been... it might even so we had a discussion on *[connection not clear]* investigation at the time. I cannot recall that but at a point in time relevant to this, she explained in some depth that the president wanted an
20 investigation into the affairs of Eskom.

And she had recommended to him that I would perform... I could perform that function. And the purpose of me being there was for him to presumable consider and agree or otherwise to that suggestion.

ADV SELEKA SC: Was it made clear to you by her Mr

Linnell that what she was telling you was what was desired by the president?

MR LINNELL: Without a doubt Mr Chairman.

ADV SELEKA SC: Did the President, Mr Zuma, at the time, join you in that meeting?

MR LINNELL: No, he did not. I think it was about four o'clock in the afternoon then he had left the office was his residence. He had just left. And I departed. And in the process of departing, Myeni asked if I do not [*connection not*
10 *clear*] attend the meeting on the 8th which was...

This was Friday, the 6th. The 8th would have been the Sunday. If I could then again attend the meeting which was intended for the 6th with him on the Sunday, the 8th.

ADV SELEKA SC: Yes.

MR LINNELL: I then departed.

ADV SELEKA SC: Yes. Just before we move on. Let me ask you this. On the 6th, you meet with Ms Myeni and you meeting her at the president's residence in Pretoria. Is that correct?

20 **CHAIRPERSON**: I think ...[intervenes]

MR LINNELL: Chair, that is correct.

CHAIRPERSON: Were you meeting her at the president's residence or at the president's office at the presidency? I think the presidency... ja, the offices... the official residence, I think is something else.

MR LINNELL: Mr Chairman, I was [*connection not clear*] I think I have a recollection of being misdirected and I might have gone to which was known as the Union Buildings on the way but they are next to each other. And the meeting was at the residence.

CHAIRPERSON: Oh, the meeting was at Mahlamba Ndlopfu, at the residence?

MR LINNELL:

CHAIRPERSON: Oh. But I thought you said that at about
10 four o'clock, you were told that the president had left for his residence. Did I misunderstand you?

MR LINNELL: No, that is correct but as I understood it, he left for his residence in Kwazulu-Natal. So he was not... he was at his residence. Apparently when I was there, that he was not in the rooms that we were waiting for that.

CHAIRPERSON: Oh. So when you and Ms Myeni were having a meeting at the president's residence, you got to understand at some stage that he was not there at the time as opposed to him having been there but left while you were
20 waiting for him.

MR LINNELL: When I arrived there Mr Chairman, my understanding he was in the residence at the meeting and during the course of the time that I was there, there was always the expectation that one would be summoned to see him at any moment.

That any moment drifted for a number of hours. At a point in time, I think around four o'clock or late in the afternoon, it was announced that he had left that building and gone I think to KZN.

CHAIRPERSON: Okay.

MR LINNELL: At which point, an arrangement was made to meet him on the 8th.

CHAIRPERSON: Oh, okay alright.

ADV SELEKA SC: Thank you, Chair. So what then Ms
10 Myeni talks with you about, it is an inquiry or you say an investigation into Eskom's affairs.

MR LINNELL: Correct, Mr Chairman.

ADV SELEKA SC: It is not into SAA, SA Airways affairs?

MR LINNELL: Not at all Mr Chairman.

ADV SELEKA SC: Did she mention anything about the suspension of the executives at Eskom in this meeting?

MR LINNELL: Mr Chairman, I would imagine there was a discussion about suspensions because the discussion took place was Ms Myeni said briefing about the inquiry into
20 Eskom and a discussion as to how at which the inquiry ought to follow.

So I... when I left there at four o'clock, in my mind it would have been both an approach that the top executives would be... it would be proposed that they would be suspended during the inquiry.

CHAIRPERSON: Now during your conversation with Ms Myeni, did she tell you what problems Eskom was facing that needed to be dealt with?

MR LINNELL: Mr Chairman, yes there was... there was quite a bit of background information provided. As I recall and I did give it to your Commission. There was... I took a photograph on my phone of one piece of paper which I subsequent found and sent to my computer but the photograph shows... the photograph was taken on the 6th of
10 [break in audio] and that had some details on a structure of an enquiry. So there would have been a discussion about what was to – what was expected to be taken, the approach to be taken for such an inquiry and that would have been a two way discussion, it would have been my suggestions as much as her suggestions. It was a discussion.

CHAIRPERSON: So is the position that she would have mentioned to you what at least some of the problems that she would have said Eskom was facing and she would have
20 said there was a need for an investigation and she said she had recommended you to the President as somebody who could conduct such an investigation. Is that correct?

MR LINNELL: Mr Chair, I cannot recall the extent to which she gave me a background of the state of affairs of Eskom *per se*. Having said that, I and every other South

African, was very much aware of the state of Eskom at that time. No one had any other idea than it was in a crisis and was in a vending(?) **01.38** national calamity(?) **01.43** so it did not need much elaboration.

CHAIRPERSON: So the – that Eskom was facing serious challenges was well-known at the time and you might not have asked for too much detail because you knew that Eskom had serious challenges, is that right?

MR LINNELL: Not quite, Mr Chairman, she would have
10 offered [indistinct] 2.14 around insights that she might have had. I do not remember specifically any pertinent insights at that meeting that she had. You know it was more – well, back on the 8th but she would have had some views on Eskom but I had a fair understanding of, as everyone in the country had an understanding, of what was going on at Eskom.

CHAIRPERSON: Did she say who had come up with the idea of an inquiry or an investigation at Eskom? At that stage did she mention to you?

20 **MR LINNELL:** I cannot remember the words but there was absolutely no idea, no other idea than she had been asked to broach this by the President. So if there was one person who had told her to do it, it was the President.

CHAIRPERSON: Yes. Yes, please continue, Mr Seleka.

ADV SELEKA SC: Thank you, Chair. Mr Linnell, we

understand from your statement that you also did your own independent what, research background research into Eskom's affairs?

MR LINNELL: I did. I started doing some research that evening and into the next day on the Saturday the 7th but that research was limited to desktop research and in media articles. I went on the Eskom site and I took – printed out copies of some of the printouts, you know, the photographs of directors and maybe some structure, maybe press
10 releases, I cannot remember specifically but I would have done some more work after I left there on the 6th prior to the 8th.

ADV SELEKA SC: Yes. So to the extent that ...[intervenes]

CHAIRPERSON: Mr Seleka, I think it is time for the break.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: We are at twenty past. We will take the short tea adjournment, we will resume at twenty five to
20 twelve.

ADV SELEKA SC: Thank you, Chairperson.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Let us continue.

ADV SELEKA SC: Thank you Chairperson. Mr Linnell you can hear us?

MR LINNELL: I can hear you Mr Chairman.

ADV SELEKA SC: Thank you. Just before the adjournment you were talking about the desktop research that you did. You mentioned looking at the structure of Eskom and printing out some photographs of the directors. Do you recall?

MR LINNELL: Yes.

10 **ADV SELEKA SC:** Would you have done that?

MR LINNELL: Yes.

ADV SELEKA SC: Thank you. Can you explain to the Chairperson when you doing that having in mind to identify who should be suspended?

MR LINNELL: Not specifically I was trying to gain an insight into company people, it was a general research thing but it was not with any particular thoughts. I was conscious of what would be my proposal to suspend top executives but that would not have preoccupied the
20 research. The research was just to try and get a better understanding of the entity and who was who.

ADV SELEKA SC: Yes, so we getting ahead of ourselves but let me ask you the question because of talking about the executives in your supplementary affidavit there is an indication by you that you would have come up with the

areas affected by the investigation and in which the executives would have to be suspended.

MR LINNELL: Not at that stage I know on the 7th so on the 6th of the 7th I would have been conscious whether it was by suggestion or my own intuition that if one was going to investigate entities such as Eskom or the allegations that were found at that time. I would propose that the key players were removed as a precautionary suspension during that investigation.

10 **ADV SELEKA SC:** Okay so that is...[intervene]

MR LINNELL: That would be my belief.

ADV SELEKA SC: Thank you Mr Linnell so that exercise you would have done after in days following shall I put it that way.

MR LINNELL: Yes out of the six.

ADV SELEKA SC: Yes, thank you. So going back to your affidavit on the 6th you say the President did not meet with you in that meeting. You understood that he had left for his residence in KZN. Can you take the Chairperson from
20 that on to how the next meeting was arranged?

MR LINNELL: When I left the Presidency on the afternoon of the 6th I was aware already, it was really clear in my mind I would be travelling to Durban on the 8th to their meeting. So effectively what I thought was the purpose of the meeting on the 6th were most found and

transferred to Durban on the 8th.

ADV SELEKA SC: And you would have understood that from Ms Dudu Myeni?

MR LINNELL: That is correct Mr Chairman.

ADV SELEKA SC: So this meeting on the 6th apart from you and Ms Dudu Myeni there was nobody else that attended the meeting?

MR LINNELL: There was no one else Mr Chairman.

CHAIRPERSON: Apparently you had that discussion
10 with Mr Zola Tsotsi on the 6th or on the 7th, is that right?

MR LINNELL: Mr Chairman my person awareness of Mr Tsotsi would have been on the morning of the 7th I was given his cell phone number he had my number and phoned me and there was talk that he was also meant to be at the meeting on the 8th and I asked him during that meeting if he could obtain the key company documents that we would need if we were going to have that meeting on the 8th which he undertook to do.

CHAIRPERSON: At the meeting of the 6th of April at the
20 Presidents residency between you and Ms Myeni, Ms Myeni mentioned Mr Zola Tsotsi the Chairperson of the Eskom board in any way or is that something you cannot remember?

MR LINNELL: Not to my recollection I do not think his name was mentioned, not that I can recollect.

CHAIRPERSON: Okay. Alright, please continue Mr Seleka.

ADV SELEKA SC: Yes, thank you Chair. Mr Linnell the conversation with Mr Tsotsi how would it have come about if mention was not made of him in the meeting on the 6th how would your conversation with him have come about?

MR LINNELL: I cannot remember Mr Chairman but what I do recall simply because at the time I was able to look back at my own records I had a telephone conversation
10 with him on the Saturday morning of the 7th. I then recall that with my telephone records demonstrated that so from that moment I had to try and work out what had been the conversation bearing in mind I was only reflecting on this maybe a year or so later it was not relevant at that time to think about that. So I was having to recollect when was my first engagement with him regarding any other notes.

ADV SELEKA SC: Is it apparent from your telephone records who initiated the all?

MR LINNELL: I cannot recall that Mr Chairman I just –
20 the process that I adopted is when this issue became an issue I needed to go back and work out what had happened and the only way I could do that is look for source information on my computer and on my phone and that is the reason I was able to find the photograph which I had taken on the 6th and subsequently transferred that to my

computer. So much of my earlier recollections of this was taken from trying to find out a starting point and work back from then.

ADV SELEKA SC: Yes, so what was your conversation with him about?

MR LINNELL: I cannot recall all that Mr Chairman I certainly it pertained to me requesting copies of corporate documentation which I would bring to Durban so I was aware that he was coming during that conversation to
10 Durban and it might have only been about that time knew he was coming to Durban. My recollection is that I left on the 6th at that moment I did not know he was going to be there; I did not think that anyway. So maybe it was an introductory type conversation who am I and who is he I do not think I met this man particularly before that and I asked him for the documents and that was the end of the conversation.

ADV SELEKA SC: Ja, so that incident is referred to in paragraph 14 of your affidavit page 31 paragraph 14 which
20 reads:

“During the following days Saturday 7 March 2015 of course which is not inserted there. Mr Tsotsi either called me or I was provided his contact number but I requested from him company documents and policies which would be required for

proposing the enquiry and its terms. During the exchange it was evident he would be able, he would also be at the meeting in Durban on Sunday 8 March 2015.”

Do you see that?

MR LINNELL: Correct.

ADV SELEKA SC: Well I would have asked you who provided you with his number.

MR LINNELL: That is correct.

10 **ADV SELEKA SC:** Ja, I would be asking you who provided you with the number.

MR LINNELL: I don't know.

CHAIRPERSON: When one looks at paragraph 14 Mr Linnell one gets the impression that the person who had the need for a conversation or a discussion was you rather than him, because you point out that you requested from him company documents and policies, that might suggest that you would have called, because you wanted to get those documents in preparation for the meeting in Durban
20 the following day. Does that help you remember whether you called him or it doesn't help you?

ADV SELEKA SC: No, I don't think – I don't think that would be a correct assumption, I am stating in that paragraph that arising out of that conversation I asked him for documents. He might have phoned me and I might have

phoned him, it wasn't particularly relevant to me who initiated the call at that time.

CHAIRPERSON: Yes.

ADV SELEKA SC: Yes, and the documentation were exchanged with you, you did receive documentation from him?

MR LINNELL: Mr Chairman the next morning, and it might be referred to in one of the documents, but I go from recollection, so the next morning which would be Sunday
10 morning when I was travelling to Durban for this scheduled meeting he sent me delegations of authority documents, I think there were two, and that's the only ones I got as I recall from Mr Tsotsi at that time.

ADV SELEKA SC: Okay, just to assist you Mr Nick Linnell we have emails sent to you on page 530 and 520 by email dated 8 March 2015.

CHAIRPERSON: What is the page number?

ADV SELEKA SC: Page 530, which is the first email, according to the timestamp and then page 529. Let's start
20 at page 530 Mr Linnell.

MR LINNELL: I am just getting there, I'm nearly ready.

ADV SELEKA SC: Alright.

MR LINNELL: I can carry on because I recollect the documents.

ADV SELEKA SC: Yes, the email comes from Mr Zola

Tsotsi, it is addressed to yourself,
NickL@theprojectoffice.co.za 8 March 2015, the timestamp
is 11:57:57 it says:

“Hi Nick,

Herewith are the docs as discussed.

Regards,

Zola”

Now it is not apparent from this email what ...[intervenes]

MR LINNELL: That is correct I would have re ...

10 **ADV SELEKA SC**: Carry on.

MR LINNELL: Yes, I did, that was the document I
received and together as attachments on that document
were the delegations of authority ...[indistinct – break in
audio] and the delegated powers ...[indistinct] or
procedures.

ADV SELEKA SC: Yes, there's another email if you to
page 529, page 529 so it's the page before, the time was
...[intervenes]

MR LINNELL: That was 5:29.

20 **ADV SELEKA SC**: Yes the timestamp on that one is
11:59:19, so it would have come after the one we referred
to just now.

MR LINNELL: That ...

ADV SELEKA SC: So that one seems to be specifically
dealing with the delegation of authority, also on the 8th of

March 2015, do you see that?

MR LINNELL: I am looking at page 531, am I on the wrong page.

ADV SELEKA SC: 529.

MR LINNELL: 530, 529?

ADV SELEKA SC: Yes.

MR LINNELL: Yes 529 is the one I have just referred to, attached to that document I did get that, and I got the delegations of authority and it had annexures attached to
10 that email, I see that.

ADV SELEKA SC: Yes, if you go – if you could please go back to page 530.

MR LINNELL: 530?

ADV SELEKA SC: Yes, where the email simply says:

“Here are the docs as discussed.”

You are there?

MR LINNELL: [No audible response] yes I received a – I received – I believe I received that email and there’s no attachments.

20 **ADV SELEKA SC**: Yes, that’s what I was going to ask you about.

MR LINNELL: There’s no attach ... – sorry?

ADV SELEKA SC: I said that is exactly what I was going to ask you about.

MR LINNELL: I believe I received that email but there

were no attachments.

ADV SELEKA SC: Thank you. Shall we move on then to the meeting on Sunday 8 March 2015. Were you travelling from Cape Town to Durban?

MR LINNELL: That is correct Mr Chairman.

CHAIRPERSON: From Jo'burg?

ADV SELEKA SC: Or was it from Jo'burg?

MR LINNELL: Cape Town.

CHAIRPERSON: Oh, did you go back to Cape Town on
10 the 5th?

MR LINNELL: That is correct Mr Chairman.

CHAIRPERSON: Oh, okay. I don't know why I thought you travelled from Jo'burg to Durban, okay. Mr Seleka?

ADV SELEKA SC: Mr Linnell what time was the meeting – or no let me ask you this way, what time did you arrive more or less at the President's residence in Durban?

MR LINNELL: I think it was probably about just before midday, thereabouts. I think just – or thereabouts to midday.

20 **ADV SELEKA SC:** I see.

CHAIRPERSON: What time had the meeting been scheduled for?

MR LINNELL: I cannot recall Mr Chairman.

CHAIRPERSON: Okay. I guess whatever time it was probably you were not late, probably you came more or

less on time?

MR LINNELL: Mr Chair I didn't – my experience with meetings such as this and from my experience the day before the scheduled of the meeting does not necessarily dictate when it starts, so I got there, I took the earliest flight to get there and I went straight there, it's the presidency in Durban North, Morningside I think it is.

CHAIRPERSON: Ja.

ADV SELEKA SC: Thank you.

10 **CHAIRPERSON:** Ja, Morningside would not be Durban North, but it is in Durban, Morningside, Gauteng as, Jo'burg has their Morningside too.

ADV SELEKA SC: Indeed Chair. Yes, did you hear Mr Linnell, we can carry on.

MR LINNELL: I didn't hear, I am sorry.

CHAIRPERSON: No, I was saying Morningside in Durban is not in Durban North but Morningside is in Durban and Gauteng has got its own Morningside too.

MR LINNELL: Yes, it was the one in Durban correct.

20 **ADV SELEKA SC:** Ja, a flashy suburb Mr Linnell.

MR LINNELL: Sorry?

ADV SELEKA SC: A flashy suburb.

MR LINNELL: I missed that.

ADV SELEKA SC: A flashy suburb.

MR LINNELL: I cannot hear that.

CHAIRPERSON: He says a flashy suburb. A flashy suburb.

MR LINNELL: Oh, a flashy suburb. Mr Chairman to digress the house is not flashy State property.

CHAIRPERSON: Oh okay [laughing].

ADV SELEKA SC: Well I hope you are going to hear me, I am carrying on. When you arrived at the President's residence who do you find there?

MR LINNELL: To my recollection there was Ms Dudu
10 Myeni, Mr Tsotsi, Ms Dudu Myeni's son, Thalente, and another gentleman whose name I recollected or discovered later called Jabu, so that was the group that met.

ADV SELEKA SC: Did you go right away into the meeting upon your arrival?

MR LINNELL: Did I sorry?

ADV SELEKA SC: Did you go right away into the meeting upon your arrival?

MR LINNELL: We went straight into the meeting on my arrival. I recollect it was just in one of those ante rooms
20 and everyone congregated in that room and then there followed a discussion. It wasn't a formal, I think it was like a lounge.

ADV SELEKA SC: Was the President part of that group upon your arrival.

MR LINNELL: He was not no Mr Chairman.

ADV SELEKA SC: So when you arrived at the President's private residence who welcomed you?

CHAIRPERSON: You said private residence ...[intervenes]

MR LINNELL: Just to clarify that ...[intervenes]

CHAIRPERSON: You said private residence, I think it is an official residence.

ADV SELEKA SC: Alright.

CHAIRPERSON: Was it the official residence, the
10 President's official residence or was it a private residence?

MR LINNELL: Yes it is the State House correct.

CHAIRPERSON: The State House okay.

ADV SELEKA SC: I beg your pardon.

MR LINNELL: I think Ms Myeni welcomed me and she was the call it the coordinator of that meeting.

ADV SELEKA SC: Yes.

CHAIRPERSON: And when you say that Mr Linnell, namely that she was the coordinator of that meeting you must be quite clear what you are talking about because
20 you know what a coordinator does, isn't it?

MR LINNELL: I think in terms of coordinating insofar as what I deem as general become relevant as we get into this, further into my affidavit but her coordination was call it the chairman or the person facilitating the meeting, I would call her a facilitator, probably not coordinator.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: Yes, thank you Chair. So she would have – I mean using those concepts, coordinator/facilitator she would have arranged this meeting.

MR LINNELL: Most definitely. Well I say most definitely Mr Chairman that is my perception yes.

CHAIRPERSON: Certainly, as far as you were concerned because she was the one who asked you to come to the meeting in Durban.

10 **MR LINNELL:** That is correct.

ADV SELEKA SC: Mr Linnell just relate to the Chairperson then what gets to be discussed in this meeting?

MR LINNELL: It was – my understanding in advance was to discuss the details of the proposed inquiry and to meet the President with regard to discussing the proposed approach to it, so it was to meet the President, but it was also to meet and discuss what we were going to say to the President.

20 **ADV SELEKA SC:** Ja, so this time around you went into the details of the inquiry is that correct?

MR LINNELL: That is correct.

ADV SELEKA SC: And is it correct also that this time around the suspension would not have been pointedly discussed?

MR LINNELL: That is correct.

ADV SELEKA SC: Can you recall how many executives it was envisaged would be suspended?

CHAIRPERSON: Oh Mr Seleka can we do it this way, can you tell me the main features of the discussion that took place in that meeting? The main points that were discussed at that meeting?

MR LINNELL: Mr Chairman I think to start off there was a discussion about the state of Eskom and to my recollection
10 Jabu had some documents, one of which I saved to my computer on that same day and I provided the Commission with that document, and that related to – that document, that was one document but there was discussion around some documents which referred to the state of Eskom at that time so discussion around what was happening at Eskom was part of the discussion and that led to an affirmation that an inquiry into Eskom would be what was the proposal and from that moment we went on to discuss in the same session what would the appropriate approach
20 would be to that inquiry, with the expectation that this would be put to the President for his assent.

CHAIRPERSON: So the discussion was that there would be an inquiry at Eskom and that this would be put to the President, is that right?

MR LINNELL: That is correct Mr Chairman.

CHAIRPERSON: Yes, and ...[intervenes]

MR LINNELL: If I might – sorry if I might mention Mr Chairman it wasn't so much a gathering to work out a proposal to propose to the President, it was – the expectation was make sure that the proposal we give the President fits his expectation, so it was preparatory to discussing it with the President, rather than a discussion to have an inquiry and then let's put it to the President as a sequel, it was preparatory to a meeting with him.

10 **CHAIRPERSON:** I see you don't mention anything suspension of executives, when I asked you to tell me the main features of or points of that conversation. Is that because there was no discussion about the suspension of some or certain executives?

MR LINNELL: Mr Chairman there was definitely a extended discussion about suspension, it would have started with the principle of suspensions and why that was a good approach and then it would have been given that suspensions were a good approach which functionaries
20 would be the appropriate people to suspend and that being premised on the heads of those departments which one would be looking into and subsequent to that, and I think it was part of that same conversation the names of those individuals in those positions would have been provided, but it started off as saying there must be an – there has to

be an inquiry the inquiry needs to have the people in key positions set aside for the duration of the inquiry, which functionaries should that be and then finally who are those functionaries.

CHAIRPERSON: Yes, so why did you not mention the suspensions as having been discussed as well earlier on?

MR LINNELL: Did I not do that Mr Chairman?

CHAIRPERSON: You didn't, that is why I asked you and yet I think it is such an important item, you didn't mention
10 it, that is why I asked you whether the reason why you did not mention it was because it was not discussed.

MR LINNELL: Can I reflect in my statements but ...

CHAIRPERSON: Ja, you can refresh your memory.

ADV SELEKA SC: Should I assist?

CHAIRPERSON: Yes, you can assist.

ADV SELEKA SC: Mr Linnell you can turn to page 26.2, that is of your supplementary statement.

MR LINNELL: I am looking at black numbers which page?

ADV SELEKA SC: 26.2. Paragraph 12.

20 **MR LINNELL:** The black numbers.

CHAIRPERSON: Black numbers – we will be referring to the black numbers all the time.

ADV SELEKA SC: If I may repeat again 26.2.

MR LINNELL: Page 26.2?

ADV SELEKA SC: Yes paragraph 12.

MR LINNELL: Oh. Ja – sorry it is – I have got a hard copy of that document.

ADV SELEKA SC: Oh. That will be page 2 of it. Page 2 of that document.

MR LINNELL: And I am looking at paragraph?

ADV SELEKA SC: 12. It reads:

“Suspension...”

MR LINNELL: Thank you [00:01:15] paragraph 12 reads:

10 “Suspensions were considered during the
meeting of the 8 March. Cautionary
suspensions would have been a standard
approach that I would have considered. I
would have considered key areas of the
business that the inquiry would focus on and
also were there any particular and anyone in
particular in those areas may have had the
propensity to interfere or have a such a
presence as to create the perception of
potentially impeding the investigation.”

20 So thank you Mr Chairman I did mean to mention it; it is my
statement that we discussed suspensions.

CHAIRPERSON: Okay. Now in this meeting do you
remember what points you might have – what important
points you might have made yourself during that discussion
and on what issues they related to?

MR LINNELL: Mr Chairman yes I would have had in my mind fixed perceptions of my preferred approach and as we will see from my statement as we go through it there was – and it was mentioned in the presence of the President later on that there were certain conditions [00:02:41] was going to do an inquiry of this nature. For example it had to be independent; it had to be external; it had to be transparent; it had to – it had to be free of internal and external influences. Those – those were con – not conditions they
10 were proposals that I said would need to be in an inquiry of this nature. And they were discussed and they were further mentioned in the presence of the President when he joined the meeting – or when – when he joined the meeting later. So yes – ja I gave certain ...

CHAIRPERSON: So did the President join the meeting at some stage?

MR LINNELL: Yes maybe it was an hour or two later Mr Chairman I cannot recall but it was – it was period later. I think early in the afternoon he – we were in one room and we
20 were then told to go to another room and he joined in that other room. So we got to the other room first; he then joined it. It was another lounge environment and the group then presented to him the proposed inquiry's approach.

CHAIRPERSON: So it looks like there were two meetings. The one without the President in one room and another

meeting in another room with the President but discussing the same issues. Obviously can – the second one can be seen maybe as a continuation of the first one but the composition of the people who attended the one meeting excluded the President and the composition of the second meeting included the President, is that right?

MR LINNELL: That is correct Mr Chairman. So he was in – he was added to the second meeting but it was not so much a continuation it was – the first meeting was to...

10 **CHAIRPERSON**: Like a caucus?

MR LINNELL: To agree a consensus – inform him what was going to be proposed. So he – he was not involved in a discussion as much as this is what is proposed and he asked a number of – a limited number of questions as I recall and then he agreed and that agreement included agreement that certain – each of the people in that meeting needed to do certain subsequent steps thereafter.

CHAIRPERSON: Okay just to separate. Let us finish off with the meeting without the President. So what was the
20 conclusion of that meeting that did not involve the President?

MR LINNELL: That there would be an – that it would be proposed to the President that there would be an inquiry. That I would coordinate that inquiry. That it would be an in-depth inquiry and all the things I had just mentioned and

the...

CHAIRPERSON: Transparency.

MR LINNELL: Top three executives would be suspended.

CHAIRPERSON: Hm. And...

MR LINNELL: And if I might further add that all this was context on the basis that the proposals included that the President would be asked to seek the agreement or consensus with the Minister; the Chairman would seek the support and agreement of the board. And they were – and in
10 addition to that it would require the approvals as necessary of the Minister of Finance.

CHAIRPERSON: Yes. Now at that first meeting you said the people who attended were yourself, Ms Myeni, Mr Zola Tsotsi, Ms Myeni's son, Thalete as well as another man you referred to as Jabu, is that correct?

MR LINNELL: That is correct Mr Chairman.

CHAIRPERSON: Hm. In that meeting you said that Ms Myeni played the role of I think Chairperson or – or facilitator, is that correct?

20 **MR LINNELL:** That is correct. Well it was an informal meeting.

CHAIRPERSON: Ja.

MR LINNELL: But she was – ja.

CHAIRPERSON: The meeting centred around – she was the person who was directing the discussion or not really?

MR LINNELL: That is correct.

CHAIRPERSON: Yes. Now you – you did speak at that meeting, did you?

MR LINNELL: I did correct.

CHAIRPERSON: Yes. Yes. And...

MR LINNELL: Significantly.

CHAIRPERSON: And Mr Zola Tsotsi also speak at the meeting – at that meeting?

MR LINNELL: He did yes.

10 **CHAIRPERSON**: Did Thamente?

MR LINNELL: Correct Mr Chairman.

CHAIRPERSON: Did Thamente speak at that meeting?

MR LINNELL: Not to my recollection.

CHAIRPERSON: Hm. And did ...

MR LINNELL: I am not sure what he was there for.

CHAIRPERSON: Yes. But did Jabu speak at that meeting as well?

MR LINNELL: Very much Sir.

CHAIRPERSON: Yes.

20 **MR LINNELL**: I think he would be in the source of a lot of the information.

CHAIRPERSON: Yes. Now did you end up finding out what his surname was – Jabu or did you not get to know that?

MR LINNELL: I do not – I do not recall ever asking who he was other than – I was introduced to him by name but after

that I did not recollect his name.

CHAIRPERSON: Yes.

MR LINNELL: I only recollected his name when I was looking at the documents. But he – my perception during that meeting of who he was was maybe incorrectly but like secret service. He had very incisive information about Eskom.

CHAIRPERSON: Hm.

MR LINNELL: Which to me would have been someone who
10 had internal knowledge of Eskom's workings.

CHAIRPERSON: Hm. Now when ...

MR LINNELL: But that was just a perception in my mind.

CHAIRPERSON: Yes. Now when the meeting moved to another room where you were joined by the former President did all of you move into that other room including Ms Myeni's son and Jabu?

MR LINNELL: I believe so yes Mr Chairman.

CHAIRPERSON: Yes. Okay alright. Mr Seleka.

ADV SELEKA SC: Thank you Chairperson. Mr Linnell was
20 this your first meeting with Mr Tsotsi in terms of you firstly..

MR LINNELL: That is correct Mr Chairperson.

ADV SELEKA SC: You were meeting him for the first time?

MR LINNELL: That is correct.

ADV SELEKA SC: Were the issues pertaining to load shedding touched upon in this meeting?

MR LINNELL: They would have been one of the biggest concerns discussed at that meeting.

ADV SELEKA SC: And who would have spoken about the issues pertaining to load shedding of those present in the meeting?

MR LINNELL: I cannot recall specifically – it was a consensus of view that load shedding and the risk of a so called blackout were very much on everyone’s minds at the time. So I do not think anyone came with the view of an
10 agenda point of load shedding so much as it was on everyone’s mind that load shedding was a major risk.

ADV SELEKA SC: Okay are you still on that statement because I could pick it up from there and see what – whether this cannot jolt your memory. On that same page or in the bundle is 26.2 it is page 2 on your separate document – paragraph 10. Well let me start at 9 it says – 8 I beg your pardon it say:

20 “However Mr Tsotsi’s reference to Ms Myeni at the meeting jogged my memory with regard to another person present but not mentioned by Mr Tsotsi. A young black African male possibly named Jabu. He was not specifically introduced but clearly he had insight and sources of people at Eskom. In addition Jabu I think had a number of

documents that dealt with alleged events at Eskom. These were largely from unidentified sources and unverified content. These were things that an investigation would identify but in part some of the allegations did not provide some value in scoping an approach to the investigation.”

Does this help you remember who would have talked about load shedding – issues relating to load shedding?

10 **MR LINNELL:** Mr Chairman to the extent that Jabu might have mentioned anything specific related to load shedding it would have been in relation to Duvha or Kusile or Madupe and the problems that they were having. So there would not have been about load shedding but they would have been the inherent causes of load shedding. So I would have thought he had some insights into at that level load shedding was the culmination of the problems within Eskom as opposed to the issue itself. We were going to investigate why there was load shedding not that there was load
20 shedding.

ADV SELEKA SC: I see. So the President then meets or comes to join you at some point and you move into a difference room.

CHAIRPERSON: Oh they move into a different room first and then the President joins.

ADV SELEKA SC: Yes did you hear what the Chairperson said?

CHAIRPERSON: Ja I am saying they moved to a different room first.

ADV SELEKA SC: yes.

CHAIRPERSON: And then the President joins in that room.

MR LINNELL: Ja.

CHAIRPERSON: You said the President joins and then they move to a different room?

10 **ADV SELEKA SC:** Yes, no I am looking at...

MR LINNELL: I think this...

CHAIRPERSON: Which – which is which? Did the President join you first and then you moved to another room or did you move to another room and the President joined you in that room?

MR LINNELL: The latter Mr Chairman. That is – I think [00:15:14] in the meeting room before he comes in and so you are waiting his presence. I think that is the way they like to do it. There was no – otherwise he could have joined
20 the room we were in but we had to go to another room and he joined us in that room.

ADV SELEKA SC: I see.

CHAIRPERSON: Okay.

ADV SELEKA SC: Thank you. Thank you Chairperson. So when he joined – when he joins then in the other room you –

you present to him what the – the group without him had discussed?

CHAIRPERSON: Or maybe let us start with – I am sorry I am interrupting Mr Seleka.

ADV SELEKA SC: Okay.

CHAIRPERSON: I guess that when you – that is your group now you and the other people who had attended the first meeting when you came to the other room now where the President subsequently joined you I take it that you had
10 finished talking about what you were going to propose or tell the President and whatever discussion might have happened it was just some discussion but otherwise you had – you had had enough time to finalise what you would have been telling him. Is that right?

MR LINNELL: Yes Mr Chairman I think what – if I recollect, we would have almost run out of a conversation before we went to this other room so there was a sense of waiting for the moment when we met the President. It was not just that we had not concluded we had – we had wrapped up the
20 conversation while we were waiting for his meeting.

CHAIRPERSON: About how long did the first meeting take if you are able to remember?

MR LINNELL: I would have left there around four o'clock'ish and if we got there at about elevenish the whole lot had been about four or five hours. So – but a lot of that – this meeting

was not like sitting around a board meeting. This was a discussion so...

CHAIRPERSON: You were discussing.

MR LINNELL: There were times that..

CHAIRPERSON: As long as you were together.

MR LINNELL: The conversation [00:17:55].

CHAIRPERSON: As long as you were together?

MR LINNELL: Correct.

CHAIRPERSON: So – but when you moved to the other
10 room are you able to say that you had been in the first room
for about an hour or two hours or three hours or are you not
able to say?

MR LINNELL: I would say three or four hours it had been.

CHAIRPERSON: Before you moved to the other room.

MR LINNELL: But if I might Mr Chairman in the other room
the people I mentioned were in the other room for about
three or four hours. Now Mr Chairman I say that – that does
not necessarily imply a productive four or five hour meeting.

CHAIRPERSON: Yes. Yes.

20 **MR LINNELL**: In that time there was a lot of waiting.

CHAIRPERSON: Ja. Ja. Ja. No, no that is alright. And
then the time you spent in the second room now before the
President came are you able to indicate it was thirty
minutes, fifteen minutes or an hour or are you not able to
say that?

MR LINNELL: Maybe five minutes Mr Chairman.

CHAIRPERSON: Oh okay.

MR LINNELL: Almost immediately.

CHAIRPERSON: Oh okay. And then that meeting now the second meeting how long did it take if you are able to give an estimate before you concluded and could leave?

MR LINNELL: Thirty minutes maybe Mr Chairman.

CHAIRPERSON: About thirty minutes?

MR LINNELL: It was not long.

10 **CHAIRPERSON**: It was not long. Okay alright.

MR LINNELL: It was not long.

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: Yes thank you Chair. And in this meeting Mr Linnell what gets to be discussed with the President?

MR LINNELL: It was – it was more a presentation to him that this was the proposed approach. So I think the expectation I would imagine in his mind was there is going to be an investigation; how are you going to do it? Rather than – that would have been the nature of it. It was a discussion
20 about this is the proposed approach.

ADV SELEKA SC: Yes. So the question was not should we have an investigation or not? It was a question of we are going to have it but how are we going to – how are we going to carry it out?

MR LINNELL: I would think that is a great spec to correct

Mr Chairman.

CHAIRPERSON: During that second meeting when you say it took about thirty minutes was the President in that meeting for more or less that time?

MR LINNELL: Well Mr Chairman we went into that room and I think we probably waited for him absent-mindedly with nothing to talk about for about five minutes. It was – we were waiting for his entrance. Then when he entered he was probably there with us for thirty minutes and then he left and
10 then we left.

CHAIRPERSON: Oh so the thirty minutes – so he would have spent about twenty-five minutes or so with you in the meeting but when he left that was the end of the meeting and you left.

MR LINNELL: That is correct.

CHAIRPERSON: Now Mr Seleka.

ADV SELEKA SC: Thank you Chair. It will come back to you. Mr Linnell – so I asked about an inquiry along with that I want to ask about the suspension; was that also discussed
20 in the presence of the President?

MR LINNELL: It was correct Mr Chairman.

CHAIRPERSON: Can I take it that the group which had attended the first meeting made a presentation to the President to say; we have had a discussion these are the main points that we – we think – this is what we need to –

needs to be done. This is what we believe needs to be done? Is that how it happened?

MR LINNELL: Correct Mr Chairman. I think the introductory would have been done by Ms Myeni and as I recall her kind of jovial banter. It is was not in a sense austere because we had – there was a jovial nature to it and – but he knew what the meeting was about and it was not as if why are you here to tell me? It was – it was the extension of what are you here to tell me? So I think Ms Myeni probably started that
10 but everyone had a say in that probably Jabu might have – he might not even have said anything in that meeting, I cannot remember. Though he was present in that.

CHAIRPERSON: But not having said anything?

MR LINNELL: So people who [00:23:35] I am sorry?

CHAIRPERSON: Did you say Jabu might not have attended the second meeting?

MR LINNELL: No, no he attended the meeting but I do not recollect him being a vocal person in that meeting.

CHAIRPERSON: Okay.

20 **MR LINNELL**: That might have been – that might have been a cultural subservience I am not sure but the people who spoke more at that meeting would have been Ms Myeni, Mr Tsotsi and myself.

CHAIRPERSON: Well Mr Tsotsi gave evidence here and said when the President came in he spoke in Isi-Zulu and

said [African language] or something to that effect. Now I do not know whether you know Isi-Zulu or not? Do you remember whether the President said anything in Isi-Zulu when he came in?

MR LINNELL: No I would not remember Mr Chairman it – it – there was a jovial on introduction.

CHAIRPERSON: Yes, ja.

MR LINNELL: That what anyone said in that introduction I would not recall.

10 **CHAIRPERSON**: Yes okay. No that is fine [African language] would have – would have been what are we talking about or what is the discussion about? But Mr Tsotsi also said it was quite clear that the former President knew exactly what the issues were which is what you are saying as well.

MR LINNELL: Mr Chairman if that is the interpretation of what he said to Mr Tsotsi then it was not in that context. It was quite clear that we all knew what we were discussing there.

CHAIRPERSON: Yes, no, no.

20 **MR LINNELL**: It could have been...

CHAIRPERSON: Yes. I think Mr Tsotsi said that the former President did say in Isi-Zulu something to the effect that or asking what the discussion was about. But Mr Tsotsi also followed up by saying it was quite clear he knew what the meeting was about and what the issues were. That is what

he said. So that latter part seems to be consistent with what you are saying as well.

MR LINNELL: Mr Chairman I think it goes further saying [?] absolutely I agree with Mr Tsotsi but the – the context of the meetings before that and even on the 6th the context was Mr – the President wants an investigation.

CHAIRPERSON: Yes

MR LINNELL: It was not – it was not as if one was going to say to him; we have got a good idea we are going to have
10 this investigation.

CHAIRPERSON: Yes.

MR LINNELL: The context was the President wants an investigation into Eskom.

CHAIRPERSON: Yes okay.

ADV SELEKA SC: Thank you. So as you say in your affidavit Mr Linnell the President was clearly familiar with the purpose of the meeting?

MR LINNELL: That is correct.

ADV SELEKA SC: If the question is asked Mr Linnell that
20 did you at any stage ask yourself or even ask Ms Myeni you are not at Eskom you are at SAA how is it that you are coordinating or facilitating or convening this meeting – meetings that would deal with issues pertaining to Eskom and not SAA? Did you ask yourself that question or did you ask Ms Myeni that question?

MR LINNELL: I did not ask her the question but only because I would have in my mind have a clear understanding of the answer to that question had I asked. In my mind Ms Myeni is and publicly said to be a close confidant and political ally of the President and to the extent that she is also the SAA Chairman is because she has a confidant and political ally of the President. And so her role there was not as the Chairman of SAA she was there because of the same reasons that she is the Chairman of SAA it is because she is
 10 the confidant and political ally of the President. So whether she was doing his bidding insofar as Eskom or SAA or anywhere else that was my understanding. So she was not there – had nothing to do with SAA she was there because she was his intermediary and she plays that same role in other domains. It does not need to ask the question that was very clear in my mind why that was the case.

ADV SELEKA SC: I see. So you say she played the same role in other domains?

MR LINNELL: In the sense that she has been the Chairman
 20 of [00:29:28] she has been the Chairman of SAA and possibly other entities but I was – I was very conscious of the fact that she is politically connected and to that point as we go through this you will see right from that moment I was conscious of – we were dealing with an entity but there were politically connected personalities involved, and from the

moment of my first memorandum to the board and throughout to the terms of reference, they imposed certain degrees and independence, objectivity, impartiality and remunerational division(?) of any vertical interference. So I was conscious of the dynamics at that meeting.

ADV SELEKA SC: H'm.

MR LINNELL: And they carried through into what I did afterwards.

ADV SELEKA SC: Yes. But is it not ironical that this... I
10 mean the very conduct on their part smacked as political interference, nothing else?

MR LINNELL: It could do if you look in retrospect but at the time, my perception was this is excellent that the president who is duty bound to sort out these things is taken an imitative and doing something. And in my mind, having an inquiry into Eskom, was a very necessary and urgent activity. Insofar as it might also been vertically motivated, I would have been conscious of the vertical(?) connection of it all because we all are. And because of that, I would made sure
20 in what I did, those connection were limited.

ADV SELEKA SC: Some of us have no political connection.

MR LINNELL: I will not [*connection not clear*] Well, it did... Mr Chairman, at political... everything in this country has a political undertone to it. And one comes to anticipate that.

And in this instance, I was conscious of that and I made

sure that what I thought would limit that over the course of the inquiry would be limited. But it was not like a threat. It was not something that... I was just aware of it.

CHAIRPERSON: Of course ...[intervenes]

MR LINNELL: Some of my mind [*connection not clear*]

CHAIRPERSON: Of course, one would expect the president of the country to be concerned with challenges in an entity such as Eskom, is it not?

MR LINNELL: Mr Chairman, in my mind, this was exactly
10 that he(?) ought to be doing. This was his... I think we heard on the texts(?). This was his job.

CHAIRPERSON: H'm. Of course ...[intervenes]

MR LINNELL: This is what was expected of him.

CHAIRPERSON: Of course, how he or she or whoever the president is those(?) about handling, that might be a different thing but being concerned about what is happening at Eskom would be legitimate. Would you expect that?

MR LINNELL: I lost your... the last point Chairman?

CHAIRPERSON: I am saying. How a president, whether it
20 is he or she, handles issues relating to Eskom might be a different issue but that a president should be concerned about challenges at an entity such as Eskom, would be a legitimate concern. Is that right?

MR LINNELL: It should very much be. Yes, Chair.

CHAIRPERSON: H'm. Okay.

ADV SELEKA SC: Thank you, Chair. Yes. May I develop that point, Mr Linnell? Because, it is one thing to express concern. It is another thing how you deal with the issue. You understand that?

MR LINNELL: [No audible reply]

ADV SELEKA SC: You cannot ...[intervenes]

MR LINNELL: I do.

ADV SELEKA SC: Yes. We have included in your bundle. Ms Myeni's statement to the Parliamentary Portfolio
10 Committee. And I want to make reference to that statement because in her statement she says the president was not involved in these meetings. Well, in particular, the meeting in Durban. You have seen that?

MR LINNELL: Yes, I have seen that, correct. Well, not correct. I have seen it in her statement.

ADV SELEKA SC: Yes. But she also says, why would the president meddle, and I am paraphrasing, meddle in the manner in which it is alleged by Mr Tsotsi? The president should write to the minister and say propose certain steps to
20 be taken. So this goes to the ...[intervenes]

MR LINNELL: Can I comment on...?

ADV SELEKA SC: Okay. Sorry, let me give you a chance.

MR LINNELL: To comment on that. I did see what she said in her statement. I would not agree with that. I think it is...

My perception is whether the president works directly

through his ministers or he works in parallels, it is his discretion. As long as he does it for the right reasons, the right purposes.

So in this case, one might think the minister should have been in that meeting. That did not perplex me one little bit. To my mind, he was taking an initiative. That is what he should be doing.

But I went to that meeting, one of the requirements that is not disrespectful was the president had contact the
10 minister to share the discussions with her and in a sense seek her concurrence to it.

That was an outcome deliverable on that meeting with him.

CHAIRPERSON: Now this point where Ms Myeni says in her statement Mr Zuma did not take part in that meeting and you say he did take part and you were both, that is yourself and Ms Myeni were in the same meeting, is quite strange. Are you quite clear in your own mind that President Zuma was at that meeting and took part in the meeting?

20 **MR LINNELL:** Without any doubt Mr Chairman.

CHAIRPERSON: But are you able to remember some of the points he raised or some of the questions he asked? And if so, tell me.

MR LINNELL: I can tell you the gist of it Mr Chairman but I cannot [*connection not clear*] ...[intervenes]

CHAIRPERSON: Yes. No, I do not mean ...[intervenes]

MR LINNELL: He would be a man of [*connection not clear*]
...[intervenes]

CHAIRPERSON: I do not mean you must be... you must tell me verbatim. I do not mean verbatim. I just mean, you can just tell me the points in your own words.

MR LINNELL: Ja, the gist of it was, he asked, I would say half a dozen questions and that was it and then finally he said: I would... and I am paraphrasing what he said at the
10 end. "Go and do it." Something like that. But his contribution to the meeting would have been five or six questions which I assumed at the time were kind of testing his understanding of what he was saying.

CHAIRPERSON: Okay. Mr Seleka will ask you also about Ms Myeni's version about her son having been there.

ADV SELEKA SC: Chair, may I allow the Chair to do so?
[laughing]

CHAIRPERSON: [laughing] Ms Myeni also denies that her son, Thalente, was at the meeting. What do you say about
20 that? You said her son, Thalente, was at the meeting. She says, no her son was not at the meeting. What do you say about that?

MR LINNELL: My recollection, he was at the meeting. But I think I said in my statement, he was present at the meeting. He was not a participant in the meeting.

CHAIRPERSON: Ja, I think you say ...[intervenes]

MR LINNELL: ...if that makes any sense.

CHAIRPERSON: You say he did not play any active role. He was just present.

MR LINNELL: He was present.

CHAIRPERSON: H'm.

MR LINNELL: It was as if... as if he was in his normal surroundings. It was not... he would just quite comfortable just be there.

10 **CHAIRPERSON:** H'm. Well, you also told... you testified that there was this other gentleman referred to as Jabu. Mr Tsotsi gave evidence and said he knows Jabu quite well. I think he said. But he says he has no recollection that Jabu was at that meeting. What do you say about that?

MR LINNELL: My recollection is that Jabu was at that meeting and *[connection not clear]* at the meeting. I did not know that... I was not aware that Mr Tsotsi knew Jabu.

CHAIRPERSON: Okay. Mr Seleka.

ADV SELEKA SC: Thank you, Chair. Mr Linnell, talking of
20 Jabu which you subsequently did a Google search and you found that he is Jabu Maswanganyi. Was this your first and last time you met with him?

MR LINNELL: When I did my submission originally to parliament, I had no recollection of hearing or seeing him again. So it was when I found the document which is part of

the bundle and I did the necessary search on, that gave me and the name... that led me to take who he was and that led me to ultimately concluded he was either in Johannesburg at Mr Tsoti's house the next week when we had the various meetings on the 9th, 10th, 11th.

My recollection, he would have probably been there but I would not swear to it that he was definitely there. But I communicated via email with him in the subsequent weeks but that is...

10 Because I found the documents, not that I originally recollected communicating with him. My recollection came from me finding documents where he and I have exchanged emails.

ADV SELEKA SC: Okay.

MR LINNELL: The following week.

ADV SELEKA SC: So let us be clear on that. You know from your emails that you did exchange emails with him after the 8th of Mach 2015?

MR LINNELL: Correct.

20 **ADV SELEKA SC:** So there are emails exchange between the two of you?

MR LINNELL: Correct.

ADV SELEKA SC: Yes. You have a faint recollection that you might have met with him at Mr Tsotsi's house in Joburg?

MR LINNELL: If anyone deny that, I am not going to get

into an argument with them about that but my sense is, if I ...
for example, if I can answer it this way. When I was told
about the meeting, the so-called secret(?) of meeting on the
16th.

My recollection is probably, he told me about that
meeting which would have been a verbal communication
because that is not writing.

So when I put all that together and my sense is, he
would have been... he would have passed through Mr
10 Tsotsi's house at a time that I would have been there in that
or the subsequent week.

ADV SELEKA SC: I see.

CHAIRPERSON: So with regard to whether you met him at
Mr Tsotsi's house after the 8th of March 2018, you are not
sure about that. But with regard to whether he attended the
meeting in Durban, are you... are you sure about that? You
are not sure about that as well or what is the position?

MR LINNELL: I am sure about that. And what reinforces
that in my mind is the document I saved on my computer on
20 the 8th.

CHAIRPERSON: H'm.

MR LINNELL: It originates from him as well.

CHAIRPERSON: H'm.

MR LINNELL: So in a sense, if and one's own memory, you
need to corroborate a perception, it corroborated my

perception.

CHAIRPERSON: Mr Seleka, do you know where that document is in the bundle that Mr Linnell is talking about?

ADV SELEKA SC: Yes.

CHAIRPERSON: It would be good to identify it now.

ADV SELEKA SC: Yes, Chair thank you. Let me... I want to find it. Mr Linnell, if you could assist. I ...[intervenes]

MR LINNELL: I am just looking for it now. I think it is in the... probably in the original parliamentary annexures. It
10 could be attached to the second supplementary if I recall. Or the third... the second supplementary, yes.

ADV SELEKA SC: The second. Yes, the second supplementary only deals with your identification of him.

MR LINNELL: You can ...[intervenes]

ADV SELEKA SC: Of Mr Jabu Maswanganyi.

MR LINNELL: Ja, that is the document we are talking about. I will have to find it. It is in the bundle, I am pretty sure.

ADV SELEKA SC: Just remind me. What does it deal with
20 it again?

MR LINNELL: I am sorry?

ADV SELEKA SC: Just remind me, what does it deal with?

MR LINNELL: So the documents pertain to Koeberg and maybe Kusile, a couple of the power stations.

But it is clearly dated prior to, I think, May 2014 because

it talks to maintenance at Koeberg to be done in May 2014. So the document itself was not a recent document but the report of the document was to lay blame at the doors of two of the executives. Those two was subsequently suspended.

ADV SELEKA SC: Yes.

MR LINNELL: Chairperson, who ...[intervenes]

CHAIRPERSON: Ja, but are we able to find the document?

ADV SELEKA SC: [No audible reply]

CHAIRPERSON: Are we able to find the actual document?

10 **ADV SELEKA SC:** It is... it should be here Chairperson.

CHAIRPERSON: Or maybe we can continue and somebody might assist to look for it.

ADV SELEKA SC: Yes, my investigator will obtain the document Chairperson.

CHAIRPERSON: Well, maybe we can go back to it after lunch because ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...it is five to one. So maybe you can just move to other questions. Then after lunch we can go back to
20 it.

ADV SELEKA SC: Thank you, Chair. Mr Linnell, I just wanted to quickly put through the version of Ms Dudu Myeni and then we can move on to you because according to her, this meeting that Mr Tsotsi had with her in Durban, it was because Mr Tsotsi was concerned about his own position that

the board was seeking to pass a motion of no confidence into him. Was that issue discussed in your meeting in Durban?

MR LINNELL: Definitely not. The first I heard about that was when I read the statement. That statement seems to suggest that there was a prior meeting.

ADV SELEKA SC: Yes.

MR LINNELL: And I never heard about that either.

CHAIRPERSON: Did Ms Myeni never mentioned to you
10 either on this the 6th of March when you met her in Pretoria or the 7th of March or the 8th of March in Durban, did she never say anything that indicated that these meetings were taken place because Mr Tsotsi had been asking for assistance or guidance or advice from her as to how to handle certain issues at Eskom?

MR LINNELL: Mr Chairman, to the contrary. My perception was Mr Tsotsi is more than an unwilling participant in that meeting. He was doing his duty by being there but I think he was uncomfortable being there.

20 **CHAIRPERSON**: Yes.

MR LINNELL: So if you... yes, it was at his behest the meeting was taking place. I would not agree with his behaviour being in conformity with that.

CHAIRPERSON: So you say his demeanour at the meeting then there and the discussions gave you the impression that

he was really a reluctant participant in the meeting?

MR LINNELL: I do not want to place it too strongly Mr Chairman but ...[intervenes]

CHAIRPERSON: Yes.

MR LINNELL: ... I think he was uncomfortable.

CHAIRPERSON: You think it could be something that part(?) he had?

MR LINNELL: H'm.

CHAIRPERSON: Okay.

10 **MR LINNELL**: Correct.

CHAIRPERSON: Okay.

MR LINNELL: But Mr Chairman, it was not pertaining to him personally being uncomfortable about saying. I think it was his role in the meeting that he was uncomfortable with. If I make that point. I think, the suggestion in Ms Myeni's statement is that he was perplexed because he was about to be removed from his board.

CHAIRPERSON: H'm.

20 **MR LINNELL**: And that is why I am saying, he was uncomfortable with. I think he was uncomfortable by being at that gathering.

CHAIRPERSON: H'm.

MR LINNELL: If I can make that point?

CHAIRPERSON: Yes, okay. H'm. Do you recall what Mr Tsotsi' first reaction was to the notion that certain executives

should be suspended at that meeting in Durban? Do you recall what his initial reaction was to the notion that certain executives should be suspended?

MR LINNELL: He was very disturbed and arguing quite strenuously against it.

CHAIRPERSON: And are you sure about that?

MR LINNELL: I am sure about that.

CHAIRPERSON: Yes. Do you remember what he might have said in... as to why he was opposed to it or is it
10 something you cannot remember?

MR LINNELL: I am not sure what exactly what it was but my... if I put it unkindly and I do not mean to do it. My perception was you are not being strong enough.

CHAIRPERSON: H'm.

MR LINNELL: Now that is unfair and unkind but he was just opposed I think to the destruction to the people concerned and that was absolutely genuine. He was genuinely uncomfortable with that. And that is why in my mind I thought it is unfairly. You not *[connection not clear]*

20 **CHAIRPERSON**: H'm, h'm.

MR LINNELL: I did not say that to him, you know, but that was my feeling.

CHAIRPERSON: H'm. And his reaction to the idea that there should be an investigation or an inquiry at Eskom or into the affairs of Eskom, do you recall what his reaction was

to that proposal?

MR LINNELL: My perception was at the time that he was quite comfortable with the inquiry. He was uncomfortable with the suspensions.

CHAIRPERSON: Okay.

MR LINNELL: He has... I see in his evidence, he has alluded to, he had previously wanted an inquiry himself. To my recollection on the 8th, I was not aware of that, that he had also wanted an inquiry. He might have said it but that
10 certainly did not come through in my recollection that he wanted an inquiry.

CHAIRPERSON: Yes, okay. Mr Seleka. Or should we take the lunch adjournment?

ADV SELEKA SC: An opportune time.

CHAIRPERSON: Or do you want... do you have a few questions before we adjourn?

ADV SELEKA SC: I think it is an opportune time Chair.

CHAIRPERSON: Yes, okay.

ADV SELEKA SC: Ja.

20 **CHAIRPERSON**: We are going to take the lunch adjournment. It is one o'clock. We will resume at two o'clock. We adjourn.

ADV SELEKA SC: Thank you, Chair.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Let us hope the break in transmission is not going to come back. Let us continue.

ADV SELEKA SC: Thank you, Chair. Some people were wishing for the opposite, Chair?

CHAIRPERSON: Hey?

ADV SELEKA SC: Some people were wishing for the opposite.

CHAIRPERSON: I am very happy that we can continue.

ADV SELEKA SC: Thank you, Chair. Mr Linnell, you can
10 hear us?

MR LINNELL: I can hear you.

ADV SELEKA SC: Thank you. So the storm apparently has passed. Yes. Just before the adjournment we were looking for the document which is annexed to your second supplementary statement to the Parliamentary Portfolio Committee which you have also submitted to us, the document titled Eskom Energy Crisis Load Sabotage. We have since emailed it to you now.

MR LINNELL: Got it.

20 **ADV SELEKA SC:** Chairperson, may I beg leave to hand it up? Chairperson, with your permission, the document belongs with the second supplementary statement of Mr Linnell which is found on page 24 – I beg your pardon, let me refer to the back pagination.

CHAIRPERSON: 27.

ADV SELEKA SC: Page 27.

CHAIRPERSON: Ja, 24 is the red one.

ADV SELEKA SC: That is correct, Chair. 27, 28.

CHAIRPERSON: Do you want it to be put immediately after?

ADV SELEKA SC: Page 28.

CHAIRPERSON: Page 28 and it will be page 28.1.

ADV SELEKA SC: Correct, Chairperson.

CHAIRPERSON: Okay, alright.

10 **ADV SELEKA SC:** And 28.2. Mr Linnell, do you see the document, Eskom Energy Crisis Load Sabotage?

MR LINNELL: I do.

ADV SELEKA SC: Yes. So you were busy explaining to the Chairperson that this is a document, I think, as I recall, you would have received from Jabu, Mr Jabu Maswanganyi?

MR LINNELL: That is my recollection, so it was this – I found it by its having been sent to my computer on the 8 March 2015 and although it is not authored in any apparent
20 way the metadata demonstrated where the document originated and came from and that ultimately was Jabu.

ADV SELEKA SC: Yes. You have familiarised yourself with the contents of this document?

MR LINNELL: I have indeed.

ADV SELEKA SC: Are you able to in a nutshell relate to

the Chairperson what is contained in this document or should ...[intervenes]

MR LINNELL: I will do. Mr Chair, the document reviews a number of power plants within the Eskom Group but mainly deals with alleged corruption, maladministration, both at some of these plants but also in respect of some procurement issues and it appears to specifically target a number of individuals.

ADV SELEKA SC: Are you finished?

10 **MR LINNELL:** Unless you are wanting me to elaborate?

ADV SELEKA SC: Yes. May I read it quickly into the record?

CHAIRPERSON: Ja, that is fine, ja.

ADV SELEKA SC: Thank you. So Mr Linnell I am going to read it into the record. Quickly I will go through it:

20 “Introduction: Eskom has the total generation capacity of 43 000 megawatts. The current capacity is under strain due to the aging power plants. Yes, it is true that some of the load shedding was necessary to protect the grid from the blackout but in recent years load shedding has become a concern since it is driven by unclear factors. This report will unveil how Eskom executives collides with the contractors to sabotage load capacity creating what is known as load losses.”

Mr Linnell, what do you understand with that paragraph?

MR LINNELL: I think it is relating some of the power outages directly to the performances of certain Eskom executives and I think it is suggesting that there would be intentional behaviour as well as normal maintenance backlogs.

ADV SELEKA SC: Okay, so you are saying in addition to normal maintenance load shedding could have been – I use the word for lack of a better word, manipulated?

10 **MR LINNELL:** That is what the document appears to suggest, yes.

ADV SELEKA SC: So what it means is there would have been incidents of load shedding which were not necessitated by the need to load shed but merely done by some people within Eskom when there was no need to load shed?

MR LINNELL: Correct, Mr Chairman, the one word used there is sabotage load - or the phrase is, sabotage load capacity. So that would have quite a dire interpretation.

20 **ADV SELEKA SC:** So when you were given this document, if you can recall, as you say coming from Mr Maswanganyi, what was the reason – what was his explanation in providing you with this document?

MR LINNELL: I cannot say it but my recollection of the conversation was this indicates intentional disruption of

the power grid. The whole document as a whole indicates intentional disruption. And, secondly, maladministration.. So perhaps in a sense it is also intentional.

ADV SELEKA SC: So that aspect would have become part of what you would later draft as the terms of reference for the inquiry?

MR LINNELL: Mr Chairman, when I would have read this document it would have conveyed to me that there was the possibility of intentional disruption as well as what one
10 read frequently at that time, corruption as well. So these specific instances probably would have ended up as being followed through in the investigation but what it indicated to me at that time that these were indicative of some substance, be it allegations, that required to be investigated.

ADV SELEKA SC: Yes.

MR LINNELL: So it was a meaningful document.

ADV SELEKA SC: Yes. Okay, the – yes but my question was did sabotage, the load capacity sabotage, become part
20 of the terms of reference that you would later draft?

MR LINNELL: I do not think we – I do not think that term was used in terms of reference, I think that would have been – I would not have relied on this terminology of this document directly terms of references, terms of references are more broadly framed but they will – included this by

anyone getting into the terms of reference. So the terminology I would have avoided because it is descriptive.

ADV SELEKA SC: I see. Okay, the second paragraph:

“Western Cape gets Fire Power Station. Western Cape gets Fire Power Stations. Western Cape has two gas fire-powered stations, Ankerlig, (Saldanha), Gourikwa, Mossel Bay. Given the lack of adequate access to natural gas the two power stations have been operating on diesel. The two power stations have been operating on diesel on a peak load basis meaning that they are not always switched on.”

Well, you can see I am correcting as I read there.

“They only operate during peak hours which is from 4 p.m. to 7 p.m. The two power stations have been converted to base load capacity meaning that they now operation 24 hours nonstop. The reason for this conversion into a base load capacity is driven by the greed of Eskom executives to benefit from the diesel supply contracts and political sabotage through load sabotage.”

There again we see the concept load sabotage. Did you do anything to investigate what is being alleged in this document?

MR LINNELL: No at this stage they just want my - the input into me drafting the ultimate terms of reference. So

all these issues would have been covered in one way or another in the terms of reference. But there were two points here I think which is significant and again it comes back to comment we were talking about before lunch because this indicates greed, which is a form of corruption but it also talks about political sabotage, it has another connotation altogether.

So if you have – whether it is true or not at this stage it did not matter, the implication was, if you were
 10 going to find out what was going on at Eskom one had to be clear that influences on those scores were not going to interfere with getting to the bottom of it.

ADV SELEKA SC: Yes. Well, as we continue on that document, I am reminded of what you said in your affidavit about the documentation given to you – if not given but at least shown to you by Mr Jabu. If you could please go to page 32 of your – in the bundle, which is a page in your affidavit, paragraph 17 on page 32.

MR LINNELL: Yes, that is referring to this document.

20 **ADV SELEKA SC:** It would have referred to – okay, let me read. It says:

“To the best of my recollection, Jabu had a number of documents that dealt with alleged events at Eskom. These were largely from unidentified sources and unverified content. These were things

that an investigation would identify and were background in context but in part some of the allegations did not provide some value in scoping an approach to the investigation.”

So this document you say would fall under this category of documentation you are referring to.

MR LINNELL: If I understand what you are saying, this document would have supported that, what you have just read, that it would have formed an input into framing a
10 terms of reference to get to the bottom of what was going on.

ADV SELEKA SC: Yes but the source of which was unidentified, the contents of which were unverified.

MR LINNELL: Yes, the document on the face of it is not authored so when I got this, whoever authored this – and it may have been authored in phases because it is difficult to work out exactly when it was created. So my [indistinct] 14.41 continued to spread is not – at the beginning of it I say Jabu gave certain documents. So at the end of it when
20 I commented the source of these things is not clear is because I did not want to attribute a source of this document because it is not clear but the import of this document was serious enough to be included in the terms of reference or the general grounds of terms of reference.

ADV SELEKA SC: So you would have been drafting the

terms of reference relied on this document?

MR LINNELL: I would not have put – now we have to check where – my document, my terms of reference is very detailed, now I would need to go and see if I put any direct references to this document in it but typically my terms of reference would have used generic terms rather than Gourikwa Mossel Bay. I would not have been specific but I would have covered the content of this in the terms of reference without doubt.

10 **ADV SELEKA SC:** Yes. So one question, to the extent that the document forms part of your bundle or your statement, what was your intention about it?

MR LINNELL: Amongst others, these issues would need to be investigated.

ADV SELEKA SC: Just repeat that?

MR LINNELL: And it was serious. Sorry, amongst other reasons, the contents of this document would need to be investigated.

ADV SELEKA SC: Yes?

20 **MR LINNELL:** So in addition to other issues, these would also have to be investigated.

ADV SELEKA SC: Were they investigated?

MR LINNELL: There was no investigation to my knowledge. The terms of reference were aborted.

ADV SELEKA SC: I see. What would you say to the

Chairperson should he approach this document
...[intervenes]

MR LINNELL: Sorry, should he would?

ADV SELEKA SC: How should the Chairperson consider
this document?

MR LINNELL: I would think it is a very important input into
the determination to hold an inquiry, to make sure it is
comprehensive because it implies political as well as
individual interference with the efficiency of the company
10 and it should be included in an investigation.

ADV SELEKA SC: Yes.

MR LINNELL: That investigation would need to take
account of the fact that there are parties involved who
might be implicated in this document, that is specifically
and generally.

ADV SELEKA SC: Yes. Given that the document was
given to you what, some five years ago and it did not, as I
understand, explicitly form part of your terms of reference,
the ones you drafted, one.

20 And number two, that the inquiry that was
envisaged at the time did not take place, is there any value
to be placed on the document? Any weight, I beg your
pardon.

MR LINNELL: I would disagree, Mr Chairman, I would say
that it is in the reference to be comprehensive and would

have covered every part of this document.

ADV SELEKA SC: Your terms of reference, the ones you drafted, do you know whether or not Eskom did rely on those terms of reference to conduct ...[intervenes]

MR LINNELL: They did not.

ADV SELEKA SC: Sorry? You may carry on.

MR LINNELL: They did not rely on those terms of reference, they rejected them.

ADV SELEKA SC: Now the terms of reference – I know
10 you have exchanged them with Eskom. Let us see whether
– what we found on page 71 of the bundle before us
...[intervenes]

CHAIRPERSON: Mr Seleka, have we finished the meeting of the 8th in Durban, the second meeting?

ADV SELEKA SC: No, Chair, we have not finished.

CHAIRPERSON: Yes.

ADV SELEKA SC: The document has ...[intervenes]

CHAIRPERSON: Do the documents not take us out of the context.

20 **ADV SELEKA SC:** Ja, maybe it is taking away from
...[intervenes]

CHAIRPERSON: I think you must try and finish what happened at the meeting.

ADV SELEKA SC: Yes.

CHAIRPERSON: And then move on so that the sequence

of events is the right one.

ADV SELEKA SC: Follows, indeed, indeed.

CHAIRPERSON: Ja.

ADV SELEKA SC: Mr Linnell?

MR LINNELL: I am with you.

ADV SELEKA SC: Oh, there you go, okay. That is alright. Okay, we will come back to our terms of reference because they come after your meeting with the board, so maybe let us follow the sequence for a moment and as I go
10 back to the sequence, I would like to quickly read out to you just by way of completion what Ms Dudu Myeni says in her statement and you will find that on page 191. So that takes us back to the meeting of the 8 March.

MR LINNELL: Okay.

ADV SELEKA SC: Page 191, Chair.

CHAIRPERSON: Okay.

ADV SELEKA SC: Ja, just those paragraphs, just to read them on record. I know we have dealt with – we have put some of that version to you, Mr Linnell, that - I think they
20 are more complete if you read them from the statement. Are you there on page 191?

MR LINNELL: Ja, 191.

ADV SELEKA SC: Ja, paragraph 13, where it starts with:

“The factual inaccuracies of statement Mr Zola Tsotsi about meeting with me.”

Do you see that?

MR LINNELL: Yes.

ADV SELEKA SC: Yes.

(i) First is it factually true that Mr Tsotsi met me. At his requested, as stated above, in Durban, but not in the presence of my son as he alleges. I met him in the presence of the person who was advising legally. I introduced Mr Tsotsi to Mr Linnell.”

10 So you have already answered the Chairperson in regard to whether or not Ms Myeni’s son was present in that meeting.

MR LINNELL: He was present, Mr Chairman.

ADV SELEKA SC: Thank you. And we know that the meeting did take place in Durban at the President’s residence.

MR LINNELL: Correct.

ADV SELEKA SC: Is that the official residence?

MR LINNELL: Sorry.

ADV SELEKA SC: Is that the official residence.

20 **CHAIRPERSON:** I think he said it was – it is state house.

ADV SELEKA SC: The state house.

CHAIRPERSON: So it is official, ja.

MR LINNELL: State house.

ADV SELEKA SC: The next paragraph says:

“Secondly, it is factually untrue that I was leading

the meeting.”

Your comment quickly on that? Well, you have said that she was coordinator/facilitator.

CHAIRPERSON: Ja, he said she was like the Chairperson – she was like the Chairperson of that meeting even though the meeting was informal, is that right?

MR LINNELL: That is correct..

CHAIRPERSON: Yes.

ADV SELEKA SC: She goes on to say:

10 “I did not outline any purpose of the meeting as
alleged by Mr Tsotsi.”

Is that correct?

MR LINNELL: That would not be correct.

CHAIRPERSON: She did?

ADV SELEKA SC: Did she outline the purpose of the meeting?

MR LINNELL: Yes, not in a succinct way but in a very broad descriptive way. She most certainly did. It was not like an agenda item, it was – but it was very clear what the
20 discussion is about.

ADV SELEKA SC: She writes further and says, about Mr Tsotsi:

“He had wanted me to introduce him to a legal adviser who happens to be Mr Linnell. I had already briefed Mr Linnell why we had to meet the

Chairperson of Eskom. It turned out that most of the things, points I raised to Mr Tsotsi was correct according to Mr Linnell. There were certainly not shortcuts especially if you were worried about being removed and also if you had things to hide.”

Do you understand what she is talking about?

MR LINNELL: I can disagree with that. At that meeting there was nothing to suggest at all that Mr Tsotsi was under threat of removal. I only became aware of the threat
10 to remove him the following week or the week after that. Two weeks afterwards was the first indication that anyone wanted to remove him.

The second thing is, I would say, I would never driven or flown on a Sunday all the way to Durban to meet Mr Tsotsi to discuss a risk he perceived to the removal of him from the board obviously, that would hardly be within the type of function that I could assist him with.

ADV SELEKA SC: I see.

CHAIRPERSON: So to the extent that Ms Myeni says that
20 she had already briefed you as to why the two of you had to meet the Chairperson of Eskom, what – do you have something to say about that?

MR LINNELL: That would not be true.

CHAIRPERSON: Yes. What is the position?

MR LINNELL: I had been briefed to meet again with the

President to discuss the approach to his idea of having an inquiry into Eskom.

CHAIRPERSON: Okay.

MR LINNELL: And, as counsel had mentioned before the lunch break, I had done some preliminary research with regard to that, not with regard to Mr Tsotsi's position.

CHAIRPERSON: When did you know for the first time that Mr Tsotsi was going to be at the meeting?

MR LINNELL: I think on Saturday the...

10 **CHAIRPERSON:** The 7th.

MR LINNELL: The 7th, so on the morning of the meeting of the 6th I had a telephone conversation with him on the morning of the 7th. At the end of that conversation I understood he would be at the meeting.

CHAIRPERSON: So prior to that had you not been told by anybody including Ms Myeni that the Durban meeting would include Mr Zola Tsotsi?

MR LINNELL: Mr Chairman, I think – I do not know now whether on Friday the 6th it was indicated that during
20 meeting that anyone else would have been at the 8th meeting.

CHAIRPERSON: Yes.

MR LINNELL: But clearly I knew by – if I did not know by the end of that day I knew by the morning of the 7th.

CHAIRPERSON: 7th, okay. Okay, yes continue, Mr

Seleka?

ADV SELEKA SC: Thank you, Chair. The next paragraph (iii), the Chairperson has already asked those questions.

CHAIRPERSON: Yes.

ADV SELEKA SC: I do not need to pursue them. Thirdly:

“The former President was not part of my meeting with Mr Tsotsi at any point. The President greeted us in the room where we were...”

And she goes on to say:

10 “The burden of proving that the former President was part of the meeting rests on Mr Tsotsi who should provide the minutes or evidence of the former President’s involvement in that meeting.”

Was the former President not part of the meeting? I think you have answered that question.

CHAIRPERSON: He has already told us that, ja.

ADV SELEKA SC: Yes.

MR LINNELL: He was present at the second part of the meeting most certainly.

20 **ADV SELEKA SC:** The next paragraph says:

“Fourthly, I need to stress that my being at the former President’s official residence...”

Well, you may or may not know this, Mr Linnell, her presence at the former President’s official residence in Durban was as per a prior commitment for a meeting on a

different matter which had nothing to do with Eskom or SAA. You may or may not have a comment on that.

MR LINNELL: I can – what I can say is there might have been another reason for Ms Myeni to be there but one of the reasons she was there was to discuss Eskom.

ADV SELEKA SC: Please turn the page, (iv) on page 192: She continues to write, says:

10 “Furthermore, it is not true that I have had a prior knowledge of financial performance and operational matters of Eskom other than the information Mr Tsotsi voluntarily shared with me including but not limited to load shedding, the claim by Mr Tsotsi that I spoke about the War room of Eskom is totally untrue.”

Now according to your recollection Mr Linnell, and I think I asked that question early this morning regarding load shedding and who would have talked about aspects relating to load shedding

20 **MR LINNELL:** Ms Myeni would have been involved and would have had a contribution on that topic.

ADV SELEKA SC: Was anything mentioned about the financial performance and operational matters of Eskom?

MR LINNELL: Most definitely.

ADV SELEKA SC: And who would have done the talking on those aspects?

MR LINNELL: [Indistinct 00:57] would have been one, Ms Myeni would have been one and I'm quite certain Mr [Indistinct 1.02] would have contributed to that discussion.

ADV SELEKA SC: In your view – or your view but your recollection of how the meeting transpired, we may be asking this question again but who would have been the main speaker on those points?

MR LINNELL: I can't say clearly, I think there was a discussion, think Jabu was particularly informative and he
10 provided a lot of the discourse, Ms Myeni would have provided input, if any one maybe Mr Tsotsi he would have been subdued as he would – he would have contributed but everyone contributed to the meeting and the one thing – I don't have a recollection at that time of the war room specifically, it was certainly years later, at it may have been discussed but I don't particularly remember the war room.

ADV SELEKA SC: I see, then, maybe I will read the next roman six as the last paragraph, it says,

20 "I should further state, the most pressing issue was not about Eskom but was about Mr Tsotsi himself. Prior to that meeting he had shared with me, his concern that the Board wanted to get rid of him and that some Executive at Eskom should be dismissed he, therefore, needed help of legal nature urgently".

Well that point is alluded to in the – one of the paragraphs before, preceding, I think you've already dealt with it.

MR LINNELL: [Indistinct 3.04] Eskom.

CHAIRPERSON: Yes, let's start with that one. Is it true that the discussion or the meeting was about Mr Tsotsi himself?

MR LINNELL: There was no discussion about Mr Tsotsi himself.

10 **CHAIRPERSON:** Yes, the discussion was about Eskom?

MR LINNELL: That is correct, Mr Chairman.

CHAIRPERSON: Yes, okay, well I guess one...[intervenes].

MR LINNELL: Mr Chairman, if I could comment, my recollection is, I arrived after the others and I think that's my recollection, if they had a prior meeting as this document here suggests, they had a prior discussion, I don't know anything about that discussion but the discussions I was part of [break in audio] and its
20 operations.

CHAIRPERSON: Yes, of course, when you say the discussion was about Eskom, at the Durban meeting, that would be in line with your evidence on the discussion that Ms Myeni had with you on the 6th at the President's official residence in Pretoria?

MR LINNELL: That is correct, Mr Chairman.

CHAIRPERSON: Because that discussion was about Eskom and not about any individual.

MR LINNELL: That is correct.

CHAIRPERSON: Yes okay, continue Mr Seleka.

ADV SELEKA SC: Thank you Chair...[intervenes].

CHAIRPERSON: Or maybe I can say, just to finish that paragraph for you Mr Seleka.

ADV SELEKA SC: Indeed Chairman.

10 **CHAIRPERSON:** The last sentence of paragraph, roman figure six, on page 192 says that Mr Tsotsi needed help of a legal nature urgently. In that meeting in Durban did Mr Tsotsi – or did anybody talk about Mr Tsotsi needing legal help himself as opposed to, maybe, Eskom?

MR LINNELL: None whatsoever Mr Chairman and none followed. As an outcome of that meeting I'd been asked, during the meeting to discuss that assistance, there was no assistance following that meeting. So, that supports the fact that it was not discussed.

20 **CHAIRPERSON:** Yes, continue Mr Seleka.

ADV SELEKA SC: Thank you Chair. Mr Linnell, to complete on this, I wish to ask you to go to page 26.2, this is the supplementary statement which you have loosely before you.

CHAIRPERSON: [Indistinct 6.17].

ADV SELEKA SC: Page 26.2.

CHAIRPERSON: So, you have moved away from 192?

ADV SELEKA SC: I've moved away from that one Chair.

CHAIRPERSON: Okay, I think there is one more thing to be put to Mr Linnell. Mr Linnell, Ms Myeni says in roman figure seven on page 192 that she needs to reiterate that she did not know Eskom Executives, nor did she know any of their acts of alleged wrongdoing. She says she was in that meeting to advise Mr Tsotsi as a colleague at his
10 behest and hence she introduced him to a legal advisor at that meeting in Durban, which must be you. What do you say about her statement that she did not know – or does not know any Eskom Executives?

MR LINNELL: I don't remember her naming any particular names but we spoke about the functions and the names would have been mentioned, at least by Jabu because in the document we've just referred to certain names are being referred to in that particular document and that document was discussed. Some of the names were
20 discussed but I – it was certainly the functions the functions were discussed and to my recollection Mr Tsotsi finally gave me the details of those three people in written format after the meeting.

CHAIRPERSON: Mr Tsotsi said that at the meeting one of the things that Mr Zuma – one of the questions Mr Zuma

asked was whether Mr Tsotsi knew the names or the identities of the Executives who were to be suspended, do you remember anything along those lines being asked by Mr Zuma?

MR LINNELL: I don't remember that question.

CHAIRPERSON: You don't remember.

MR LINNELL: ...[Indistinct 8.44] in a sense that, presumably Mr Tsotsi would know his own staff.

CHAIRPERSON: Yes, well I think Mr Tsotsi made the
10 point that it was quite clear that Mr Zuma knew the issues that were supposed to be discussed at the meeting and that at some stage during the meeting he asked Mr Tsotsi whether he knew who the Executives were who were going to be suspended and I think Mr Tsotsi's evidence before the Commission was that he responded to Mr Zuma by confirming that he knew the Executives to be suspended and I think he was saying that because prior to that point he said the discussion that had taken place, I think, before Mr Zuma came in had included the names of the Executives
20 – three executives, that was what he said.

MR LINNELL: [Indistinct 9.57] probably mentioned in the discussions before, Mr Chairman, in the first session but to be honest those names at that time bore no resonance in my mind because obviously then I would have recognised them, so I wasn't paying attention to names *per*

se, my focus was on the titles or their functions, he might have mentioned the names, I don't know.

CHAIRPERSON: Yes, so – but would you say that by the end of the meeting Ms Myeni did not know – or would not know the names of the Executives who were to be suspended, if they were mentioned?

MR LINNELL: I would think – they were mentioned in – everyone was mentioned in discussions.

CHAIRPERSON: Ja.

10 **MR LINNELL:** And starting off by function and then by names.

CHAIRPERSON: Ja.

MR LINNELL: I can't remember the names because I don't know if she would have remembered the names but names were certainly mentioned and confirmed in writing later.

CHAIRPERSON: She says she was at that meeting, simply to advise Mr Tsotsi as a colleague at Mr Tsotsi's behest to introduce Mr Tsotsi to you. She says that was
20 the – that is why she was at that meeting, what do you say to that?

MR LINNELL: Mr Chairman, it's simply not – it's absolutely clear that the purpose of the meeting was to traverse and prove an inquiry into Eskom's current performance. There was no discussion which took place.

CHAIRPERSON: And one wonders whether – if that was the only purpose, whether it would not have been enough for her to give Mr Tsotsi your number and then Mr Tsotsi could reach you and the two of you could make arrangements to meet rather than have a meeting in Durban or can you not hear me Mr Linnell?

MR LINNELL: No, it was indistinct Mr Chairman.

CHAIRPERSON: Oh, I'm saying one wonders whether, if that was the purpose of the meeting, namely that she
10 should – she was there to advise Mr Tsotsi at Mr Tsotsi's request and that she was there to just introduce Mr Tsotsi to you, whether it would not have been enough for her to give Mr Tsotsi your number and Mr Tsotsi could give you a ring and the two of you could arrange to meet, you understand?

MR LINNELL: I wouldn't have to fly to Durban to do that.

CHAIRPERSON: On a Sunday.

MR LINNELL: You're right Mr Chairman, I wouldn't have had to fly to Durban to do that.

20 **CHAIRPERSON:** Yes, Mr Seleka...[intervenes].

MR LINNELL: Mr Chairman if I could elaborate just on counsel's earlier question, at the end of that meeting we had identified the three people so everyone in the room knew there were going to be those three people [break in audio] for suspension so we left the meeting with that

knowledge.

CHAIRPERSON: Yes, so...[intervenes].

MR LINNELL: We might have got four more names later but we certainly knew that was the outcome of the meeting.

CHAIRPERSON: Yes, and at that stage were the only three Executives who were discussed and who were going to be suspended in terms of the discussion at that meeting or was it four Executives?

MR LINNELL: To my recollection there was three
10 people mentioned and we put three people in the documentation, at a later stage the three became four and the three morphed into four so when the three became four, I cannot recall but I know in the document that I did immediately after this meeting, and including the narratives on the motivations for suspensions of those three they referred to, specifically, those three.

CHAIRPERSON: Yes okay, Mr Tsotsi also gave evidence along the same lines, namely that at the Durban meeting only three Executives were discussed as executives who
20 would be suspended. He said it was only later, I think at the meeting of the 11th that, at some stage, the name of the Financial Director was included is that your recollection as well.

MR LINNELL: I think, Mr Chairman, that in the discussions on the 8th there is probably discussion about a

host of people and positions but at the end of the meeting the view was, those were the three key positions and I would have thought Mr Tsotsi's input on those three positions would have been quite critical because he would have known that best, no-one else would have known that.

CHAIRPERSON: Okay, Mr Seleka?

ADV SELEKA SC: Thank you Chair. Mr Linnell, indeed, you do say, in the supplementary statement which I was going to refer you to on page 26.2, your page 2, paragraph
10 14.

MR LINNELL: 14?

ADV SELEKA SC: Ja but we can start at 13 because there you write,

"I would not have known the identity of the individuals beforehand but at a meeting on 8, which I believe is March 2015, we had identified roles and names of three Executives and these were named by me in the briefing document I composed and sent to the Chairman, that evening, the 8th."

20 Paragraph 14 then says,

"Mr Marokane, CEO – I beg your pardon, Mr Matone, CEO, Mr Marokane, Group Capital and Mr Koko, Commercial and Technology were named in the suspension memorandum that I forwarded to Mr Tsotsi prior to the Board meeting on 11 March. I

cannot recall when the fourth Executive was added.
Ms Molefe had not been initially considered as potentially impending the investigation and not part of my proposal”.

MR LINNELL: That is correct, Mr Chairman.

ADV SELEKA SC: But we understand that the ultimate decision was that 4 Executives should be suspended and in fact, that’s what happened.

MR LINNELL: That’s correct Mr Chairman.

10 **CHAIRPERSON:** But to go back to the meeting in Durban, was the conclusion of the meeting, therefore, that, one, There would be an inquiry that would be conducted at Eskom, into the affairs of Eskom, two, three Executives would be suspended and they were identified who they were or that Mr Zuma was going to speak to the Minister – brief the Minister of Public Enterprises or Mr Tsotsi would speak to the Board of Eskom, is that how the meeting concluded?

MR LINNELL: That is correct Mr Chairman.

20 **CHAIRPERSON:** Is there another point I’ve left out of importance that was concluded at that meeting?

MR LINNELL: I think, Mr Chairman, there was the general statement, it would have been discussed in the presence of the President, where my own decision on doing the inquiry which set out a couple of the principles of that

inquiry, which would be independence of that and that, and I think I've documented that in the – one of the statements. So, there was a conclusion come to that the inquiry would take place it would have to be done in this particular way. One of those implications were that these people were to be suspended but there were other conditions mentioned at the end of that meeting.

CHAIRPERSON: Ja, just deal with them because I want to have a full picture of the conclusion of that meeting.

10 **MR LINNELL:** I think, Mr Chairman to ...[break in audio] the – that was an important point because that was the point of departure which led, ultimately, to the terms of reference and the approach of the inquiry which followed all the way through. So the principles agreed about independence, transparency etcetera, etcetera followed all the way through from that ... [break in audio] into the media briefing, into the terms of reference and they were, consistently applied.

CHAIRPERSON: Okay before you go there, one, your
20 role, did the meeting in Durban agree as to what your role would be in the inquiry or was there an understanding of what your role was going to be?

MR LINNELL: I left with the understanding that I would be – proposed to the Board that I would be the coordinator of the inquiry.

CHAIRPERSON: Yes, what were agreed to be the features of the inquiry you have told me about the transparency, what else, independence?

MR LINNELL: Yes, independence, it had to be transparent, it had to be thorough I think I documented some of those things...[intervenes].

CHAIRPERSON: Ja you can look at the document if you want to refresh your memory. Was it already mentioned, at that meeting, that the inquiry should take no longer than
10 three months or did that come later?

MR LINNELL: [break in audio] there was a discussion about that, Chairman, in the sense that in our earlier discussions if there is a long winded investigation that comes to nought to any event and it creates more damage than good. So, you have to go in, do it thoroughly and quickly and identify the main issues otherwise it will just peter out and so three months was an issue. Counsel can you remind where – do you where we detail those, was it in the affidavit or the supplementary?

20 **ADV SELEKA SC:** You could go to page 32 of the affidavit, paragraph 20.

MR LINNELL: Which is on black page number?

ADV SELEKA SC: 32.

MR LINNELL: Oh page 32?

ADV SELEKA SC: Yes, paragraph 20 21 – well mainly 21.

MR LINNELL: Okay ja.

CHAIRPERSON: Well you can just read into the record the principles that you set out there, what you say from paragraph 20 to 21.9, do you want to read that quickly.

MR LINNELL: Would you like me to, certainly?

CHAIRPERSON: Yes.

MR LINNELL: Paragraph 21 starts,

10 “The President was fairly familiar with the purpose of the meeting and he provided a summary of what was propose arising from the earlier discussion referred to above. This included a number of key principles, 1. For the inquiry to have credibility it needed to be open, independent and comprehensive, it needed to be free from internal interference. 2. It needed to be quick as lengthy previous inquiries in other State entities led to greater harm than good. 3. It needed the capacity and capability of the best investigators across commercial, financial, and technical disciplines. It was, therefore, not suitable for one entity to conduct it. 4. It needed to be seen to be credible, sound communication with stakeholders and the public was necessary”,

20

And then I comment on something which is in the ultimate, final version of the terms of reference which I

cannot recall mentioning here but it – part of my thinking then was, you needed an overseer to comply or to deliver on the points of being credible and transparent. In an inquiry of this nature the big risk is, no-one really knows the truth.

CHAIRPERSON: Yes, oh I thought the principles went up to 21.9.

MR LINNELL: Okay.

CHAIRPERSON: Ja I think 21.6, you say,

10 “The Board and the Minister must be in agreement and supportive and seen to be so.

21.7 you discuss the implications of the Board and PFMA approvals.

21.8 the matter of suspension of top Executives was discussed, the rationale, supporting suspension was that,

21.8.1 if investigators were going to have the freedom to follow the evidence there needed to be an environment free from fear or
20 intimidation these conditions do not need to be active, exist in the passing presence of key people can inhibit openness. These were precautionary suspensions and those included would be counselled on that point as would the media release.

21.8.2 The risk to the business of suspensions of key people will be managed by appointment of capable subordinates, a strong communication strategy would convince stakeholders and the public that this was a positive and not a negative approach. The inquiry would be limited to three months, your own role would be that of coordinator and you would interface with the Board and then at

10

22 you say, the President listened to these views and asked one or two questions and then agreed. He undertook to speak to the Minister and Mr Tsotsi was going to speak to the Board”,

Is that how the meeting ended?

MR LINNELL: Yes, Mr Tsotsi was going to communicate with the Board, I was going to draft him documents to communicate to the Board that evening, which I did. The President was going to talk to the Minister and all those points – ultimately [break in audio 26.46] documents. So, for example in the Board proposal it deals with issues of the approval of Ministry of Finance. So, all those issues which are recorded here were, ultimately, followed through and the documents entered later.

20

CHAIRPERSON: Okay, Mr Seleka.

ADV SELEKA SC: Thank you Chair. So Mr Linnell it appears to be – maybe you can verify this or confirm this to the Chairperson that these principles were coming from you, the underlying principle of the nature of the inquiry, is that correct?

MR LINNELL: I would like to agree with that, I think so.

CHAIRPERSON: Now, we know that, when you met with Ms Myeni on the afternoon of the 6th of March 2015 in
10 Pretoria, she told you that the President wanted an investigation into the affairs of Eskom. At that stage, did she talk to you about any principles that would govern that investigation or did she talk to you about any important features of that investigation or is the position that, that was not discussed at that stage but by the time you arrived at the Durban meeting you had ideas of what principles should be followed?

MR LINNELL: I think a bit of all those, Mr Chairman, so, [break in audio 28.39] discussion on the 6th, certainly some
20 of these principles would have been discussed, I would have raised them but on the – I think on the Saturday morning, I stand corrected but I would have commented on one of the documents that I, ultimately, did. I started drafting a document – first version of a document early on the Sunday morning or late on the Saturday or early

Saturday morning which started recording some of these kinds of things, [break in audio 29.15] certainly. I'm not sure – I would have mentioned them, I suppose, on the 6th but they were very clearly entrenched by the 8th.

CHAIRPERSON: Now, at that meeting on the 6th of March, in Pretoria between yourself and Ms Myeni, did the issue of the suspension of the Executives arise or did that only arise at the meeting – at the Durban meeting?

MR LINNELL: The principle of suspensions would have
10 arose on the 6th, yes.

CHAIRPERSON: So, the two of you did discuss that in Pretoria?

MR LINNELL: Correct, not [break in audio] but the principle of suspension she is sitting at the top of the organisation.

CHAIRPERSON: Ja, no, no that's fine, in Pretoria in your meeting **CHAIRPERSON:** Ja, no, no, that is fine. In Pretoria in your meeting with Ms Myeni you are saying that there was a need – there would be a need for some
20 executives to be suspended was discussed but the actual names were not discussed, is that right?

MR LINNELL: That is correct.

CHAIRPERSON: But was there – did the discussion include portfolios, in other words to say the executives who would need to be suspended would be those who occupied

certain – or who were leading certain portfolios or that did not also arise, it was just the suspension, that there may have to be a suspension without saying which positions would be affected or which persons would be affected?

MR LINNELL: Mr Chairman, on this, I would not have understood the organisational structure as to who was who. So that would not have been an issue at all but that came clear on the 8th as to Mr Tsotsi had a role in identifying positions of influence in the business.

10 **CHAIRPERSON:** So who actually came up with the whole idea that there would need to be suspensions on the 6th, was it you or was this Ms Myeni?

MR LINNELL: Mr Chairman, I would put to you that it would have been my recommendation. Having said that, I cannot say that it was not also on her mind and in conversation there was an accepted discourse between the two of us that was necessary but where I am in doubt, it would have intuitively been my – an idea I would have seen it, if you are going to do this properly, this must happen.

20 **CHAIRPERSON:** Yes.

MR LINNELL: We might have had the same thought, I cannot recall that.

CHAIRPERSON: Yes. But the actual portfolios of – that would be affected by the suspension of the executives, those portfolios were only identified at the Durban meeting,

is that correct or not?

MR LINNELL: To my memory recollection, yes, Mr Tsotsi would have been the one who knew those roles better than anyone and maybe Thabo but certainly Mr Tsotsi would have been.

CHAIRPERSON: Now at the Durban meeting do you recall whether it fell upon you to raise the issue of the suspensions or whether somebody else in the meeting happened to be the first one to raise the issue of
10 suspensions and, if so, who was that?

MR LINNELL: Mr Chairman, I do not have recollection – at the time there was no thought that that was an issue, the discussion was around we had to do an investigation, what is the best approach to do it and the suspensions were no more of an issue in say my recollection in mind than it being fair and transparent and thorough, they were all part of the same approach.

CHAIRPERSON: Yes. Now do you remember whether the actual names came from Mr Jabu Maswanganyi or Mr
20 Tsotsi. Did you remember or is that something you do not remember or who the names came from?

MR LINNELL: What I do recall is Mr Tsotsi having a role in a debate about the positions and then ultimately, as far as I recall, any maybe it is formed by I got the names from him in writing to make sure I wrote then down correctly.

He sent those to me. Jabu would certainly have mentioned some of those names because in the document we referred to energy crisis just now, two of those names are in his document.

CHAIRPERSON: Okay. Mr Seleka?

ADV SELEKA SC: Thank you, Chair. Mr Linnell, if you are still on your supplementary affidavit, paragraph 12. Just for completeness sake, talking of the suspensions considered on the 8 March and you said:

10 “Precautionary suspension would have been a
 standard approach that I would have considered.”

Do you see that?

MR LINNELL: Correct.

ADV SELEKA SC: Yes.

 “I would have considered key areas of business that
 the inquiry would focus on and also whether anyone
 in particular in those areas may have a propensity
 to interfere or have such a presence as to create a
 perception of potentially impeding the
20 investigation.”

Although paragraph 13 says:

 “I would not have known the identity of the
 individuals beforehand.”

Do you see that?

MR LINNELL: Mr Chairman, the [distortion on audio] I

would have considered, that would have been the consideration. The principle of that is the consideration. So the consideration would be who are the functionaries who are going to be – might impede this investigation and what are the areas in which they work at. That would have been my consideration.

ADV SELEKA SC: Yes and I think what the Chairperson was trying to establish from you is whether that consideration which ultimately becomes a decision of this
10 meeting is something that you, as the legal adviser, because that is how you have been labelled, you as the legal advised them to do. Did you advise them to suspend the executives?

MR LINNELL: It was not – the meeting was not an advisory meeting but I would have certainly said if I am going to do this inquiry, these are the principles that I would want to have in place.

ADV SELEKA SC: Okay, so that was ...[intervenes]

MR LINNELL: So ...[intervenes]

20 **ADV SELEKA SC:** That was your advice to them.

MR LINNELL: So I would have – sorry?

ADV SELEKA SC: That was your advice to them?

MR LINNELL: Probably advised.

CHAIRPERSON: He says the meeting was not an advisory kind of meeting but he says he would have told the meeting

that if he was going to conduct the inquiry or coordinate it he would have told the meeting that one of the things he would want to have done was the – would be the suspension certain key people. Is that correct, Mr Linnell?

MR LINNELL: If I understood correctly, it would be – I would have advised that if I was going to do the inquiry, these principles should be in place but when I said it was not – the discussion, to start off with, was a discussion, everyone added their bit. That would have been one of the
10 bits or those points that we have read out just now would have been points that I would have raised.

ADV SELEKA SC: Ja. Mr Linnell, then you do say on the next page – there is an aspect I think I should clear with you beforehand. Before I go there, Mr Linnell, just to clear with you what the Chairperson had raised with you earlier which is what Mr Tsotsi says. I am going to read from his affidavit quickly. You will find it – and you can write this down – on page 167 of your bundle. 167. And paragraph 12.12 Mr Tsotsi write, this is his affidavit before the
20 Commission:

“The President then enquired as to whether I knew which executives were to be suspended whereupon I responded that I knew as Dudu...”

That is Ms Myeni.

“...had mentioned them in the discussion prior to

this meeting. His response gave me the impression that he had been privy to this discussion.”

Before I move on, let me ask you this ...[intervenes]

MR LINNELL: Which paragraph are we on?

ADV SELEKA SC: 12.12, sorry page 167. Are you on that page?

MR LINNELL: 12.12, I have got it, ja.

ADV SELEKA SC: You have got that. You heard what I read, you can look at it.

10 “The President then enquired as to whether I knew which executives were to be suspended whereupon I responded that I knew as Dudu...”

I believe it is Ms Myeni.

“...had mentioned them in the discussion prior to this meeting. His response gave me the impression that he had been privy to this discussion.”

Do you see that?

MR LINNELL: I can see it. I have no recollection of that particular part.

20 **ADV SELEKA SC:** Chairperson – ja, sorry, Mr Linnell, may I interrupt you. Chairperson, apparently we have lost the – SABC has lost signal for live broadcasting due to a storm. Shall we proceed? Thank you, Chair.

Mr Linnell, we are at a stage where, as I understand what Mr Tsotsi here is talking about. At the stage where

the President is joining you in that second room
...[intervenes]

MR LINNELL: I understand.

ADV SELEKA SC: You follow that?

MR LINNELL: I do.

ADV SELEKA SC: Yes. Let me ask you a different question, whether did you get the impression that Mrs Myeni knew who were the executives to be suspended?

MR LINNELL: It is quite possible because – you mean
10 before the 8th or on the 8th?

ADV SELEKA SC: Either or but that she knew
...[intervenes]

MR LINNELL: Certainly on – certainly during the conversation on the 8th all these people were mentioned. I cannot recall if their names *per se*, like Dan Marokane who was mentioned as a name, that would not have registered with me as a name because I was not familiar with the name but people and their positions were discussed.

ADV SELEKA SC: Yes.

20 **MR LINNELL:** So Mrs Myeni would have been aware of that.

ADV SELEKA SC: I see. The next paragraph on the same pages, it say:

“Dudu Myeni had informed me on my arrival that
Nick Linnell, who is a lawyer, who she had

commissioned to advise her at SAA and would be available to do the same for us at Eskom.”

You may not know what he was advised but you are able to verify whether or not you had been engaged by her at SAA?

MR LINNELL: Certainly, I was – it was concurrent with this – the SAA work was concurrent with this work.

ADV SELEKA SC: Was it concurrent with this work? So you were then being engaged with Eskom to similarly
10 assist at Eskom.

MR LINNELL: It would have been materially the same kind of investigation. Eskom one would have been much, much bigger.

ADV SELEKA SC: You mean the Eskom task would have been much, much bigger?

MR LINNELL: Certainly. The SAA one was limited in its scope.

ADV SELEKA SC: Did it also involve the suspension of the executives?

20 **MR LINNELL:** The executive was certainly suspended.

ADV SELEKA SC: And an inquiry was established?

MR LINNELL: The inquiry followed and a disciplinary hearing followed and a settlement followed.

ADV SELEKA SC: Oh. But we ultimately had settlement here at Eskom?

MR LINNELL: No, no, so the point – the point on SAA.

ADV SELEKA SC: Yes.

MR LINNELL: The record of the investigation is public record, it was in the Labour Court and it is about 3 000 pages. Maybe twelve instances or allegations proven and that is – as I understand has also been submitted to the Commission, that report. So that is question of fact, objective fact, what the substance of those allegations, investigations resulted in. The fact that there was a
10 settlement, was more likely to be a political outcome rather than a business outcome on that matter.

ADV SELEKA SC: I see.

CHAIRPERSON: Well, maybe I should go back to a question that – or a topic that we dealt with briefly before lunch, Mr Linnell, namely the need for your services. Now if you get involved in – if you – if Ms Dudu Myeni brought you into SOEs, state owned entities such as SAA to deal with, for example, a disciplinary matter, I cannot understand why it was necessary for her to bring you in
20 when an organisation such as SAA would have a legal department, people who are employed to deal with such things and indeed in some of the matters that have been testified about before me relating to SAA during Ms Myeni's time at SAA involved law firms being brought in as well to chair disciplinary enquiry, to prosecute managers or

executives. So I ask myself the question, why was Ms Myeni bringing you in because the entity had the necessary capacity.

MR LINNELL: Mr Chairman, I would beg to differ, SAA did not have the necessary capacity and in organised ...[intervenes]

CHAIRPERSON: How do you know that?

MR LINNELL: Sorry?

CHAIRPERSON: How do you know that?

10 **MR LINNELL:** I worked that for 18 months, Mr Chairman, I know that.

CHAIRPERSON: Well, I do not know now ...[intervenes]

MR LINNELL: Mr Chairman, if I could elaborate ...[intervenes]

CHAIRPERSON: I do not know now but I know SAA in the past to have had a position I think called a legal counsel, for example, which was occupied by some advocates in the past and I think the last I knew was Adv Pikoli was I think occupying that position recently. I do not know if he is still
20 occupying it, so I cannot imagine that SAA did not have a legal department, did not have a human resources department. Are you saying that one, SAA did not have a legal department? Two, it did not have a human resources department? Because running a disciplinary enquiry you do not actually even need a lawyer, human resources

practitioners are enough to do that but if you feel you need a lawyer there would be a legal department and very often there would be people who are qualified in labour relations.

ADV SELEKA SC: Chair, before he responds – sorry, Mr Linnell.

MR LINNELL: Can I respond?

CHAIRPERSON: Just one second, Mr Linnell?

ADV SELEKA SC: He is [distortion on audio] to respond.

10 **CHAIRPERSON:** The transcribers also now have a problem, so they are asking for five minutes adjournment.

CHAIRPERSON: Oh.

ADV SELEKA SC: So that they can sort out their recording.

CHAIRPERSON: Oh, okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay, Mr Linnell, please do not forget the question and your answer.

MR LINNELL: I will not.

20 **CHAIRPERSON:** But we will take a break because the transcribers need to sort out something as well. Okay, we will adjourn.

ADV SELEKA SC: Thank you, Chair.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: We have had a break of about what, 30 minutes.

ADV SELEKA SC: Yes about 30 minutes Chair.

CHAIRPERSON: Ja, and ...[intervenes]

ADV SELEKA SC: We are still interrupted.

CHAIRPERSON: And the signal hasn't come back.

ADV SELEKA SC: Yes.

CHAIRPERSON: Is there anything that we have been told that is promising, or I had to speak maybe? Is that an
10 indication that something is happening, or not really? It is not the wonders of my voice.

ADV SELEKA SC: It would have been amazing.

CHAIRPERSON: Is Mr Linnell able to hear me?

MR LINNELL: Yes I can sir.

CHAIRPERSON: Oh, and would the recording happen? Would it be possible to record or would it not be happening? It won't be possible, there would be no recording?

ADV SELEKA SC: The message is there is a delay in the
20 transmission of the recording so the recording keep the words, it records late.

CHAIRPERSON: Oh is that so?

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay so maybe we must just adjourn.

ADV SELEKA SC: I think so.

CHAIRPERSON: Till tomorrow.

ADV SELEKA SC: Unfortunately.

CHAIRPERSON: Mr Linnell we are going to adjourn because of this problem, the intention is to resume tomorrow, I take it that you probably are available to continue tomorrow?

MR LINNELL: I am sir.

CHAIRPERSON: Yes, okay let's do that, I think tomorrow's witnesses maybe could be told to not arrive
10 before twelve, I am not sure, because we will start with Mr Linnell, and then once we are done with him then we will start with them.

ADV SELEKA SC: Yes we will convey the message Chair.

CHAIRPERSON: Ja, ja, so we are going to adjourn for the day and tomorrow we will start at ten o'clock, which is our normal time, okay, we adjourn.

ADV SELEKA: Thank you Chair.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 6 OCTOBER 2020