

[Opening of Hearing // 6 October 2016]

1
2 **Adv T Madonsela** : ... engage with you (*indistinct*) as you know Mister President,
3 regarding allegations that were randomly made in the Media, but
4 picked up by three Complainants. The three Complainants are a
5 group of Catholic Priests. They were the first ones to complaint to us.
6 Then the second Complainant is the Democratic Party. Then the first
7 Complainant, representing the group of Catholic Priests, is Father S
8 Maibe. The second Complainant is Mr Maimane.

9 The third Complainant, I have withheld his name, although in
10 the document submitted to you I think the name was there, because
11 we gave you the actual complaint, so it is known to you, but for the
12 public document we withheld his name. Normally we withhold
13 names of Complainants if it is not a service failure matter. For the
14 record I would ask that we record our names or firstly Advocate
15 Kanyane, record the date?

16 **Adv N Kanyane** : Yes, it is the 6th of October 2016. My name is Nkebe Kanyane. I'm the
17 Acting Executive Manager in the Good Governance & Integrity
18 Branch in the Office of the Public Protector.

19 **Adv T Madonsela** : I'm Thuli Madonsela, the Public Protector.

20 **Mr B Dhlamini** : Bonginkosi Dhlamini, Chief of Staff, Public Protector South Africa.

21 **Mr M Hulley** : Michael Hulley, Advisor in the Presidency.

22 **Adv B Makhene** : Bonisiwe Makhene, Advisor in the Presidency.

23 **Adv T Madonsela** : Thank you, Advocate Makhene. Mister President, you don't have to
24 introduce yourself.

25 **President Zuma** : Okay, thank you.

1 **Adv T Madonsela** : Thank you, Sir. As I was indicating, the Complainants, basing their
2 allegations on Media reports, alleged that Mr ... that you may have
3 violated the Executive Ethics Code by allowing the Gupta Family to
4 approach Mr Mcebisi Jonas and offer him a position of the Minister of
5 Finance. They also ... that is the second Complainant. He also
6 suspected that if Mr Jonas was offered the post of the Minister of
7 Finance, then the same family that offered him the post of the
8 Minister of Finance would have been involved in the removal of
9 Minister Nene and his replacement with Mr Des van Rooyen on the
10 9th of December.

11 That would be the second complaint lodged in terms of the
12 Executive Members' Ethics Act. I'm clarifying that because there is a
13 question mark around why do this investigation ... when we are still
14 sitting with investigations such as Modupi Pesile(?), is incomplete
15 and other investigations that are incomplete at this stage, including
16 the one that came back of PetroSA that the Supreme Court of Appeal
17 asked us to redo?

18 Mister President, the Executive Members' Ethics Act requires
19 whoever is the Public Protector to investigate any allegation that is
20 duly made by the Member of Parliament regarding the violation of
21 the Executive Ethics Act, whether suspected or alleged. It doesn't
22 give me discretion, Sir. It is a must. If the report is filed in terms of
23 the Public Protector Act, as was done in the first complaint by Father
24 Moyo, then that gives me discretionary power to say I will
25 investigate or I will not investigate. I may not investigate because I

1 don't have resources. I may ask that this matter be investigated by
2 SIU, I may recommend to the President to appoint a Judicial
3 Commission of Enquiry, but unfortunately if it is filed in terms of the
4 Executive Members' Ethics Act I don't have those powers. That is
5 why we investigated. The second thing was, if it is filed in terms of
6 the Executive Members' Ethics Act, it must be done within 30 days
7 and if we can't complete it within 30 days, we have to report to you
8 that we can't complete it within 30 days.

9 However, even if we can't complete it within 30 days, the
10 understanding is that we should complete it soon thereafter and over
11 the years we have struggled to complete these matters in 30 days,
12 hence we now have appointed a person fulltime to take care of
13 Executive Members' Ethics Act matters. However, when this
14 investigation came, that person had not yet assumed duties, hence
15 we then requested to Government resources, we requested that we
16 be given money to employ a group that is similar to a Commission of
17 Enquiry.

18 Having done this investigation, I do believe that we were right,
19 that we should have been given resources to appoint a structure
20 similar to a Commission of Enquiry, because the vast amounts of
21 paper that have to be perused and the number of witnesses that have
22 to be looked into are extensive, and it is a serious matter, Mister
23 President. Why is it serious? It is not so much serious for other
24 people. It is very serious for Mr Jonas, because Mr Jonas is a Member
25 of Executive. He is required in terms of the Executive Ethics Code to

1 abide by the Code, to not allow his personal interests to conflict with
2 his official interests, to put the public interests first, to put his
3 Constitutional interest first and he has now made this allegation that
4 should have been tested. Whether it were tested by us or they were
5 tested by a Commission of Enquiry, they should have been tested,
6 because at the end of the day if they remain untested and people are
7 accusing him of lying or he is lying, you have an uncertainty that
8 needs to be cleared about is he lying? If he is lying, then what it is
9 going to happen to him?

10 That is the seriousness of it, why we thought a Commission of
11 Enquiry. It is less serious or equally serious, but less serious of Ms
12 Mentor, because she is not at the moment employed by the
13 Executive. She is a private citizen. Even if it turns out that she is
14 lying, the consequences are not so dire. Even if nobody tests her
15 allegations, they can be subjected to the Criminal Justice System and
16 she has lodged a complaint in the Criminal Justice System. Mr Jonas
17 being a Member of the Executive, he himself is bound by the very
18 same Code that we are doing this investigation under.

19 That is one of the things we just needed to clarify. The second
20 complaint is ... no, so the first complaint was that the two people
21 were offered jobs and that you allowed this ... you may have allowed
22 this thing to happen. The second complaint is that ... coming from the
23 same people, is that the Gupta Family has used the power given by
24 these relationships that are established with Ministers and Board
25 Members to get tenders and to get preferential treatment in terms of

1 how those tenders are processed. It is a two-stage process, it is the
2 appointment of Ministers ... of these two Ministers and appointment
3 of Board Members, and then thirdly the award of tenders and these
4 Dominican Order Catholic Bishops or Priests also asked us to look
5 into licences that may have been given to the Gupta Family. We
6 haven't looked into that. It will not be part of this phase of the
7 report. They asked us to look into State contracts. We haven't
8 looked into the entire set of State contracts.

9 That again will not be part of this report. We only looked at
10 State contracts that were mentioned specifically in the documents
11 that they provided to us. They mentioned Eskom, Transnet, Denel.
12 They also mentioned SAA, but we haven't looked at SAA again fully,
13 other than just to confirm that the route was cancelled, but we don't
14 have information at this stage as to the process followed in cancelling
15 that route, so we are not in a position at this stage to proceed, but if
16 there is any information we can get from your side, we will get ... the
17 third complaint came much later.

18 It is not an allegation to the Lawyers. It is a suspicion and the
19 Constitution allows the Public Protector to investigate both an
20 allegation ... suspected or alleged improper conduct. He asks
21 President ... and this one can be clarified just to explanation. He asks
22 why did Cabinet get involved in the conflict between the Gupta
23 companies and the banks, and why these matters were not dealt with
24 by the National Consumer Commission or with the Banking Ombud?
25 Is it normal that Cabinet gets involved in these matters? Then he

1 makes ... it is a very short report. He makes then a remark if there
2 may be corruption? He doesn't say there is corruption. He just says
3 we should look into whether there may be corruption? So that is the
4 only complaint. It is not really allegations. It is a suspicion. The
5 person is just asking us to enquire and find out if this happened?
6 That is basically ... we have submitted to the Presidency a set of
7 questions based on the issues we have identified and at this stage I
8 want to leave it at that, because I have clarified the process.

9 The second thing maybe I would like to clarify Sir, is what have
10 we done to date, because there was an allegation this morning ... you
11 sent me something that suggests that a Journalist said I made a ... I
12 said there is a report. There is no report. There is no single report
13 that this team has at this stage. There are reports in different places,
14 so there isn't a report and the report on the evidence we have
15 gathered, none of those reports talk to findings. When we sent you
16 the Section 7(9) Notice, we were very careful based on the
17 experiences we have had with people that the Section 7(9) Notice
18 doesn't say these are findings.

19 It says we are giving you a sense of what do we have and we are
20 asking you what is your response to those things? If we don't get any
21 further information, we could make adverse findings. We don't even
22 say what those adverse findings are going to be. That is how we have
23 framed it this time to avoid the possibility that there is a sense that
24 we have pre-concluded these matters. There is no finding against
25 anybody at this stage, there is no finding against any single person.

1 We have just interviewed people and we have asked for example ...
2 the starting point was always in a situation like this – the two
3 Lawyers can confirm that, Sir – is that you always start with the
4 people who are accusers. So our journey has started with interviews
5 ... with subpoenas of Ms Mentor and Mr Jonas. Then we went to the
6 people they claim could verify their version and documents that
7 could verify their version, we did that and then any other witnesses.

8 The last phase then has been to interview some of the people
9 who have been implicated during the evidence that we have
10 gathered, and we asked the Gupta brothers to be interviewed.
11 Unfortunately two of them are out of the country and we are still
12 looking at ways and means of overcoming that hurdle. We are going
13 to interview young Mr Zuma. It is fair to him that we hear his side of
14 the story, because he has been mentioned by the witnesses in favour
15 of the allegations. He has also been mentioned by Mr Ajay Gupta and
16 it is only fair that we then hear his side of the story. Mr Hlongwane, I
17 was informed that ... he wrote a letter to us and I thought he had
18 declined to be interviewed.

19 It turns out that the person who had declined to be interviewed
20 was Mr Ben Martins. It wasn't Mr Hlongwane and he is being
21 subpoenaed today, so that he can provide his evidence under oath.
22 The reason everyone's evidence has to be provided under oath Sir, is
23 that we have to give equal weight to the evidence and if yours has
24 been issued outside oath and somebody issued theirs under oath, the
25 one who tells us a story under oath stands the possibility of going to

1 jail for perjury, and the one who gives their evidence outside the
2 system doesn't stand the possibility of going to jail, and you can't
3 give equal weight then to these two sets of evidence. We will then
4 ask Mr Hlongwane, using the Canadian approach that says,
5 "Anywhere, anytime we can meet you, because of the timelines that
6 we have". That is basically how far we have gone, Sir and I just want
7 for the record to say there are no findings at this stage against
8 anyone that we have investigated. We have just informed some
9 people of what we have collected, that implicates them or touches on
10 their name, because we are required to do so in terms of Section 7(9)
11 of the Public Protector Act.

12 Before I go then to the actual interview, I'm going to ask Mister
13 Hulley, if you want to make representations? Ordinarily in
14 investigations like this we require that people speak for themselves,
15 because it says "assisted" and then the Lawyers clarify when there
16 are legal issues, but since you say you have prepared a
17 representation that you would like to make, I think it is proper that
18 we listen to it and then we agree on how to proceed after we heard
19 you.

20 **Mr M Hulley** : Thank you very much. These are in fact legal submissions ...

21 **Adv T Madonsela** : Okay, that is perfect.

22 **Mr M Hulley** : ... and they are submissions, which President Zuma would associate
23 himself with. They have been prepared in consultation with him. He
24 understands the import and the nature of the submissions, which are
25 to be made. The submissions largely deal with procedural aspects, to

1 the extent that we intend to demonstrate that the Enquiry or the
2 interview in terms of Section 7(9) of the Public Protector Act is
3 premature and we would like to demonstrate to you why it is that we
4 make that submission, and in those circumstances it renders such a
5 meeting procedurally unfair in a way that doesn't speak to the
6 import of how these matters ought to be conducted, and we would
7 like to demonstrate to you through the Act, as well as through
8 judgments, which we think are supportive of those submissions.

9 I think it might well be necessary to start when the first
10 notification was received and that was on the 22nd ... pardon me, I'm
11 just battling a bit with the flue and that was on the 22nd of March
12 when a letter was direct to His Excellency, President Zuma, advising
13 him that there was such an investigation that was taking place. The
14 next that the matter was drawn to the attention of the President was
15 on the 13th of September, where in essence a meeting was requested
16 and the purpose of that meeting was described in paragraph 2,
17 where it reads – and I quote:

18 *"I would like to have a meeting with you to brief you about the*
19 *investigation into allegations of State capture. The meeting will*
20 *also enable me to afford you an opportunity to answer to the*
21 *allegations made against you, to the effect that you ought to have*
22 *known and/or allowed your son, Mr Duduzane Zuma, to exercise*
23 *enormous undue influence in strategic ministerial appointments*
24 *as Board appointments at State-owned entities."*

25 So that was the request and the request was responded to

1 undercover of an acknowledgement, and subsequently a letter dated
2 the 21st of September, wherein the Director General, Dr Lubisi,
3 indicated the date to discuss those matters would be the 6th of
4 October, which is today's date. Subsequently a letter was directed to
5 Adv Madonsela, wherein a request was made for copies of the
6 complaint, as well as any other documents that would speak to the
7 content of paragraph 2, which I reiterate was the purpose of the
8 meeting as set out in that correspondence dated the 13th of
9 September.

10 Subsequent to that, two and a half days before today's date,
11 there was a letter received dated the 2nd of October, a 20-page letter,
12 wherein was set out quite explicit and detailed allegations. For the
13 first time the Notice in terms of Section 7(9) of the Public Protector
14 Act of 1994 was given and I think for the purpose of the record it is
15 necessary to note what those provisions are – and I quote:

16 *"If it appears to the Public Protector during the course of an*
17 *investigation that any person is being implicated in the matter*
18 *being investigated and that such implication may be to the*
19 *detriment of that person or that an adverse finding pertaining to*
20 *that person may result, the Public Protector shall afford such*
21 *person an opportunity to respond in connection therewith, in any*
22 *manner that may be expedient under the circumstances."*

23 We understood the letter of the 2nd of October, with the nature of the
24 complaint that was set out there, as well as the detailed matters upon
25 which President Zuma was called on to respond, were set out there,

1 in our view the time period of two and a half days is plainly an
2 inadequate period of time. We say so for the fact that you would
3 have gaged from the response and the indication that the President
4 gave when he was requested to, that you would have seen the lead
5 time is on average about two weeks. The President's diary of course
6 is fixed well in advance.

7 It impedes on his ability to traverse all those allegations and to
8 come up with a substantive response, under pain of the seriousness
9 of the investigation, which is being actually carried out and we think
10 that the expediency that is referred to in Section 9 ... sorry, Section
11 8(9)(a) cannot be at the expense of one being given an adequate
12 opportunity to deal with the detail, with the gravity and the
13 seriousness that such matters deserve.

14 There was a further letter that was sent to the Public Protector
15 and that letter was dated ... sorry, that was under the hand of the
16 Director General, that was sent on the 5th of October and in that letter
17 – as the Public Protector has referred to earlier – reference was
18 made to comments attributed to the Public Protector in a daily
19 newspaper. Those comments ... and I quote ... and this we
20 understood was with reference to this meeting, which is convened
21 today and I quote the following:

22 *"We will hear his version of events and he may have information*
23 *for us that we need to consider against our own findings."*

24 And (2):

25 *"Refers to a denial of the allegations made by the Honourable*

1 *Deputy Minister, Mr Mcebisi Jonas by one Mr Hlongwane.”*

2 The correspondence goes on to say that:

3 *“These are a matter of concern and we would like to know (a),*
4 *the findings which have already been made, and (b), whether the*
5 *veracity of Mr Jonas’ comments have been ventilated and*
6 *investigated.”*

7 Now we understand the trigger, as it were, for paragraph ... for
8 Section 7(9)(a), that it must appear to the Public Protector during
9 the course of an investigation that any person is being implicated in a
10 matter being investigated. Now we think the word “appear” has a
11 judicial meaning and that is, the Public Protector must hold a *prima*
12 *facie* belief that the person whom she seeks to question has been
13 implicated by one or other witness. In our view that determination
14 couldn’t possibly have been made and we say so for the following
15 reasons – and I want to attribute a quotation to the Public Protector,
16 which was reported on the electronic media – and I quote as follows:

17 *“At this stage I don’t know who is lying. The only way I’m going*
18 *to take Mr Hlongwane’s version, is if he comes and testifies under*
19 *oath. There is no way that this letter means anything for this*
20 *investigation, unless he comes in person and presents evidence*
21 *under oath.”*

22 I think the important aspect that we want to dwell on, with reference
23 to the Subsection that I have read, is the pertinent comment of the
24 Public Protector where she says she doesn’t know who is lying. In
25 other words, we read into that comment an establishment of ... or a

1 lack of establishment of what is anticipated in Section 7(9), which
2 calls on an implicated party. “Implicated” has a very specific English
3 usage and it means that someone has examined the veracity of what
4 has been said and satisfies themselves that it calls on someone to
5 venture a response, and we think in light of that comment that can’t
6 possibly be the case. I go on to make reference to a further quote
7 that was given at the same time, and it reads as follows:

8 *“We will get some of the truths now. I don’t think that in the next*
9 *7 days we will get to the full truth. I have picked up in the last*
10 *interviews we have done that there were a lot of holes that will*
11 *need to be plugged. Because of that, we worked out an exit*
12 *strategy that we report” ... sorry, “that the report will say in*
13 *terms of the way forward.”*

14 Now the reference once more in connection with the previous point
15 that was made is the acknowledgement that “There are a lot of holes
16 and that will take time”, and that fits into the early or the primary
17 representation that me make and that is premature. It is premature
18 to put these matters, where on a plain reading – and we must
19 understand in its plain sense – that the Public Protector has not
20 satisfied herself sufficiently that Mr Zuma ... President Zuma is an
21 implicated person. The second point that we make is, even if we are
22 wrong on either of those, even if we have difficulty with entering into
23 the mind of the Public Protector and satisfying ourselves from where
24 we sit that she had the requisite evidence to formulate that Section
25 7(9) or then to be invoked, we think it is premature for a second

1 reason and that is we haven't been provided with the evidence,
2 which is referred to undercover of the letter of the 2nd of October.
3 We think as a rule of nature justice it is not proper only to set out
4 explicitly what the allegations are, it is important to set out the
5 founding documents and the evidence to which you make mention.

6 There is a very practical reason for all of that, because (a) it
7 reveals the identity of the person who was making the allegations,
8 (b) it shows the context under which those allegations are in fact
9 made, and it points to all the other circumstantial and intricate
10 matters, which an affidavit of any other form undiluted it, so that one
11 is able to make a comparison whether the allegation, which is being
12 put, is in fact supported by the evidence which is in the possession of
13 the Public Protector. We haven't had an opportunity to address that
14 matter with you.

15 We would have liked to, but because of the program of
16 President Zuma and our opportunity to consult with him, it is the
17 first that we are able to draw your attention to the fact that we deem
18 your letter dated the 2nd of October to be insufficient insofar as it
19 doesn't contain the evidence upon which the allegations are based.
20 The further point that we make, why we think the matter is
21 premature, is because of the provisions of Section 7(9)(b)(2) and I
22 read in as follows – and I quote:

23 *“Such person or his or her Legal Representative shall be entitled,*
24 *through the Public Protector, to question other witnesses,*
25 *determined by the Public Protector, who have appeared before*

1 *the Public Protector in terms of this Section.”*

2 We understand the reference to “such persons”, meaning such
3 persons that implicate President Zuma and we understand that the
4 meaning of “through the Public Protector”, that the Public Protector
5 will host an opportunity where either directly Mr Zuma ... sorry,
6 President Zuma or his Legal Representatives will have an
7 opportunity to examine those witnesses and in so doing, assist the
8 Public Protector in determining what she referred to earlier on when
9 she says, “At this stage I don’t know who is lying”. We would have
10 and important and vital interest in assisting you in making such a
11 determination.

12 So in the sequencing, as we understand it, is that that would
13 have to predate any opportunity which Mr Zuma now has for an
14 opportunity to put his version of the events as he understood it, as he
15 would now better understand – based on the evidence and based on
16 the answers that would have been elicited in examination – as to
17 what matters he needs to respond to, the seriousness and the import
18 of them, the context in which they were given and all the other
19 matters which flow from an examination of a witness, to their credit
20 and to their discredit, the Public Protector would now be in a much
21 better position to make such an assessment. We fear that if we were
22 to proceed with the interview, it might well satisfy the schedule that
23 you might with respect have in mind and that is to allow everyone an
24 opportunity to be heard, and we appreciate that, but in our view it
25 must be a fair opportunity, it is must be exercised judiciously. In

1 other words, the person who has been implicated ... and of course in
2 the ordinary usage we know what that means, if the Head of the
3 Executive has been implicated in a matter which has serious import
4 and concern, then with respect to the procedure all the evidence,
5 whatever transcripts of what had transpired earlier – if there is no
6 good reason why they ought to be withheld – then they ought to be
7 provided. I can't give you the quotation, but there is a seminal
8 judgment by Ngcobo J, as he then was in the NPD, the case of
9 Tshabalala ... *State v Tshabalala*, which establish as a rule of fairness
10 where if someone is going to be implicated in the commission of an
11 offence – and I'm minded this is not a criminal Enquiry – then
12 whatever documentation has been relied on to demonstrate his
13 complicity, must be made available to him, unless there is good
14 cause.

15 Now I understand in respect of one of the Complainants,
16 whether their identity was mistakenly shown or otherwise of course
17 – we will treat that with the respect that it deserves – but in our view
18 even in respect of that witness there are mechanisms which our
19 courts have employed to protect the identity of persons, but that the
20 fact that they are so-called whistleblowers does not shield them from
21 an examination of whether they are lying, whether they are telling
22 the truth, whether there is any substance to the allegations that I
23 make. Now one is minded by the distinction which you draw with
24 respect between the different complaints and reference made to that
25 aspect being a suspicion. The fact of the matter is, the suspicions is

1 either well founded or it is not and President Zuma must have an
2 opportunity to demonstrate whether it is well founded or whether it
3 is not. Suspicion still brings with it a negative connotation, still
4 brings with it a negative finding and I dare say for both personal
5 reasons, but also for the reasons of good governance and the proper
6 conduct of the Executive, President Zuma is not minded to let any
7 adverse suspicion sail on by without having been given the proper
8 opportunity to address it, to examine it and in turn when he is called
9 on to give evidence on it, to be able to put it in its proper context and
10 to give a proper explanation, as he understands it, under pain of an
11 adverse ruling after the entire process having been embarked on of a
12 ruling having been made. Now of course we are very new in living
13 with the ruling that emanated from the matter of the EFF and the
14 Speaker of Parliament in the Constitutional Court.

15 We now know the importance of whatever the conduct of the
16 Public Protector says and does, we know the import of the findings
17 that are there. Now that having been said, we are also minded by the
18 ruling in the SCA of Nugent J in the matter of *Mail & Guardian v The*
19 *Public Protector*, where your predecessor's report was reviewed and
20 set aside, and the court made some very cogent or poignant
21 comments about the manner in which the investigation ought to be
22 conducted. I don't want to labour the point, but I think the last point
23 is to be made – and I don't think it should be an elephant in the room
24 – the fact of the matter is that President Zuma has today announced
25 the appointment of your successor and that there is a new Public

1 Protector that would be ... that would take office on a designated
2 date. We know well that there is a very shortened period in terms of
3 which you are able to exercise the responsibility that you have. We
4 don't think that that brings about any urgency with having to deal
5 with this matter expeditiously. That there is a general urgency, that
6 it is a matter of sufficient public interest, but we don't think that that
7 urgency is accelerated by your term of office with respect.

8 In respect of this matter there is a Supervisor who has been
9 actually designated for this matter, as we understand it, a competent
10 person. We understand that there is a team, we understand there is
11 an external team that is there to assist you as well. We have noted
12 your very gracious comments about the import of your team in
13 helping you with your work and we don't say that almost as a
14 poisoned chalice, but we know given the seriousness of these types
15 of allegations, anyone would be (*indistinct*) to try to undertake an
16 exercise like that on their own.

17 We think that that matter in and of itself, particularly where an
18 incumbent is in the (*indistinct*), has been identified, there has been a
19 Parliamentary process, which has been engaged with, there can be
20 no uncertainty that the work of the Public Protector would continue
21 and we think the fact of your vacating office in another 6 or 7 days
22 cannot be a matter which unduly creates urgency, which means that
23 these matters which were brought to your attention ought then to be
24 given lesser value to for the sake of finalising the report on a certain
25 date. We are a little bit troubled that the reference is made to an

1 “exit strategy”. The Office of the Public Protector is not going
2 anywhere, there is no exit. They are there, they are a Chapter 9
3 Institution, charged as we understand through the rulings that have
4 emanated, through the empowering legislation, both in the Act and in
5 the Constitution, with a very important part of underpinning our
6 Constitutional Democracy. That institution is going to remain there.
7 Parliament in its wisdom will make sure it has the necessary capacity
8 to undertake its work, balanced as it is against all the other resource
9 issues that we face.

10 So in those circumstances and in summary the reason why we
11 haven’t refused to meet ... and I must point out that President Zuma
12 has been suffering with the flue, that he has been undertaking all his
13 engagements and I hope I don’t embarrass him by actually
14 mentioning so, but the fact of the matter is we have an interest in
15 participating in this matter, we have an interest in making sure that
16 if there is need for concern, that it is properly addressed, but if there
17 are persons who are making spurious allegations, which impact on
18 one of our spires of Government or one of our spires in terms of our
19 separation of powers, it is a matter of concern, it is a matter of
20 proper investigation.

21 Those would be the submissions that we would like to make at
22 this stage and we ask that you give them consideration.

23 **Adv T Madonsela :** Thank you, Mister Hulley, for that very well thought-out and
24 elaborate representation. I just want to know before I respond if Adv
25 Makhene or the President would like to add anything in support of

1 what Mr Hulley has presented for my consideration?

2 **Adv B Makhene** : No.

3 **Adv T Madonsela** : Nothing?

4 **Adv B Makhene** : I think he has traversed all the issues.

5 **Adv T Madonsela** : Thank you. In that case regarding the principles of fair process,
6 which come from the point of view of common law from the
7 principles that we call the old principles of administrative justice, the
8 principles of due process, the right to be heard when you are accused
9 of some things is certainly an important right.

10 In South Africa and certainly most of the commonwealth we
11 have a system of adversarial justice, but even in that system of
12 adversarial justice the right to be heard comes earlier than at the
13 point when you have now *prima facie* evidence against you. I hope
14 you would agree with me, Advocate Makhene and Advocate ... and
15 Mister Hulley, is that the right to be heard ... the moment somebody
16 accuses you of something you have that right and that right
17 immediately becomes material, and whoever is listening to your
18 accuser needs to hear you.

19 That is just generally in our adversarial justice system. In our
20 adversarial justice system also once the accusing parties have
21 finished their case and presented witnesses in support of their case,
22 then the accused person or Respondent can respond. We call our
23 adversarial system an accusatorial system and if for example the
24 people who are accusing you and the people they have brought to
25 support the accusation, and the evidence they have provided to

1 support that accusation reaches a point where no conclusion can be
2 drawn that you did anything wrong, in the normal court system, in
3 the normal adversarial justice system your Attorney or your Legal
4 Representative can approach the court and say, "We request a
5 discharge, because there is no case to answer". That is the
6 inquisitorial ... that is the accusatorial justice system and it is
7 adversarial in nature. It is a system that says if those who are
8 accusing you provide nothing and put nothing on the table, you owe
9 nothing to the process.

10 Until they present all the pieces of the puzzle and there is a
11 complete picture, the court can close shop. Mister President, that
12 system is like a game of chess – as you being a chess player – as they
13 move, you move and if they haven't moved and they haven't put you
14 in a situation where you have to move, the game waits until they
15 have done that, and unfortunately the system we are operating with
16 is an inquisitorial justice system, which is the European approach
17 and I know it is an oddity, Mister Hulley.

18 I have had to deal with this for 7 years and even before I
19 became Public Protector it is one of the things I had looked at from
20 an administrative law point of view, that this institution is an oddity,
21 because it is really a tiny island of inquisitorial justice in a system
22 that is predicated on adversarial justice and accusatorial justice. So
23 in accusatorial justice you place the burden ... and in fact the Public
24 Protector operated exactly the way Mister Hulley, you are asking us
25 to operate. That is why we landed in court in the Oilgate matter,

1 because what the Public Protector used to do was, you look at what
2 the Complainant has brought. If it is vague, you might not even
3 investigate, but if you proceed, you proceed with the understanding
4 that the Complainant must provide the pieces of the puzzle and most
5 of the reports that I used to see would say the evidence has not been
6 able to provide sufficient evidence and then we issue a closing
7 report.

8 I think some of that language would be found in the so-called
9 "Oilgate Case" and it was then sent to the SCA, and the SCA came back
10 and said, "Public Protector, you are not a Judge, you can't sit there
11 and wait for evidence to reach you. You have got to find it wherever
12 it is and yours is supposed to be an inquisitorial justice process".
13 One of the things the SCA said, Mister Hulley, was you have to keep
14 an open mind. One of the things they have highlighted in that case is
15 you have to keep an open mind and I want to underline that, that I
16 am certain that sitting in this room if I had said to the Media, "The
17 evidence I have implicates this one, implicates this one", we would be
18 discussing a different story, which is ...

19 In the last case that I dealt with it was said in the Section 7(9)
20 Notice we had said that already we have conclusions and therefore
21 we prejudged this matter, and then coming to ask you questions is a
22 charade. So I carefully drafted the Section 7(9) Notice to avoid that
23 accusation that we have now made any conclusions and I carefully
24 worded my statements to the public, not to say that we have any
25 conclusions at this stage, because even if we do have, the public

1 doesn't know the idea of a *prima facie* case. If you say now so and so
2 is implicated, to the public that person is guilty. If you come back
3 tomorrow ... our reports have been leaked previously. If we change
4 whatever we were thinking of, the public comes back and says, "We
5 are intimidated, we had a deal", something wrong happened that
6 made us change our case.

7 So to avoid all of this and taking into account that it is not an
8 accusatorial justice system, it is an inquisitorial justice system, you
9 can take all of these things parallel to each other, we then decided
10 that ... much as we have formulated some thoughts on some of the
11 ideas that are emerging, those are thoughts. They are thoughts
12 nonetheless that provide ... if you read the Section 7(9), you will
13 notice that there are very specific issues that the President can
14 answer without preparation.

15 I want to come to the issue of preparation. You are right Sir,
16 that you can't ambush a person, especially when there are serious
17 allegations against that person. That is why the President was the
18 first person I wrote to and there is nothing new in the Section 7(9)
19 Notice that differs from the letter I wrote on the 22nd.

20 The only thing that differs there is that we now provide some
21 background information that contextualises the story. We also
22 provide specifics around who said who, but these matters have been
23 in the public domain since March this year. Everything that Mr Jonas
24 said has been in the public domain since March and to the extent that
25 that information was given to us, we provided it in the letter to the

1 President on the 22nd. So there is not going to be anything new than
2 what was in the public domain. Everything that Miss Mentor said is
3 in the public domain. The only person you could say the accusations
4 by him are not in the public domain, but the issue *per se* is in the
5 public domain ... I guess what I'm saying is, in inquisitorial justice you
6 don't have to ... you don't have a right not to say anything until
7 somebody has solidified a case against you. Inquisitorial justice
8 system gives everyone a fair chance to speak when there are no
9 closed ideas.

10 In the normal accusatorial justice system for example once you
11 have a *prima facie* case, it means that you have a prejudgement that
12 says if for example you say, "I choose to say nothing", we can issue
13 that prejudgement and say whatever you are accused of. I just want
14 to answer that one last question Mister Hulley, Mister President and
15 Advocate Makhene, around the suspicion, around the Complainant,
16 around the context. The Public Protector may investigate on own
17 initiative. In fact we don't need to provide any of the complaints.

18 All we have to provide is what we think is answerable, you are
19 answerable for, in terms of how the Act is formulated, in terms of
20 how the Constitution is formulated, because this is supposed to be
21 your internal integrity agency to monitor ethical conduct in
22 Government, not criminal conduct outside there. Once it goes
23 outside there, it is a different story. Here we are talking about people
24 who are employees of the State, who are answerable to the State
25 because the State is ... it is their employer, when there is a suspicion

1 that they may have done something wrong and of course if they
2 explain themselves and say, "I didn't do these things that you are
3 accusing me of, here is my version", then that is it. We met with ...
4 one of the people who are accused for example is Mr Gupta. We met
5 with him for more than 4 and a half hours. He gave us his version of
6 what he knows and we have taken what he has to do, and we are
7 putting it in this basket, because that is not accusatorial justice,
8 where you have this side and this side, and they have to match. In
9 inquisitorial justice you have one basket of facts from everyone who
10 is supposed to provide information.

11 Regarding the Section 7(9) Notice we were asked to provide for
12 the second time the information we had ... that we had provided,
13 because we had provided to the President ... from the letter of the
14 22nd I stated exactly what those people were saying, so there was
15 nothing more. When there was a request that we should provide and
16 also provide any information we had, we had to provide that
17 information then in terms of Section 7(9), because that information
18 some of it implicates. "Implicating" doesn't mean ... concludes that
19 you did something wrong.

20 **Mr M Hulley** : Sorry, if I could just interject? The 7(9) Notice hadn't been issued by
21 then. It was only subsequent to that, when there was a request from
22 the DG in the Presidency saying, "Provide me with the information" ...

23 **Adv T Madonsela** : That is what I'm explaining exactly, Sir. I'm saying we issued the
24 Section 7(9) on that request. If you see, the Section 7(9) responds to
25 the letter from the DG, it does that. The Section 7(9) Notice was

1 issued after we received a letter from the DG that was requesting us
2 ... in fact it had requested the information by Friday that week, but I
3 was out of the country and we battled ... I remember being out of the
4 country and for the whole day working with the team to try and meet
5 this requirement, and because we are now asked to provide the
6 information we had to then contextualise it in the Act, which is
7 Section 7(9) says if there is evidence that implicates you. We then
8 provided the information requested by the Presidency under Section
9 7(9).

10 My understanding is that my Section 7(9) provides context, but
11 my understanding was that the documents that were also requested
12 were provided by the office. Initially the Section 7(9) had referred to
13 annexures, but because we ended up sending these documents at
14 different times, we removed the part that talks about annexures, but
15 that information was provided, not with the Section 7(9). It was
16 provided before the Section 7(9), the evidence part. Am I right?

17 **Adv N Kanyane** : Yes, it was sent.

18 **Adv T Madonsela** : Yes. Yeah, because the Section 7(9) was delayed because of me
19 having to quality assure things and carefully wanting to word ... to
20 delete exactly the things that you would like me to put on a Section
21 7(9), but I would ask you, Mister Hulley, to read your letter to me in
22 response to Nkandla, where the accusation was the opposite of what
23 now I'm being accused of.

24 **Mr M Hulley** : Sorry, I'm not with you?

25 **Adv T Madonsela** : I'm saying Sir, go back to the letter you wrote to me, very erudite

1 letter that you wrote to me in response to the Nkandla Section 7(9).
2 The accusation was the opposite of today's accusation and in
3 response to that then we have tried ... but it is not just in response to
4 that. It is in response to the climate in the country, that people feel
5 that if the Section 7(9) says you have already done it, it locks them
6 into a finding and it makes them feel that your open mind ... that
7 open mind that the Supreme Court of Appeal said we should have in
8 the Oilgate Case becomes a closed mind.

9 It is a perceptions issue and what we are trying to do is to
10 manage perceptions, and it is not just the perceptions of the accused
11 person, it is also the perceptions of somebody who lands with a
12 Section 7(9) Notice, because we cannot always guarantee who ends
13 up getting these documents. If now you have a Section 7(9) Notice
14 that conclusively said you have done one, two, three and it goes
15 somewhere, to them that is the report, that is a finding and that is
16 why we haven't crafted it that way. So Mister President, my ... and
17 then you said the Public Protector can conclude this matter.

18 I agree with you that the Public Protector could conclude this
19 matter, but it would take time. Even for the most experienced Public
20 Protector to conclude this matter it would take time, because you are
21 saying there is a Supervisor. No, the Supervisor is the Public
22 Protector. It is more like having your Commission of Enquiry and
23 then the Judge leaves, and then you hire a new Judge. It is not going
24 to be easy for the new Judge to carry the matter forward. They will
25 do their best, but it is going to be difficult. That is why in the judicial

1 system you have part-heard matters finished by Judges. That is
2 something we were discussing actually and saying that in the
3 Judiciary when the Judge leaves, the part-heard matter is not dealt
4 with by a different Judge, because you bring your brain into it, you
5 bring memory. I have been part of the interviews, so I have context
6 to everything that has happened. So it is not just the paperwork, I
7 have context. So I have to use that to present what I have.

8 Part-heard matters are not possible with the Public Protector,
9 because the Public Protector has a fixed-term contract and you can't
10 show up two weeks later and say, "I have to finish it", because
11 Constitutionally it wouldn't make sense because you are no longer
12 Public Protector. That is the anomaly. We even thought about in the
13 near future can you change it? No, you can't even change it, because
14 the Constitution makes it a fixed-term contract. In other countries,
15 because the Public Protectors do only service failure – they don't do
16 conduct failure – they are appointed for life and therefore if you are
17 appointed for life, even if you are in retirement, you can finish the
18 part-heard.

19 So I do disagree with you, Sir, that it doesn't matter who
20 finishes the matter and I'm certain that even a Court of Law would
21 agree with me, because that is why they bring back their retired
22 Judges. Even if they had somebody acting as a Judge and they are no
23 longer acting, they still bring them in to do part-heard matters and
24 that explains ... I just want to explain Mister Hulley, Sir, before I give
25 you an opportunity, about the exit strategy. The exit strategy that we

1 are looking at ties up what is it that I can conclude fairly in terms of
2 the law and leave(?) there, and how do I then manage the process
3 going forward? Until ... yes, a new Public Protector has been
4 appointed, but that new Public Protector, Sir, is appointed with effect
5 from the 15th of October this year, which is her job starts on Saturday
6 next week. Until then I am the Public Protector and whatever
7 decisions I have to make, I have to make them in the best interest of
8 all of the parties involved.

9 It is not just President Zuma's reputation that is on the line.
10 The reputation of young Mr Zuma is on the line, the reputation of Mr
11 Gupta, Ajay Gupta, who was very much sad about what has happened
12 and incredibly emotional about this matter, is also on the line and so
13 are the reputations of the accusers. That information ... yes,
14 everything is transcribed, the new Public Protector would have to
15 reach that, but with due respect the Public Protector that you have
16 appointed only operated as a Senior Investigator in the Public
17 Protector's Office.

18 That is a level junior to her current position and she is acting at
19 a senior position. So she herself will still have to acclimatise to this
20 new position where she is not at their level. She has to re-supervise
21 and quality assure everything that they have to say. I'm just saying if
22 we now bring the new Public Protector *per se*, that is not even a
23 solution, but I'm saying even the most qualified of Judges, common
24 sense has taught the judicial system that a part-heard matter is
25 better finished by the person who is hearing it, but that is not the

1 reason we are rushing this case. From day one we cut this case into
2 two. When we were saying there are holes, those holes ...

3 **Mr M Hulley** : Well, maybe we should just cut to the chase and find out why there is
4 a rush? With respect let's find out why it is that you are rushing it
5 out of your own (*indistinct – speaking simultaneously*)?

6 **Adv T Madonsela** : I'm rushing it because I'm the Public Protector until the 14th of
7 October. I'm rushing it because I am supposed to have finished this
8 matter within 30 days. I'm rushing it because I have institutional
9 memory relating this case. As I have indicated, if I were a Judge I
10 would have been recalled from wherever I am, because I have heard
11 this matter, to conclude it. So because of that I have the memory,
12 having heard this matter, to finish it.

13 That is the only reason that I'm rushing it and I'm saying this on
14 the record, which record may go to a Court of Law, I'm saying what I
15 am doing is not different from the principles that are responsible for
16 why part-heard matters are heard by the same Judges that were
17 dealing with this matter, unless of course the Judge dies or he is in
18 hospital, but even then it becomes difficult to conclude this matter.
19 CCMA they do the same thing, part-heard matters are heard by a
20 Commissioner, they come back and finish it, unless of course they are
21 sick, out of the country or dead.

22 **Mr M Hulley** : May I with respect venture to suggest that there are other ways that
23 one can ameliorate the situation that has been set out. The fact of the
24 matter is of course you have been there a long while, there is
25 institutional memory. I'm sure that personalities bring with them

1 their own style and their own manner of doing things. I think with
2 respect Parliament went through a thorough process in appointing
3 the incumbent, satisfied itself that ...

4 **Adv T Madonsela** : Sir, can we not deal with that? I know that the process has been a
5 duly proper process, so I'm not questioning the process of
6 Parliament.

7 **Mr M Hulley** : Sorry, I'm just making a comment.

8 **Adv T Madonsela** : That is why I have ... but it is not necessary, because I have given you
9 an example of the Judiciary, so it is not about the integrity or capacity
10 of the new person. It is about a process where a part-heard matter is
11 completed by the next person, but I could ask you the same question,
12 why are you so persistent on having the new Public Protector
13 complete this case? But I don't even want you to answer it ...

14 **Mr M Hulley** : No, maybe I should.

15 **Adv T Madonsela** : ... but I'm just saying I would ask you the same question and say, why
16 are you so persistent? We asked President Zuma to respond, Sir. We
17 asked you, Sir, 22 March to respond to the issues that are being
18 raised. That was April, May, June, July, August, September, 7 months.
19 There were 7 months for us to receive a version from the President.

20 **Mr M Hulley** : Can I just carry on making the submissions that I had started
21 making?

22 **Adv T Madonsela** : I thought you had concluded, Sir?

23 **Mr M Hulley** : No, I hadn't, I was interrupted. The point was quite simply this, is to
24 say ... is to suggest and that is to say, I understand that you are in a
25 rush and want to complete it during your term of office, and you have

1 set out all the reasons why it is convenient for the same person who
2 heads the institution or a Judge who is sitting on a matter. The point
3 that we make in balancing the rights of those persons who are
4 implicated, as opposed to the difficulty that might otherwise ensue,
5 where a new incumbent comes into the office with their own
6 personality, with their own style, their own modus and manner of
7 doing things, sometimes in institutions if there is a proper handover
8 of case management, it might set off whatever otherwise might
9 negative against the work that was then done.

10 I would venture to suggest that in all the other pending
11 matters, where you have expectant parties, just like you have in this
12 matter, who also want to see justice, who also want to see their
13 matters ventilated, they have no lesser rights or are not treated
14 differently than this in ...

15 **Adv T Madonsela** : I agree with you, Sir ...

16 **Mr M Hulley** : Sorry, if I can just ...

17 **Adv T Madonsela** : ... and that is why I am trying to finish those as well. The ones where
18 I have been part of the Hearings we are trying to finish them, we
19 have prepared Section 7(9) Notices and we are preparing Section
20 7(9) Notices.

21 **Mr M Hulley** : So therefore, when balancing whether it is fair and reasonable to give
22 a person two and a half days to deal with serious allegations, which
23 are dealt with in far greater detail in the letter of the 2nd, and I would
24 like to point possibly to an example of that, where in ... sorry, if you
25 could just bear with me, I will find my notation, where at paragraph

1 20(a) – and I quote:

2 *“The evidence of Mr Jonas in his statement and other” ... sorry,*
3 *“and further obtained during his interview by the Investigating*
4 *Team, confirms the offer was made to him by Mr Athol Gupta at*
5 *the Gupta house in Saxonwold, that the meeting was arranged by*
6 *the President’s son, Mr Duduzane Zuma, who was present when*
7 *the offer was made. The person that he claims to have informed*
8 *before the removal and replacement of Minister Nene have*
9 *confirmed that he advised him about the offer before Minister*
10 *Nene was removed and replaced with Mr Des van Rooyen.”*

11 We would have an interest in requesting particularity of the
12 statement which Mr Jonas made, so that we are able to put context
13 and content into that statement.

14 **Adv T Madonsela** : It is really not necessary to give context.

15 **Mr M Hulley** : We are also interested to ask ...

16 **Adv T Madonsela** : No, sorry, Sir, there is no need for the President to have context to
17 that. As I have said, it is not accusatorial, it is inquisitorial. It is a
18 simple issue of honesty. The President would ... well, we have
19 specific questions that we are going to ask the President. Mister
20 President, there is no suggestion that you were there at that meeting,
21 so we are not going to ask you were you there, do you know which of
22 the Guptas did that ...

23 **Mr M Hulley** : But there is reference made to an “offer”. What is the offer? It is not
24 clear from this paragraph what the offer was?

25 **Adv T Madonsela** : No, but it is not made by the President.

1 **Mr M Hulley** : But we would like insight into it, so that we can give the context.

2 **Adv T Madonsela** : Okay, then if you were to allow the interview to happen, you will get
3 the context, because ...

4 **Mr M Hulley** : No, with respect, with respect, if I might just make the submission?

5 **Adv T Madonsela** : No, can I just make a ruling here? Allow ...

6 **Mr M Hulley** : Can you make the ruling after I make the submission?

7 **Adv T Madonsela** : Please. Okay, can you make the submission, so that I can proceed?

8 **Mr M Hulley** : I will, thank you very much. The submission is quite squarely this,
9 insofar as the letter dated the 2nd of October is meant to be a
10 response to the initial letter that was sent, in our submission that can
11 hardly be the case. I have pointed out to you in the letter of the 13th
12 of September two matters are brought under President Zuma's
13 consideration. The first is to say:

14 *"The purpose of this meeting, why we are gathered here today, is*
15 *to brief you about the investigation into allegations of State*
16 *capture," not to question you, to brief you.*

17 The further point is:

18 *"The meeting will also enable me to afford you an opportunity to*
19 *answer the allegations made against you, to the effect that you*
20 *ought to have known or allowed your son, Mr Duduzane Zuma, to*
21 *exercise enormous undue influence in strategic Ministerial*
22 *appointments, as well as Board appointments at State-owned*
23 *entities."*

24 **Adv T Madonsela** : Thank you, can we do that then?

25 **Mr M Hulley** : With respect, if I can make the submission, I think that you might

1 find it easier then to make your ruling?

2 **Adv T Madonsela** : Yes, Sir?

3 **Mr M Hulley** : I think if you have a look at the contents of the letter, it traverses a
4 whole range of matters, none of which are foreshadowed by that
5 letter, which was sent on the 13th of September. The import of all of
6 that, as we come here prepared and we have had our consultations
7 during the latter part of last week, where we had an opportunity and
8 we awaited the documentation on Friday, which was not
9 forthcoming, no one said there was any difficulty and that there was
10 a need for a few more days.

11 So in terms of the President's scheduling we scheduled that by
12 that date we will have had the necessary ... off my own bat I remained
13 in Gauteng, I had a consultation with President Zuma on Sunday
14 evening in anticipation of finally traversing all the information,
15 which he would be able to respond to, given the fact that his schedule
16 in the course of the preceding days, leading up to this, would not
17 permit us to have a consultation.

18 We now are faced two days prior to the Hearing with a plethora
19 of allegations, where we haven't had an opportunity to traverse
20 them. I don't know what my instructions in respect of any of those
21 matters are and in those circumstances ...

22 **Adv T Madonsela** : You don't need any instructions, Sir.

23 **Mr M Hulley** : ... it renders the process procedurally unfair and we cannot
24 understand why there would be this rush to make sure these matters
25 are dealt with? Our plea to you ...

1 **Adv T Madonsela** : Okay, thank you. Can I now make a ruling Sir, because I'm worried
2 about time?

3 **Mr M Hulley** : I will be one minute longer, if you would indulge me?

4 **Adv T Madonsela** : Yes.

5 **Mr M Hulley** : Our plea to you is to allow us an opportunity, where we are able to
6 traverse all the evidence, which you allude to in your letter and an
7 opportunity ... if that is not within your ruling and judgment, a proper
8 opportunity to go through all the allegations with the background
9 that you have set out in your 20-page letter, so that Mr Zuma is
10 properly prepared and able to deal with it, because under the current
11 circumstances he won't be able to participate, because he hasn't had
12 an opportunity to traverse all the allegations, given the timeline that
13 we had proposed the date of the meeting, given the timeline which
14 we proposed the additional information would be forthcoming, given
15 the cramped period where the further information was granted some
16 two and a half days ago. Quite frankly we are ill-prepared to assist
17 you in the investigation and if you would ...

18 **Adv T Madonsela** : Right ... yes.

19 **Mr M Hulley** : Sorry, those would be the submissions.

20 **Adv T Madonsela** : Thank you so much. I think that is very helpful and the ruling I'm
21 going to make is that I'm going to treat the President the same way
22 that we have treated other witnesses, including Mr Gupta, that the
23 President will be able to answer the questions that he can answer. If
24 there are questions where he needs ... he doesn't have the evidence
25 and he can't recall, we will record that and we will request you assist

1 him to provide written representations in that regard. Can we
2 proceed then?

3 **Mr M Hulley** : Thank you. In light of that may I ask that we have a short
4 adjournment to give some consideration to your ruling, so that we
5 have an opportunity to consult with President Zuma? It is an
6 indulgence that I think will take us about 5 to 10 minutes.

7 **Adv T Madonsela** : I am concerned though that President, you are the President of the
8 Republic of South Africa and you are employee number one.
9 Normally when we are dealing with people who are responsible for
10 the State, we deal with them and the Lawyers they come in where
11 necessary, because it is you who is accountable, Sir. It is you who are
12 employed by the State as its most important employee and then you
13 employ the rest.

14 I'm just worried that we are engaging with your Lawyer ... in
15 fact it is firstly unusual, because the Act talks about you have a right
16 to legal assistance, not representation. So we talk with you and we
17 have had Ministers accused, we talk with them and their Lawyer
18 assists where necessary. So I would want, when you go out, that the
19 decision that has to be made Sir, be made by you with the advice of
20 your Lawyers.

21 The offer that has been made to everyone, because nobody is
22 above the law, is we had offered you an opportunity to respond. It is
23 not true what your Lawyer is telling you now, was telling this
24 investigation, that you did not have an opportunity to respond. We
25 sent you the request for an investigation in March and we asked you

1 if you have any comments in response to the accusations? What we
2 have since gotten are the details of the accusations, but there is
3 nothing that is an ambush. The Section 7(9) Notice that your
4 Lawyer, Sir, is referring to anticipates two instances of evidence.
5 There is a case where you already are the person who had been
6 fingered – rightly or wrongly – and then during the investigation the
7 evidence surfaces, and at that stage you are then notified that of that
8 accusation that has been made we now have this evidence, and in
9 that case since you have been part of this process the evidence ... you
10 don't need many days.

11 I have been involved in arbitration, I have been involved in
12 court processes, 4 days is a provision of documents. The documents
13 that we are talking about were provided on Sunday.

14 **Adv N Kanyane** : On Saturday.

15 **Adv T Madonsela** : They were provided on Saturday. They had been asked for on
16 Friday. We kept them abreast, to say we are battling and then we
17 decided precisely because we wanted you to have the advantage,
18 since you had asked for the documents – only you hadn't asked for
19 the documents that we had to provide – so the documents were
20 provided on Saturday.

21 The context only was provided two and a half days ago, so it is
22 not true, but secondly, it is not an ambush because you had known
23 the ... these very same accusations you have known them since March
24 this year. Section 7(9) Notice also anticipates people who had never
25 been in that before, who in the context of this investigation their

1 names come up. We have had Ministers in this investigation who
2 nobody made these public accusations. Maybe some of them were
3 even mentioned superficially and suddenly evidence emerges about
4 them. We have now then served them with Section 7(9) Notices and
5 say, "Your name has come up, this document implicates you", but
6 that is specific documents. With you, you were not there at the Gupta
7 house, nobody says you were there.

8 So some of these issues ... we are not going to ask you were you
9 there? The questions that we are going to ask you are specific to the
10 issues that we have sent to you, which is what did you know and you
11 have a duty Sir, to tell us what you knew? This is not a criminal
12 justice process where you have the right to remain silent. It is an
13 inquisitorial process, where telling us what you know should not be a
14 problem, but I'm going to leave it there, Sir and then say you can take
15 the break.

16 My ruling at this stage is that we proceed, you tell us what you
17 know and a lot of it has nothing to do with documents, because you
18 were not ... nobody is suggesting that you did anything that is
19 documented. You will tell us what you know. What you don't know
20 or what you deny, you will deny. That is all that we expect from you,
21 Sir. Thank you.

22 **Mr M Hulley** : Thank you very much. May we be excused for a short ...

23 **[Go off record // Short adjournment // Back on record]**

24 **Adv T Madonsela** : Thank you, Advocate Makhene and Mister Hulley. I would rather
25 request, if it is acceptable to the Lawyers, that the response

1 regarding where do we go now be given by the President, because
2 Sir, it is your name that has been used in this investigation and it is
3 you who will be held accountable for this process.

4 **President Zuma** : No, thank you. Thank you very much, Public Protector. You will also
5 excuse me, I have got a very heavy flue, which has changed my voice
6 a little bit.

7 **Adv T Madonsela** : Sorry Sir, we are still just discussing the process only.

8 **President Zuma** : Yes. Yes, the process.

9 **Adv T Madonsela** : Thank you.

10 **President Zuma** : Yes. Now I think as you made the point that the matter is about me
11 and my advisors are employed to advise me, I'm definitely willing to
12 answer the questions, because I have now come to know that I am
13 implicated. Public Protector referred to the letter of March, that I
14 was aware of it and besides the letter, I'm sure you will appreciate
15 that the issue of the capture has been on for a long time in the air. It
16 is not a new issue at all.

17 My understanding of the letter of March was informing me that
18 there is a complaint that has come about the issue of State capture
19 and the Guptas, and that the Public Protector was looking at it,
20 almost assessing it and what it says I think towards the end is that if I
21 had any comment to make, I can do so. It was not necessarily saying,
22 "Can you respond to these issues?" and therefore we did not
23 understand it as saying, "Look at it, prepare yourself, you will have to
24 come". I could have made any comment, as the letter ... so it did not
25 give the impression that at some point I will have to come in. I didn't

1 have it. Perhaps if the matter was on, hence it has been on for some
2 time, at some people might complaint that there should be
3 investigation. No one could tell at the end who will ... come out if the
4 investigation started, who would be implicated? I think it is different
5 from then what comes in that says, "You are implicated, we would
6 therefore need to have a meeting with you". The one ... the initial
7 letter, not now this one, the one that came after that said it will be
8 briefing and the second point was that we will then discuss the
9 young Zuma, Duduzane.

10 The issue of answering questions came a few days from now.
11 That is when then we were saying if that is the case, the questions
12 that would be asked I need to get an advice from the legal team how
13 to handle the matter, particularly because of its nature out there. It
14 is not like a small case, you can just answer anyhow. You have to
15 consider your answers very well, given the fact that people have said
16 a number of things, including for an example the ... initially I was
17 actually keen to know that Jonas will say what did I do in this
18 meeting that triggered his actions, why am I implicated?

19 Therefore, I'm willing to answer the questions, but I think I do
20 need legal advice with the matter. It is not a simple matter. I would
21 be fair if I know ... if people have said things about me. There are
22 many things that people say about me in the majority of times that I
23 have never done and never said, not only in matters of this nature,
24 even politically people say many things about me. I have done things
25 in the past where some legal people have challenged to give them

1 proper thought ... what is the word, "Was there rationale in what you
2 did?". From that point of view I would really request that you give
3 me some time to look and get the advice from my legal people as
4 well, and look and read, because I have not even read the allegations
5 that have come, what is in the papers that have been there. Legal
6 people were looking at them and we could arrange for me to then
7 answer the questions after this, but for today I would be really ill-
8 prepared.

9 If the question was like the initial letter that was, as you say, a
10 simple matter for me to say how Duduzane ... how do I know
11 Duduzane how he came to this family, etcetera, what did he say to
12 me as a son, but not knowing what else that has been said by other
13 people, I think is a little bit difficult. I would really even love to look
14 into those questions myself and then we can arrange the time. It
15 might not take long, but just really to be in a good frame of mind that
16 we deal with those matters.

17 So really I would request ... I'm willing to answer, but I would
18 request some time to look at the matters that had been given to me
19 and also get advice, legal advice.

20 **Adv T Madonsela :** Thank you, Mister President. I note with gratitude your response,
21 your willingness to respond at a future date, which basically was
22 what Mr Hulley was asking, that we postpone today's proceedings
23 and rather go at a future date. I note also your reasons for that, in
24 that you are saying we may ask you questions that you are not
25 prepared for, because you thought that the questions that would be

1 asked would have to do with Duduzane's relationship with the
2 Guptas and what may have been said at that meeting. The questions
3 will not ... will include the relationship between Duduzane, they will
4 also include your relationship with the Gupta Family, because the
5 stuff that we are dealing with is only the stuff that was in the Media.
6 I understand President, that you are a very busy person, I know that
7 you also struggle to cover all bases.

8 I'm just surprised that neither the legal team, nor the
9 Presidency team that came for a briefing with us, assisted you to get
10 the newspaper clippings, which in my letter I referred to, to say
11 everything is based in the newspaper ... on the newspaper clippings,
12 which I assume you have and I said in the letter if you don't have, we
13 can supply you with those, which newspaper clippings had always
14 had the story of Mr Jonas, the story of Ms Mentor, the story of Mr
15 Themba Maseko, which was always just a simple allegation and the
16 story of Ministers claiming they were appointed. I don't know what
17 else would be of assistance?

18 For us it is not about you refuting people's allegations, Sir. It is
19 about you just telling us what do you know? For example my first
20 question would say, if you can explain what is your relationship with
21 the Gupta Family, how it started, when and how did you meet the
22 Gupta Family? I would ask you to describe your relationship with
23 the Gupta Family and if they are your friends, and if they are your
24 friends, for how long have they been friends? I would ask how often
25 do you visit them? So that has nothing to do with any document that

1 you may have to study. I would ask, besides visiting the Gupta
2 Family, have you been to Saxonwold and what was the purpose? I
3 would ask if the Gupta Family has ever given you any gift? So those
4 are just simple questions. You don't need a Lawyer to advise you.
5 None of them are legal in their nature. They are just factual
6 questions. I would ask you to tell us about the relationship between
7 Duduzane Zuma and the Gupta Family, and I would ask you how did
8 he start working for Sahara Computers and the capacity in which he
9 was employed?

10 Of course if you don't know any of these, because this relates to
11 young Mr Duduzane Zuma, you would say, "No, I don't know that". I
12 would also ask about their being appointed to Directorships in the
13 Gupta family and I would just ask you did you know about this or did
14 you not know about this, and if you were involved in any way? Then
15 I would ask you if you know about Duduzane residing in Saxonwold?
16 I would ask you about allegations, that Mr Ajay Gupta made Mr
17 Duduzane Zuma a billionaire?

18 We have got a version from Mr Ajay Gupta. I would ask you
19 about if you are aware of the companies that Mr Duduzane is
20 involved in? I would tell you what allegations are made against the
21 Gupta Family and find out if you are aware of those allegations, and I
22 would ask you if you were present – because this allegation has been
23 there all along and even the Media asked you about Ms Mentor
24 saying you were there in the room – I would ask you were you there
25 or were you not there? I would ask you if you saw the Media

1 statement by Minister Jonas and what would be your response?
2 Then I would ask you about Mr Themba Maseko, if you are aware
3 that he said you asked him to help the Gupta Family, and did you and
4 if you didn't, that would be it. I would ask you about Mr Malema
5 alleging that Mr Fikile Mbalula said he heard he was going to be a
6 Sports Minister from the Media, if you know anything about that? I
7 would ask you if you know about Ministers that have visited the
8 Gupta residence and if you know about such visits, and if you have
9 been concerned about it?

10 I would ask you about an allegation that one of your wives was
11 assisted to get allegation(?) in Waterkloof by the Gupta Family and if
12 you are aware of that? So it is all simple questions, nothing really out
13 of the ordinary. I would ask you why you removed Minister Nene?
14 That you have told the world, just I would want it on the record, why
15 you removed Minister Nene? I would ask you why you appointed Mr
16 Des van Rooyen? I would ask you why you removed Mr Van Rooyen?

17 Those information about ... then I would ask you about your
18 responsibilities under the Executive Ethics Act, which is conflict of
19 interest and things like that. Then I would ask you if you have ever
20 considered that your son's relationship with the Gupta Family and
21 your alleged friendship might pose a conflict of interest? But that
22 would depend on what was the answer earlier and depending on
23 whether you confirmed that relationship or not, this question would
24 arise. So they are just factual questions really, nothing legal, no legal
25 questions. It is an inquisitorial thing, which with or without a

1 Section 7(9) I would have asked you these questions about ... and I
2 would ask you about declarations, because we have looked at your
3 declarations and just on the declarations there is really the issue of
4 the house only, and then there is the issue of the owner of this other
5 house, or who is the owner? It is just really simple things and that
6 would be it. Then the issue of your own house has emerged. That
7 would be all. I don't quite understand, because these are not ... so as
8 you can see here it is not us accusing ... saying so and so has accused
9 you of that. It is us, because it is an inquisitorial, trying to find out
10 what do you know?

11 **Mr M Hulley** : I think with respect ...

12 **Adv T Madonsela** : Because that is not the Criminal Justice System where we can say,
13 "Respond to this one having accused you". It is us getting to know
14 what in your version has been happening (*indistinct – background*
15 *noise*) and then we take that version directly from you, and we move
16 forward. That is how we operate with everyone, just get their
17 version of what they know about these things and then ... we have
18 done that with all of the witnesses.

19 **Mr M Hulley** : I think with respect I don't think that the President is asking for any
20 different treatment. I think he has expressed himself and he said
21 that he is unable to deal with those as simplistically as you may
22 (*indistinct – speaking simultaneously*).

23 **Adv T Madonsela** : But Mister Hulley, with due respect the President had said that there
24 are legal issues that he needs advice on, so I have indicated the whole
25 set of questions. I think it would be proper at this stage to say the

1 President does he need a Lawyer to help him to remember these
2 things, because they are factual issues, they are not legal issues?

3 **Mr M Hulley** : With respect I don't think at ... I think it needs to be couched in its
4 proper framework. The fact of the matter is, Section 7(9) has been
5 invoked and you have set that plainly out in the notice. The
6 questions may be simple, but there are implications to their answer,
7 legal implications and those are the implications.

8 **Adv T Madonsela** : Can I ask you a direct question, Mister Hulley?

9 **Mr M Hulley** : Yes.

10 **Adv T Madonsela** : What difference would it make between today and any other day in
11 how the President recalls these issues? If we are starting with for
12 example why did you remove Minister Nene, why do you need
13 somebody to legally advise you, because that is a decision you took
14 yourself without legal advice? You took that decision, exercising
15 your power as an Executive.

16 **Mr M Hulley** : Legal power with respect.

17 **Adv T Madonsela** : Yes. No, but it is a decision you have already taken, so you don't need
18 to be advised why you took it, because it is a decision ... somebody
19 advised you, you accepted their advice, you have already executed it,
20 Sir. So now you just have to tell us why did you take that decision?

21 **Mr M Hulley** : With respect, Madam, the fact of the matter is that those ... or the
22 answer to those questions have legal import. There are provisions in
23 Parliament ...

24 **Adv T Madonsela** : Yeah, but that doesn't change the honesty around those answers. All
25 I'm asking ...

1 **Mr M Hulley** : If I can maybe answer the question, then you may have some insight?

2 **Adv T Madonsela** : All I'm asking is for honest answers. Those answers can't change
3 with legal advice, they can't. The President will tell me the honest
4 fact of why he removed Mr Nene and why he appointed Mr Van
5 Rooyen? Sir, why do you need a Lawyer to advise you, because the
6 Lawyers advised you then before you did that?

7 **Mr M Hulley** : With respect, with respect, with respect ...

8 **Adv T Madonsela** : Now why do you need a Lawyer to be able to tell me why you
9 removed any of those Ministers?

10 **Mr M Hulley** : With respect Madam, the fact of the matter is, the President has
11 indicated what his election is and I think it calls for a ruling, either he
12 is going to be afforded the time or you think the reasons which he
13 advances are spurious and doesn't warrant a postponement. I think
14 for us to revisit with respect, they are ...

15 **Adv T Madonsela** : Okay, thank you, Sir. I'm making a ruling then. My ruling is when we
16 are dealing with those questions that you think legal ... they need
17 legal input, the President will indicate and they will be deferred.

18 **Mr M Hulley** : Well, the President has indicated ... sorry, if I might respond?

19 **Adv T Madonsela** : Because he wasn't ... but the President hasn't spoken, Mister Hulley,
20 after I have indicated to him the nature of the questions, that they
21 really are about the historical facts coming to this. There is very few
22 issues here that relate to specific allegations and I am suggesting that
23 the way forward is the President would answer those questions that
24 are easy to answer, and those that need legal advice, then the
25 President can then say, "No, this one I don't have an answer right

1 now, we are going to provide you with an answer” and that for
2 example was an approach that was taken by Mr ... in fact by virtually
3 everyone. In some cases they didn’t remember the date on which
4 things were happening. They knew exactly what they did, because
5 all of this is about what you did and what you didn’t do, and you
6 don’t need ...

7 **Mr M Hulley** : May I then venture then to ask, those questions where the President
8 cannot answer, how would they then be dealt with?

9 **Adv T Madonsela** : You can choose two things. One would be to make written
10 representations. The other one is the request that has been made by
11 the President, that we agree on a mutually agreeable date that we
12 resume these proceedings and deal with those issues, which I believe
13 would be fewer than ... because some of them are just run of the mill
14 questions really, like what is your relationship with the Gupta
15 Family? It is a run of the mill question that doesn’t require legal
16 input.

17 **Mr M Hulley** : No, but in terms of the context of which other persons have stated
18 that that relationship is an undue one, we would have to give
19 consideration to the answer, not that it changes the answer, but it is
20 framed in a particular manner, which gives consideration to the
21 import of what the President’s duties are, which gives import into
22 the allegations that have been made, where he has been properly
23 advised and with respect, the request is that there can be no
24 distinction made between simplistic answers and answers which are
25 a bit more complex. They all fit into the Enquiry, which the Public

1 Protector is conducting at the moment and in my submission if the
2 Public Protector is willing to go on to a postponement in respect of
3 certain sort of questions, the balance of convenience in my view,
4 given the fact that the President has stated he has been unable to
5 traverse any of the questions – the first time that he will hear them is
6 when you mouth them – the balance of convenience and fairness
7 would dictate that at that later opportunity you deal with fill gamut
8 of all the questions.

9 **Adv T Madonsela** : I'm sorry Mister Hulley, I have made a ruling. We will proceed,
10 unless the President refuses, because even before a Section 7(9) I
11 had a duty to ask the President, I presented that opportunity and the
12 President said his understanding was that it wasn't necessary to
13 answer, but allegation had already been made in the media and he
14 made a choice not to respond to those allegations. With due respect
15 Sir, my view is that we will proceed.

16 **Mr M Hulley** : Maybe we should wait for the President to enter a plea(?).

17 **Adv T Madonsela** : And of course it (*indistinct*) the President, but the ruling I'm making
18 is you will pick up the ones that you think need further discussion
19 and we will then defer them. That then reduces the workload in
20 terms of what we need to do going forward.

21 **Mr M Hulley** : I think that it has been palpably clear that that is not the way that we
22 would like to deal with this.

23 **Adv T Madonsela** : Of course I do understand and you are on the record, and that is all I
24 can offer you, is that we will give you a copy of the recordings and
25 the reasons I have given for why I don't think the President should

1 be given further time to reflect on these matters.

2 **Mr M Hulley** : I think then it is worthy of mention in those circumstances and in the
3 context of the explanation that the President has proffered, and in
4 the manner that you want to compartmentalise, the President has
5 expressed his clear intention not to answer any of the questions and
6 to ask that all the questions be deferred to a later date.

7 **Adv T Madonsela** : Yes, thank you. Mister Hulley, I have then heard you as the
8 President's Legal Representative and I have heard you, Mister
9 President. For me my ruling, which is a win-win approach, the way I
10 see it, is that you answer the questions that you can recall answers to
11 and the ones that you don't recall answer to and have complexities,
12 we defer them.

13 **Mr M Hulley** : I think my instructions are in this matter to convey to you that the
14 President does not want to participate ...

15 **Adv T Madonsela** : No ...

16 **Mr M Hulley** : Sorry, it I might ...

17 **Adv T Madonsela** : But Mister Hulley ...

18 **Mr M Hulley** : If I might have an opportunity to address you?

19 **Adv T Madonsela** : No, sorry, Sir, the President has a right to legal assistance, not legal
20 representation. You have made that representation. I have now
21 made a ruling that we are going to proceed, but we will focus on the
22 things that the President is going to answer. I'm sorry Sir, I cannot
23 be bullied by you.

24 **Mr M Hulley** : I beg your pardon, if that is the impression, I apologise.

25 **Adv T Madonsela** : I honestly cannot. If it coming across like that, because you are not

1 even allowing the President of the Republic of South Africa to speak
2 for himself. You keep insisting on a particular way. The President
3 has graciously and respectfully suggested that he hasn't had an
4 opportunity to be advised on the specific questions and because of
5 that he needs a future date. I have indicated what the questions are
6 and I have said these questions don't need a future date, but should
7 we come across one that the President thinks he cannot answer now,
8 I'm willing to skip that one. We then can agree as a team here about
9 when then can we meet?

10 **President Zuma** : No, but Public Protector, as I said the issue of the Guptas, the capture,
11 State, etcetera, is a big issue in the country. It is not a small matter.
12 If I don't apply my mind, I can think the answer is very simple and it
13 might not be very simple. If it was just a matter, any other matter, I
14 would say no, perhaps it is an easy matter. As you say, I have
15 answered some of these questions in public.

16 **Adv T Madonsela** : Yes, Sir.

17 **President Zuma** : I was answering them to the Journalists, not the Public Protector,
18 who must at the end make a finding. I have answered the Nene issue,
19 gave a long answer as to what is it that happened, as well as the
20 appointment of Van Rooyen, but these matters ... as you know Van
21 Rooyen's appointment raised emotions in the country. The issue
22 about Duduzane as my son has raised a lot of issues, impacting on his
23 own personal things that he does somewhere there, because he does
24 his own business, but what has happened is that he has been put in
25 the corner of the Guptas by people ... some people have come to ask.

1 I have given explanations. Now what I think we may do, because I
2 would need ... even the questions I did not know how the questions
3 are.

4 **Adv T Madonsela** : We don't give the questions in advance, Sir.

5 **President Zuma** : Yes, you don't. I agree and I'm saying now I have heard ...

6 **Adv T Madonsela** : Because we want honest answers that are coming from your heart,
7 not prepared answers.

8 **President Zuma** : Uhm and I will give honest answers to all of them, but I think if ... I'm
9 not saying I'm not going to answer the questions. I'm willing to
10 answer the questions. We can prepare and agree when in the near
11 future. Because even the people who are in the ... as I said, on the
12 documents that have been sent or facts that are there, I haven't had
13 an opportunity to look at them, because the questions may be
14 emerging from other people, what other people have said, which I
15 don't know. There have been people ... there have been people
16 discussing in meetings about this State capture, etcetera, etcetera,
17 including, as I was referring, they also referred to Jonas.

18 I mean when the Jonas thing came I did not know I will ever
19 have to answer any questions, because it had nothing to do with me,
20 because people meeting and talking about whatever they talk about
21 and I would have thought the matters get to those people, deal with
22 them and the matter is over, but if I have got to answer the question,
23 I have to have given it a good thought, what does this mean? I mean
24 the fellow, Jonas, was never appointed a Minister, but the issues that
25 he was offered to become the Minister of Finance – he was a Deputy

1 Minister by that time – what does that mean really? I know that I’m
2 the only person who appoints Ministers. No other person can make
3 an offer to somebody about my responsibility. I’m just saying these
4 are things that I need to think about, why would such people make
5 such assumptions? What would it mean at the end?

6 So my request was why don’t I go through the papers that have
7 been sent, even if the answer ... the questions are routine questions,
8 so that when I answer them I know exactly what other people have
9 said, than not knowing. It does not mean I’m going to change and
10 give the answer that is not honest, to be honest, but I will be knowing
11 what had been the allegations that have been made against me or
12 they could be straight issues, as you are saying Public Protector, that
13 “Are you friends?”.

14 I have been asked this question many times, not by a Public
15 Protector, by people who were wanting to know, since the matter
16 was out there. I have given honest answers how has this happened,
17 but in this case, because it is now Public Protector – it is not like a
18 Journalist or a colleague or a friend – if I give an answer, when you
19 finally make up your mind, you will have to take into consideration
20 what I say, unlike a report who just reports, “This is what Zuma has
21 said”. So I need to give it a bit of a thought I think.

22 **Adv T Madonsela :** Okay, perhaps I should ask one question, Sir. Would the answers
23 that you give me, after I have given you an opportunity to reflect,
24 differ from the answers that you have given to the Media or any
25 other person who has ever asked you about the issues of Jonas,

1 Mentor, Maseko and Guptas?

2 **President Zuma** : No, they would not differ.

3 **Adv T Madonsela** : Would you offer a different answer?

4 **President Zuma** : No, I would not offer a different one. I wouldn't offer a different one.

5 **Adv T Madonsela** : So why do you want to defer it then if you are going to give me the
6 exact answer you have given to the Media?

7 **President Zuma** : No, as I say, giving an answer to a Journalist or to somebody is
8 different than giving an answer to a Public Protector.

9 **Adv T Madonsela** : That is why I was asking Sir, if it would differ from the one you have
10 given to the Media? If it won't differ, what then would change from
11 today to the time we have that interview, if you are going to give me
12 exactly the same answer you have given to the Media or any other
13 person has ever asked you about these matters?

14 **President Zuma** : Well, I don't know how to answer it again, because I say ...

15 **Adv T Madonsela** : I'm trying to understand you, Sir.

16 **President Zuma** : No, no ...

17 **Adv T Madonsela** : If you are saying you have answered these questions before and I'm
18 going to ask you the same questions, I'm struggling to understand it
19 and you are saying the answer won't be different from the one you
20 have given to the Media, I'm struggling to understand then what do
21 you need to rethink?

22 **President Zuma** : No, if I give an answer to a friend or to a Journalist I can phrase it
23 anyway, saying exactly the same thing, but the words I use there, if it
24 is the Public Protector might say, "But what did you mean by this
25 word?" as you phrase your question. The Public Protector has got to

1 consider this at the end and take a decision.

2 **Adv T Madonsela** : Yes, Sir.

3 **President Zuma** : The people I have answered to they do not have to take a decision
4 about what I was answering them about, so I had to say anything
5 without serious thought, even if the answer was the same. This is all
6 I'm saying and that is why I say I need to understand what are the
7 allegations, because people have been making a lot of allegations out
8 there. Others have been correcting them, but it is not like ... it is just
9 like when you are in court, if you are now in court I can't for an
10 example defend myself in court, no matter how much I know the
11 truth. I need a Lawyer, because now I am in court. Even if I tell the
12 truth, I don't think the Presiding Officers will accept it.

13 **Adv T Madonsela** : I don't know, Sir, I think they will, but I don't want to get ... to
14 disagree with you. You are the President, but I just think for me as a
15 Public Protector firstly what you are going to tell me I will consider it
16 as your version of what you consider to be the truth and as you have
17 said yourself, that it would be the same version of the truth that you
18 have given to the other structures, because it is really what you
19 know.

20 There is no other knowledge you have, other than the
21 knowledge you have and it shouldn't change. I'm battling Mister
22 President, with ... I know that your Legal Representative feels very
23 strongly that you should only answer after this meeting has been
24 deferred. I'm battling, because these allegations have been made, but
25 maybe before ... I had already made a ruling, that for me as a

1 Presiding Officer at this stage I have made a ruling that we proceed,
2 but having said that, let me hear you about then if ... also I think he
3 also argued very strongly that the matter should be deferred to the
4 next Public Protector and I indicated that ...

5 **President Zuma** : Who are you ... oh.

6 **Adv T Madonsela** : Your Legal Representative argued very strongly that the matter
7 should be deferred to the next Public Protector and therefore I'm
8 hoping that this deferment is not making it inevitable for us to arrive
9 at any conclusion right now. So let me hear you then Sir, about when
10 do you ... will you have the next time, because we have had an
11 excellent amount of time today in a very busy schedule?

12 **President Zuma** : Yes.

13 **Adv T Madonsela** : We don't get that much time with the President and we have had
14 time, more than two hours, which is a rare opportunity. If then we
15 deferred it, we will need between 2 and 4 hours. I don't know how ...
16 because in inquisitorial we don't go the route of the courts, where
17 you have to answer only relevant. We let you give us context, so it
18 can take forever. When we met with Mr Gupta it took us more than 4
19 hours, because we just listen to you.

20 **President Zuma** : I would also love that one. It would be (*indistinct – speaking*
21 *simultaneously*).

22 **Adv T Madonsela** : But now my asking then Mr President, could be possibly get that
23 time, given that my timeline is limited and your time is precious?

24 **President Zuma** : Yeah, I know, I know. I was going to say, because I don't know
25 exactly the volume of the papers, but we could indicate likely that in

1 a few days' time as to when we would be ready, because I think given
2 the discussions and given your feeling that we need to deal with it,
3 we have got to take that into consideration.

4 **Adv T Madonsela** : No, Mister President. Sir, if I have to now apply my mind about how
5 we proceed, I need a very firm offer on the table regarding when
6 could the process take place? Probably we need your PAs to also
7 consider your availability, because you are not always in the country
8 and you have got also many big national issues that you have to take
9 care of.

10 **President Zuma** : Okay. Well, you know I have always made a mistake to my office by
11 saying this is the date, only to find they tell me, "Mister President,
12 you are not here on that day or that day you are somewhere". I
13 might have to consult on that one. Perhaps I could do the
14 consultation this afternoon and then come back to you, not later than
15 today, as to what would be the date.

16 **Adv T Madonsela** : I don't like Mister President, to do a to and froing with you. I think in
17 all fairness we can only consider whether it is possible to defer or
18 not to defer if we know what are we deferring to? It is possible that
19 Adv Makhene can check with your PA your availability? Because let's
20 say we say we defer and this afternoon the answer comes, and says
21 for the next 7 days you are out of the country, so we have deferred to
22 a future that doesn't exist. So the only way we can defer or I can
23 consider deferring these proceedings is if there is a very clear
24 understanding regarding what are we then working on?

25 **Mr M Hulley** : Madam, I have got a suggestion, that we stand down and we consult

1 with the Chief of Staff and see whether that process Mister President,
2 is in fact possible and if it is, we can propose a date. If it is not ...

3 **Adv T Madonsela** : I would appreciate that, Sir.

4 **Mr M Hulley** : Thank you. May I suggest that that is what we do?

5 **Adv T Madonsela** : Thank you, yes.

6 **President Zuma** : Just before I go ...

7 **Adv T Madonsela** : Yes, Sir?

8 **President Zuma** : ... given ... I'm sure you know the papers, the amount of papers there
9 are, because I want also to take that into consideration, how long will
10 it take ... shall we take to go through this, because there is another
11 factor. We can put a date, only to find that by the date (*indistinct*) we
12 are not through, etcetera or ...

13 **Adv T Madonsela** : No, Sir ...

14 **President Zuma** : ... or we put a date and then you could look at that, even if we are not
15 through, at least I would have some picture in my mind, then we can
16 do so. I'm just making that one as a caution, that whilst we are
17 looking for the date we would be all committed to it and ensure that
18 it happens. I don't think that should be difficult.

19 **Adv T Madonsela** : They are not as voluminous as the ... as the two Advocates can tell
20 you, that the court processes, you exchange documents, sometimes
21 you have 5 days to go through. One of the ... for me for example with
22 these processes I can have 5 days to go through if it is urgent
23 proceedings, documents that are 200 pages. Here I think most you
24 have probably ... maybe 40 pages. Advocate Makhene?

25 **Adv N Kanyane** : Kanyane. It is not voluminous.

1 **President Zuma** : Not voluminous?

2 **Adv N Kanyane** : And some of the documents are documents that had been provided
3 before, like the complaint and things.

4 **President Zuma** : Okay.

5 **Adv N Kanyane** : Yes, so it not ... the letter itself it is about 20 pages and the annexures
6 aren't a lot, and some are not new.

7 **President Zuma** : Okay.

8 **Adv T Madonsela** : But roughly how many pages, Advocate?

9 **Adv N Kanyane** : I don't want to put a number on it, but it is ... they are fewer than
10 these.

11 **Mr M Hulley** : It might well be now that you have given them consideration in the
12 course of consultation for clarity, we may ask you certain things.

13 **Adv N Kanyane** : For some more documents?

14 **Mr M Hulley** : So no, it might not be more documents. It might just be answers to
15 that, whether that clarity is gained from an answer or from the
16 documents, but it is just something I know that in the normal course
17 of practice sometimes would advise(?).

18 **Adv N Kanyane** : It is fine.

19 **President Zuma** : Okay, let ... oh, sorry.

20 **Adv T Madonsela** : Then please consult then Mister President, with your team or
21 Advocate Makhene or somebody consults with the Chief of Staff
22 about what is possible or what we are agreeing to, so that when we
23 leave here we are moving this ball from one place to another.

24 **President Zuma** : Okay.

25 **Mr M Hulley** : Thank you.

[Go off record // Short adjournment // Back on record]

1
2 **President Zuma** : ... who has this schedule, my schedule as usual it is just something
3 out of this world. They noted it as it stands. I'm sure Michael ...

4 **Mr M Hulley** : If I could maybe take you through the schedule?

5 **Adv T Madonsela** : Yes.

6 **Mr M Hulley** : The President for tomorrow, which is the 7th, has a Namibian
7 binational and the reason why we are going through this schedule,
8 just so that you can appreciate some of the sort of challenges that we
9 have in fixing a time. So on the 7th there is a Namibian binational
10 where the President ...

11 **President Zuma** : Binational, that is the two countries meet. The delegation that side is
12 led by the President to discuss a structured arrangement between
13 the two countries.

14 **Mr M Hulley** : The 8th and the 9th is the Matumela Engagement in Greytown, the 8th
15 and the 9th being Saturday and Sunday. The 10th, which would be
16 Monday, the President has his weekly obligations at Luthuli House,
17 as President of the ANC. He leaves that evening at eighteen-hundred-
18 hours (18:00) to Nairobi for a State visit in Kenya. That State visit is
19 conducted on the 11th and 12th.

20 He returns late in the afternoon on the 12th. Then the
21 scheduled time they have given is about eighteen-hundred-hours
22 (18:00). The 13th he has obligations, which will be Thursday, but
23 that is the date that he would be able to reschedule because of the
24 nature of the engagements being local or their being local
25 participants. Just to give some insight, we would like the benefit of

1 consulting with him on Monday, late afternoon/evening before he
2 departs to Nairobi. So the suggested date would be Thursday, the
3 13th and obviously one is ever so mindful that it is your last week,
4 Madam Public Prosecutor, when you would have been ... or holding
5 that position and it is really why we go through this schedule, is just
6 to demonstrate that but for one, there are international
7 engagements, which otherwise wouldn't be able to ... but we lay the
8 schedule bare for you, so that you can give some consideration or a
9 revision, if necessary.

10 **Adv T Madonsela** : Thank you, Mister President and thank you, Mister Hulley. Basically
11 it means then Mister President, we are not able to reschedule
12 because there would be no point in meeting on the 13th. I would not
13 be able to apply my mind, because the 14th is my last day. It means
14 then we are back to square one, today being the only day we can
15 have this conversation.

16 **Mr M Hulley** : Yeah, I think the diary runs ...

17 **Adv T Madonsela** : Yes, I must also indicate that it just hit my mind Mister President,
18 that we advised you specifically that I would have a meeting with
19 you, Sir and my last letter, the complicated letter ... where is that?

20 **Adv B Makhene** : Which one, the 22nd?

21 **Adv T Madonsela** : Yes.

22 **Adv N Kanyane** : Or the 2nd. Don't you mean the 2nd October, the 2nd October?

23 **Adv T Madonsela** : The 2nd October meeting.

24 **Mr M Hulley** : Yes.

25 **Adv T Madonsela** : Can we ... I'm sorry, I have my own file that has these things and it is

1 me who left the file, which was given to me and when I went ... thank
2 you, Sir. In my letter I did specify the allegations. This was the 2nd,
3 which would have ... which means it was at least 5 days ago. In my
4 letter I also indicated ...

5 **Mr M Hulley** : Sorry, it is the 6th. Today is the 6th and we received the letter I think
6 on the 3rd.

7 **Adv N Kanyane** : On Monday.

8 **Adv T Madonsela** : On Monday.

9 **Mr M Hulley** : We received the letter on the 3rd.

10 **Adv T Madonsela** : On the 3rd?

11 **Adv N Kanyane** : They sent it I think over the weekend, but you only got it on Monday.
12 It was sent on Sunday.

13 **Mr M Hulley** : The 2nd is Sunday and we received it Monday. That would be the 3rd and
14 today's date being the 6th.

15 **Adv T Madonsela** : Yes. In this letter I specifically said:

16 *"I'm affording you as the President of the Republic and as a*
17 *person to whom I am likely to make an adverse finding against" ...*

18 **Adv B Makhene** : Which page are you reading?

19 **Adv N Kanyane** : The last page.

20 **Adv T Madonsela** : ... *"to respond to the above at your earliest convenience,*
21 *preferably not later than Thursday, 6 October, to enable me to*
22 *conclude the investigation and issue my report on the outcome*
23 *thereof as soon as possible."*

24 So it was very clear that the meeting of today, on Thursday the 6th,
25 was to receive your response to the allegations. I specifically said

1 this, Mister President:

2 *"I further confirm my commitment to meet with and get a*
3 *comprehensive presentation of your version on 6 October 2016."*

4 Throughout the week we have been asked if we are going to meet
5 with the President and what will be the purpose? We have made it
6 clear, it is to receive the presentation of your version, Sir. The two
7 Lawyers know that in pleadings or in proceedings, even on
8 arbitration, you don't go and sit with the Arbitrator and then when
9 you are sitting there you then start saying, "No, I don't want to
10 engage you on the merits, I want to engage you on process".

11 If you have any objection to the process, you object in advance.
12 I admit that the letter was emailed to Adv Makhene and the PA on
13 Sunday, and of course nobody sits and watches their email 24 hours
14 and we had indicated we would do so on Friday, having been
15 requested to do that. I also admit that the stash of documents, which
16 is not very comprehensive, was sent to all of the parties by the team
17 on Saturday.

18 So you knew when you received these documents on Monday
19 that we will have this meeting on Thursday, the team knew that. The
20 DG on the other hand knew exactly what the particulars were,
21 because we had a meeting with the DG in Presidency, Dr Lubisi, the
22 previous week. It was on Monday, that week, where we have a
23 recorded meeting indicating what the allegations were and then just
24 only confirming that we are ready to provide the paperwork. At no
25 stage did we receive any communication from yourself, Sir, from the

1 DG or from your Lawyers objecting to the process. Even at the final
2 end yesterday we received a letter, which was read to me this
3 morning when I was at Gallagher Estate. That letter did not say we
4 are not meeting today to hear your version. It asked me whether or
5 not the Media reports that say there is a report that has findings is
6 true and secondly asked me if it is true that I'm dismissing ... or
7 something along those lines – because it was read to me, I didn't see
8 it – I'm dismissing Mr Hlongwane, which answer was "no" to both
9 issues, to say no, he will just be invited to bring his evidence under
10 oath.

11 Now of course it is in the list ... at no stage was this raised and it
12 is not clear to us, as we are reflecting, why would you be okay with
13 the proceedings and even announce to the world that "We are here
14 to answer to the issues" and then now that we are here, we are not
15 able to do it and we want now to do it on the eve of my departure?
16 I'm leaving on the 14th and ideally on the 14th I should be sitting with
17 the new Public Protector and handing over administratively to her
18 everything that I have been doing, but even if I wasn't going to do
19 that, you want me Sir, to apply my mind to everything that I'm going
20 to hear from the President and contrast all of these versions.

21 I'm not able to do that on the evening of the 13th and then issue
22 a finding on the 14th, I can't do that, but I have a suggestion ...

23 **Mr M Hulley** : Might I respond?

24 **Adv T Madonsela** : Okay, please respond?

25 **Mr M Hulley** : Might I respond then just to give that clarity? First of all I think an

1 acknowledgement must be made that it was a lengthy letter. As I
2 said in anticipation of receiving a response, there was a scheduled
3 consultation with President Zuma after the ANC's MEC on Sunday
4 night. That consultation was had. Of course at that stage no
5 documents were received from your office. The President's
6 schedule, being what it is, the first opportunity ... yes, it is true that
7 the letter was received on Monday. First opportunity we had again
8 to consult was yesterday and at that stage ...

9 **Adv T Madonsela** : Was that before or after the letter of yesterday was issued?

10 **Mr M Hulley** : That would have been ... no, that was a brief letter. It was a brief
11 letter where ...

12 **Adv T Madonsela** : I'm asking though when you consulted with President Zuma ...

13 **Mr M Hulley** : It was after the letter.

14 **Adv T Madonsela** : ... was it before or after you had issued that letter?

15 **Mr M Hulley** : It was after the letter. It was after the letter. So the only opportunity
16 we had ...

17 **Adv T Madonsela** : So who issued that letter then, on whose instructions, if it wasn't on
18 the instructions of President Zuma?

19 **Mr M Hulley** : It was on President Zuma's instructions. A telephonic consultation
20 was had, say, "This is the matter the concerns us, this is the matter
21 that we want clarity on". I then met with the DG on the date that the
22 letter was issued. I conveyed to him that these were President
23 Zuma's instructions, met with him personally and as a consequence
24 of that he issued the letter. The point that is made ...

25 **Adv T Madonsela** : But then with the two of you then, if you had the ability to meet with

1 the DG, why was it not possible to peruse the document? As you
2 have indicated it is only a 22-page letter. We peruse hundreds of
3 pages over the same period when we deal with the processes.

4 **Adv B Makhene** : I'm working on something else. I was working on FICA and other
5 things.

6 **Adv T Madonsela** : So I'm asking why was it not possible? There was also the team that
7 had met with us earlier, where we had shared these views. Why was
8 it not possible to look through these documents?

9 **Mr M Hulley** : We did look through the documents. I am not saying as from Monday
10 that we didn't have an opportunity to look at the document. The
11 question is, did we have an opportunity to consult, to take an
12 instruction and formulate a response? My answer to you is, given the
13 President's diary, the only opportunity where that was possible was
14 yesterday and we had scheduled that in anticipation of whatever
15 additional matters might well arise, and that is why I started in my
16 opening comments to you, to say that is why there was no written
17 representation in the manner that we have made today, because
18 quite frankly the time period did not permit, coupled with the fact
19 that we always understood the import of the purpose of the meeting,
20 as that which was expressed in paragraph 2 of your letter dated 22nd
21 of September.

22 **Adv T Madonsela** : Well, we haven't changed from paragraph 2.

23 **Mr M Hulley** : With respect there is a drastic change. If you do a comparative
24 analysis, both in respect of its volume, its import and the scope, one
25 more welcome to the conclusion that the letter dated the 2nd of

1 October ...

2 **Adv T Madonsela** : The scope doesn't change. Mister Hulley, the scope doesn't change.
3 Mister President, the letter has always accused you of violating the
4 Executive Ethics Code. Mr Hulley here on the record has suggested
5 that you never knew that you were accused of anything, that you
6 thought you had to answer for your son. From the outset the only
7 reason you are ... looked into this was that Complainant number two
8 asked us to question whether or not you had violated the Executive
9 Ethics Code by either enabling or allowing this? So that enquiry has
10 not changed.

11 That was not about you being the father of young Mr Zuma. It
12 was about you as the President of South Africa being caught up. It is
13 incidental that young Mr Zuma is your son, because that is the detail
14 of the relationship, but the accusation was never about you
15 answering for Mr Duduzane Zuma's actions. It was always about you
16 answering for your actions. We can read the first letter and I would
17 ask you to read it aloud for the record, Mister Hulley, the very first
18 letter I wrote to the President?

19 **Mr M Hulley** : With respect, Madam Prosecutor ...

20 **Adv T Madonsela** : I just think we keep going around in circles about what exactly did
21 the President know about what he was being asked to answer for. It
22 was always about your ethical conduct, Sir.

23 **Mr M Hulley** : With respect Madam Prosecutor, I think we have made our
24 submissions. We have made a request of you, I think you have heard
25 it out of the mouth of President Zuma as well. We have laid bare

1 what the difficulties are. It is not a contrive situation to make sure
2 that this matter falls within the realm of your successor or any of
3 those matters. It is a genuine attempt to assist and we are going to
4 assist, whether it be yourself or your successor, I think the President
5 has expressed a ...

6 **Adv T Madonsela** : Alright. I'm making a ruling that President, we proceed now. You
7 make your choice then, Sir. If you want to proceed, you can proceed.
8 If you choose not to proceed, I will proceed then with whatever
9 information I have, because honestly Sir, I think you have been given
10 an ample opportunity to assist me with this investigation. It is a
11 requirement in terms of Section 7(4) of the Public Protector Act,
12 which Madam, you had that Act earlier. We can look at it.

13 It is a requirement of Section 7(9) of the Public Protector Act
14 that the Public Protector may ask anyone in the Republic to assist
15 him or her with an investigation and I honestly think that you can
16 assist me right now. I honestly think whatever the intention may be
17 regarding postponing this matter to the 14th, it is an irrational
18 arrangement, it will not work.

19 **Mr M Hulley** : I think then we must respectfully convey to you that under that
20 conditions ...

21 **Adv T Madonsela** : Please can you not stop ... can you stop talking for the President?
22 Mister Hulley, I'm forbidding you from speaking. I'm not giving you
23 an opportunity. I'm asking Mister President to address me. He is
24 the ...

25 **Mr M Hulley** : And is there any purpose or should I excuse myself?

1 **Adv T Madonsela** : No, Sir, you are here to support Mr President, but Mr President Zuma
2 is the one who is employed by the State of South Africa in this
3 capacity. You are employed as his Advisor, but not as his mouth.
4 Mister President, I am requesting that we proceed with the answers
5 you can give. Any additional answers ... what we can do, we have
6 noticed that on the 10th you are going to be chairing a meeting of the
7 ANC, which meeting sometimes you don't chair. When you are out of
8 the country somebody else in the ANC chairs.

9 We can then agree that you will answer the questions you can
10 answer today and then on Monday, the 10th any answers that you
11 still want to give, we can then ... I can reschedule whatever I have to
12 do on the 10th and make myself available for this. I rescheduled
13 things to be here myself, because it was important that I give you an
14 opportunity to give me your version of what happened.

15 **Adv B Makhene** : Can't we put the questions in writing?

16 **Adv T Madonsela** : No, they have to be answered, because inquisitorial things is that you
17 need to follow up ... if you don't understand, you need to follow up,
18 but really I have read them on the record, they are simple questions
19 that is ... and the President has said he has answered these questions
20 before and for me ... thank you, Sir. I had said we are not having this
21 conversation only in terms of Section 7(4) of the Public Protector
22 Act. You are Mister President, required in terms of Section 7(4) of
23 the Public Protector Act to assist me. It says there:

24 *"For the purposes of conducting an investigation the Public*
25 *Protector may direct any person to submit an affidavit or*

1 *affirmed declaration or to appear before him or her to give*
2 *evidence or to produce any document in his or her possession or*
3 *under his or her control, which has a bearing on the matter being*
4 *investigated, and may examine such person."*

5 "And may examine such person", that is the part where I can
6 examine. Then the second ... then (b) says:

7 *"The Public Protector or any person duly authorised thereto by*
8 *him or her may request an explanation from any person whom he*
9 *or she reasonably suspects of having information, which has a*
10 *bearing on a matter being or to be investigated."*

11 The important part is Section 5, because it says:

12 *"A direction referred to in Subsection (4)(a) shall be by way of a*
13 *subpoena containing particulars of the matter in connection with*
14 *which the person subpoenaed is required to appear before the*
15 *Public Protector and shall be signed by the Public Protector on*
16 *the person subpoenaed."*

17 Then Subsection (6) says:

18 *"The Public Protector may require any person appearing as a*
19 *witness before him or her to give evidence under oath."*

20 So that is it. Right, can we hear your view Sir, because we have really
21 been chasing our tails? We have wasted your valuable time and yet
22 we just have been discussing process, and this process matter was
23 never brought to our attention before we came here. I have read the
24 questions to you, Mister President and you can apply your mind. I
25 have just asked you to explain your relationship with the Gupta

1 Family and things like that. I'm also making then an offer that the
2 only reasonable ... because we have to be reasonable. We can't defer
3 to a future that is unattainable and the future of the 13th is an
4 unattainable future. I am saying then that we proceed and then on
5 Monday Adv Makhene wanted to know if these questions could be
6 answered by way of written. What could have happened is that after
7 ... on President Zuma being accused he could have answered those
8 questions, these allegations that are being made by an affidavit and
9 just said, "This is what I know" and then ...

10 **Adv B Makhene** : You mean that ones that are here?

11 **Adv T Madonsela** : No, the original accusations by way of an affidavit he could have said
12 that. For example the DG, when we subpoenaed him for something,
13 he came with an affidavit that was saying, "No, we don't know this,
14 the Cabinet thinks that we don't do things this way" and he
15 submitted an affidavit to that effect.

16 **Adv B Makhene** : Are you saying he can still prepare an affidavit?

17 **Adv T Madonsela** : Certainly, but that would not be answering our specific questions.
18 That would be answering the accusations. You will remember we
19 sent him the accusations, so the affidavit would have answered these
20 people that are accusing you, Sir. "Jonas says he was offered ... I was
21 not a party to that" or if ... whatever, Mentor says, "I was sitting in a
22 room next-door" and that she says, "I was ... she informed me" ... that
23 you could have responded to Sir, because from day one I did indicate
24 that you are then suspected by the Complainant of having violated
25 your responsibilities under the Executive Ethics Code. That is not a

1 surprise thing that came two and a half days ago.

2 **Adv B Makhene** : But can't we – in order to try and accommodate the timelines that we
3 have – send you an affidavit to respond to the accusations and then
4 what we are left with are those allegations, because you say you can't
5 give them in writing?

6 **Adv T Madonsela** : Alright.

7 **Adv B Makhene** : At least we would have done something, because then we can sit
8 with him, help him to respond to the accusations, send it to you.

9 **Adv T Madonsela** : Alright, let's do so. I still don't want to find myself in a situation
10 where President Zuma has never been given an opportunity to try
11 and get to the bottom of it, and I do believe Mister President, it is
12 important to have a lengthy discussion and I know that, because I did
13 have a lengthy discussion with one of the people who are implicated.
14 It gives you their own context of the world and ... because from
15 where I'm sitting I have not been in any of those places, so I have no
16 idea what happened. We decide, as you know, on the balance of
17 probabilities what we think happened and we move, but to do that it
18 can't be done purely on written evidence.

19 So you need an opportunity to say, "But if you are saying this,
20 how does it tally with that?". If I don't do that, I take your cardboard
21 statement against somebody who has had an opportunity to give me
22 context to theirs. I then weigh those. I may need more text. That is
23 why they have a Hearing ordinarily, even in inquisitorial Hearings
24 you have a Hearing. So this is what ... I still am suggesting Mister
25 President, that maybe you get your Deputy to chair Monday's

1 meeting. In that way we will meet ourselves halfway.

2 **President Zuma** : Oh, my Deputy?

3 **Adv T Madonsela** : Your Deputy to chair Monday's meeting, because when you are out of
4 the country your Deputy or somebody else do chair those meetings.
5 Sometimes both of you are out of the country and certainly some
6 other leader ...

7 **Adv B Makhene** : Only on Mondays.

8 **Adv T Madonsela** : Pardon?

9 **Adv B Makhene** : Mondays.

10 **Adv T Madonsela** : No, but there has been times when the President is out of the country
11 on a Monday.

12 **Adv B Makhene** : He leaves after the meetings. I'm just saying Gwede doesn't want
13 anyone to disturb him, that is his time, he tells us.

14 **Adv T Madonsela** : Yeah, but Mr Mantashe will have to appreciate that ... I'm trying to
15 provide a win-win platform. You insist you need further time. We
16 have been chasing our tails around, do we give each other further
17 time of not? We relented ... even though we were ambushed with
18 this request for further time, we relented because we want to be fair
19 ... we want the full story of what happened. We then said, "Okay, give
20 us dates". We are given a date that is unworkable by any
21 imagination. We are providing one that gives you extra time. It is
22 Thursday today and then on Monday, alternative then ... because you
23 are to here on Sunday, Sir.

24 **President Zuma** : Yeah, on Sunday I'm not here.

25 **Adv T Madonsela** : That is the problem. Since you are not here on Sunday, then Monday

1 is the only option. Maybe you could chair the meeting, part of it, on
2 Monday and then half of the day we do this. It is just trying to assist
3 each other. Monday is the only day that we can try ... can you find out
4 from Busi what is it that I can opt out?

5 **Mr B Dhlamini** : I need to get the phone. The phone is outside.

6 **Adv T Madonsela** : We have no phone?

7 **Adv N Kanyane** : We don't have phones.

8 **Adv T Madonsela** : You will have to go outside, Sir.

9 **Mr B Dhlamini** : No problem. For Monday?

10 **Adv T Madonsela** : Yeah, go to the protectors.

11 **Mr B Dhlamini** : And we can go to Johannesburg if (*indistinct*).

12 **Adv T Madonsela** : Yes. We are not ... the Canadian guy who trains people like us, they
13 say with them ... which unfortunately is a principle we have not
14 applied, they say, "Anytime, anywhere. If you want us to come to
15 your house at twelve midnight (24:00)", the Ontario Ombudsman
16 will come to your house at twelve midnight (24:00). That is why
17 they do their investigations in 3 months. They never exceed 3
18 months. The sharpen-your-teeth guy. In fact if it takes 3 months for
19 them it is long. They do this ... they do the G77, which resulted in
20 "caught in the act" against the South African ... the Canadian
21 Government on how it had treated demonstrators.

22 **President Zuma** : Let me go and check my ... my Doctor is here with the ... with the
23 Doctor.

24 **Adv T Madonsela** : Yeah, so anytime anywhere my team is saying we can go to the
25 President, wherever he is on Monday, but after he has then done half

1 the meeting. So what about you, you are employed fulltime, aren't
2 you able to consult with him?

3 **Adv B Makhene** : Yeah, but I'm booked for an operation.

4 **[Discussions amongst each other]**

5 **Adv N Kanyane** : Should I pause?

6 **Adv T Madonsela** : Yes, please.

7 **[Go off record // Back on record]**

8 **Adv T Madonsela** : ... I think it we have been fair, even though this whole procedural
9 issue has been an ambush question. Mr Hulley is saying, "We were
10 ambushed with the procedural issue, because the document was a
11 lengthy one", but you have had then seen ... and everyone announced
12 to the Media that "We are here to answer questions today" and we
13 show up here, having cancelled everything for today, there are no
14 questions being answered.

15 So I'm just saying in all fairness we have tried to meet you
16 halfway, Mister President. After a lengthy ... after a whole day
17 squandered discussing procedure, we are then saying let's meet each
18 other halfway. So what I'm putting then on the table ... I heard you
19 whisper that you have another 30 minutes, you need to go ... 20
20 minutes?

21 **President Zuma** : You mean now? Yeah.

22 **Adv T Madonsela** : Which obviously we have eaten 4 hours of your time as the President
23 of our country, taking care of all of our lives, we have eaten 4 hours
24 of your time discussing procedure. That 4 hours could well have
25 been used to discuss these issues and that 4 hours could well have

1 been used to then identify what leftovers could be dealt with
2 elsewhere. That having been said, I don't want to cry over spilled
3 milk. I am then saying if Mr Hulley is not going to be there on
4 Monday, I am reluctantly happy to proceed going forward, that we go
5 on to the meeting on Monday. I am going to say, although this is not
6 our procedure, but because we are now trying to facilitate the
7 process, which basically gives you different treatment, but what can
8 we do?

9 We are just trying from our side to play fair, to play as
10 responsive as possible. We will give these questions. You can go and
11 print out those questions and give them to President Zuma. In fact
12 we can give him this whole document. Is that okay, Advocate
13 Kanyane?

14 **Adv N Kanyane** : Madam?

15 **Adv T Madonsela** : Should we give the President this whole document, is there any
16 problem or should we just give him the questions?

17 **Adv N Kanyane** : It is your call. I don't know, it is your call. You asked whether you
18 should give just this?

19 **Adv T Madonsela** : Yeah.

20 **Adv N Kanyane** : Okay.

21 **Adv T Madonsela** : Outside procedure we will give you this document. You have ... we
22 still are open or we still insist that we meet on Monday, that then we
23 be given this document at least maybe a night before then or at least
24 a couple of hours before we have a meeting, be given your response
25 at least in time for us to make sense of your response and if we need

1 further particulars, because the idea is just to deepen our
2 understanding of your answer, because when I ask you something,
3 you give me an answer, then I will ask, "Is this what you mean?" and
4 then I then ask, "What about this?", which is not possible through a
5 letter. Then we have to write each other letters, but ... is that
6 possible to move forward? That is granting your wish, Advocate
7 Makhene.

8 **Adv B Makhene** : *(Indistinct)*.

9 **Adv T Madonsela** : That we then ask you to give us an affidavit answering these
10 questions. At the latest I would love it done by Sunday night, but ...

11 **Adv B Makhene** : This Sunday?

12 **Adv T Madonsela** : Yeah, but if it is not possible, then Monday morning. Then after
13 meeting with the ANC, we can then have a session on Monday. Have
14 we heard from the CC? Yeah, it is fine, I can meet with him in the
15 morning. I know it takes long, but I can leave you in charge of that
16 one.

17 **Mr B Dhlamini** : I will refer this one to Johannesburg as well, if it is possible.

18 **Adv T Madonsela** : Yeah, we will work out our own schedule. We do have something,
19 but we will find a way and we are agreeing that we will follow you
20 wherever you want. If you want at your house, we can meet you at
21 your house. If you want ... I don't think Luthuli House is ideal, but we
22 are in your hands. We don't want a spectacle. We just want a private
23 conversation. We are then suggesting, since Mr Hulley is not going to
24 be there, you retain a Lawyer of your wish with the advice of Mr
25 Hulley, who will be there to advise, since Adv Makhene is not going

1 to be there. That is the best accommodation I can make. Remember
2 a Lawyer ... Mr Hulley would have assisted with answering these
3 questions. It is now just a question of ... I can't interview the
4 President all by himself. In fact that is part of the reason ... if you look
5 at the "secure and comfort", a lot of stuff that was discussed at that
6 meeting is not in the report, because I met you alone and that is why
7 we have insisted this time that we meet you with your Lawyers,
8 because as you have said yourself, you need a Lawyer to say ... maybe
9 if you have explained something in a manner that doesn't really work
10 well, for the Lawyer to clarify it and put it in context or if I ask a
11 question that your Lawyer thinks it is not proper, your Lawyer
12 should then stop me from asking that question.

13 **Adv B Makhene** : I think the President would be comfortable with one of us present.

14 **Adv T Madonsela** : Yeah, but let's work with the system, man, colleagues.

15 **President Zuma** : I'm sure we could discuss that, yeah. We could discuss that I think.

16 **Adv T Madonsela** : Thank you, Sir. So do we have a deal then that we will get a time
17 from you for Monday, but can we make a deal that we will get the
18 report at least on Monday morning and there is ... an affidavit on
19 Monday morning?

20 **Adv B Makhene** : I'm not sure, we won't have time, because ... I can't agree, because
21 tomorrow I'm not here at all. I don't know if we can (*indistinct -*
22 *speaking simultaneously*).

23 **Mr M Hulley** : If you allow me to speak again Madam Prosecutor, I was saying to my
24 colleague, Bonisiwe, that ...

25 **Adv T Madonsela** : "Madam Protector".

1 **Mr M Hulley** : I beg your pardon.

2 **Adv T Madonsela** : For the next 7 days. It is 6.

3 **Mr M Hulley** : What I was saying to my actual colleague is that also not because of
4 my availability, because of the President's non-availability or
5 tomorrow and the next two days, we won't have an opportunity to
6 consult with him. I can well make Monday, but it is not around my
7 availability. It is whether come Monday we would have an
8 opportunity to consult, to traverse all the matter, to prepare an
9 affidavit, to send it off to you and to have the President in a state of
10 readiness, where ethically I can say without any contradiction that I
11 know that I have exercised my best endeavours for the President to
12 ... so that whatever the outcome, whatever your ruling is, I know I
13 haven't failed in my duty.

14 I'm saying under the circumstances and the constraint of time
15 I'm not sure I can give the President that undertaking that I can
16 properly represent him, having consulted, having drafted an
17 affidavit, taken him through the affidavit, settle the affidavit, make
18 sure that I have properly precognated(?) him for whatever matters
19 might arise out of those.

20 Those are not ... this is not a matter where I'm representing a
21 client who has been accused of having pilfered an apple from the
22 Green Grocer. It is a serious matter and with the weight of that
23 responsibility I'm saying the time that is there, these are scheduled
24 things that the President have. You can come in any day of the week,
25 you will see a host of Ministers who also have urgent matters call on

1 the President's time. We do not have the monopoly of ousting all of
2 those people and saying in the context of what we are busy with your
3 Ministry or your obligations don't ... or need to take second fiddle. I
4 know that this is a serious matter ...

5 **Adv T Madonsela** : No, no, no, Mister Hulley, some of the things you say are extremely
6 objectionable.

7 **Mr M Hulley** : I am merely sharing with you ...

8 **Adv T Madonsela** : I am not a Ministry. I am an administrative oversight body that has
9 duly come to this meeting, where you advised your client to advise
10 the world that I will be given answers today. So I'm not the one who
11 is changing the game here. You are. He issued a statement or the
12 Presidency issued a statement to say I'm here to get answers. I have
13 done my best to get those answers.

14 Even people accused of murder, all they need to be told is what
15 they are accused of and then they are interviewed. Of course they
16 can take the right to remain silent, but in the case of, for example,
17 employment proceedings ... you will know that yourself, in the case
18 of employment proceedings in a Disciplinary Enquiry all you are
19 given is what you are accused of.

20 In the preliminary part of the investigation you are just
21 supposed to say what do you know about it? This is nothing
22 different from that, because this is about the President of the
23 Republic of South Africa being the first employee. I don't like the
24 insinuations, Sir and that is why I have to respond to you, because
25 both me and you are going down on a record and this very record

1 may well go to court tomorrow, and the insinuations you keep
2 making are that I am making exceptions, I am trying to make my
3 institution important. I have played open cards here. The President
4 was given an opportunity from March this year to respond to this or
5 to make a comment. He chose ... he said he chose not to, but already
6 by then it was clear that one of those three people were suggesting
7 that he had violated the Executive Ethics Code. That is not new, that
8 is not coming today.

9 So Sir, let's just stop with the innuendos. Let's try to assist each
10 other. Despite the ambush, we have put something on the table. You
11 have put something on the 13th, I'm saying it is not workable. I put
12 something on the 10th where I know it is workable, because the
13 President is the President of both the Republic of South Africa and
14 the ANC. Adv Makhene says the SG of the ANC doesn't like anyone
15 chairing those meetings, but what people like ... I prefer fish, but
16 there are days when I have to deal with vegetables, because they
17 don't have a vegetarian meal, so what we like we don't always get.

18 So Mr Mantashe might not get what he likes. What is important
19 to me is that President Zuma has said to me he is not ready to answer
20 here, it would be unfair for me to insist on answering. I ruled that
21 let's proceed, but he came back and made a compelling statement
22 that he honestly feels he shouldn't be pushed to answer today. I
23 mean I'm saying Sir, work with me, give some of your time on
24 Monday. I'm not saying I'm special. I know you are the President, I
25 know you have a thousand more responsibilities than I do. That is

1 not an issue.

2 **Mr M Hulley** : With respect I was merely giving an insight into some of the
3 difficulties of the President's time.

4 **Adv T Madonsela** : I disagree with that insight Sir, I really do. I am a grown woman, I
5 know that he is the President of the country, I know that he has
6 Ministers requesting his time, I know he has Presidents of the world
7 requesting his time, I know he has citizens requesting his time. So by
8 trying to teach me those issues, you are suggesting that I don't know
9 about those things. I do know about those things.

10 That is why I requested the President to go and check his own
11 schedule. I didn't impose on a specific day. Based on the schedule
12 that has been presented to me by the President of the Republic, I'm
13 trying to negotiate space that could be both comfortable to the
14 President and to myself.

15 **Mr M Hulley** : You had invited me to comment. I merely just said what some of the
16 difficulties were.

17 **Adv T Madonsela** : Okay, I have heard you, Sir.

18 **Mr M Hulley** : Thank you.

19 **Adv T Madonsela** : I just don't like the innuendo, Sir. I know you have given us very
20 cogent legal issues to consider and I respect your views, and
21 anywhere and at all time I have dealt with you there is a lot of
22 valuable insight that have emerged from the questions that you raise,
23 but on these issues, on these insinuations I do take exception, Sir.

24 **Mr M Hulley** : No, then I must readily apologise.

25 **Adv T Madonsela** : Just on those small issues I do take exception.

1 **Mr M Hulley** : No, I must readily apologise. I was merely saying ...

2 **Adv T Madonsela** : But not generally on your legal arguments, which are very sound and
3 valuable.

4 **Mr M Hulley** : No, sorry, no, mine is not to be argumentative. I was just saying as a
5 practical reality, which many people can attest to, the President is
6 accessible to many people and to command his time, even though we
7 occupy a place as Advisors, it is not an easy task and where one is
8 dealing with a weighty matter like this, one must be alive to what it is
9 that one's responsibilities are.

10 **Adv T Madonsela** : Okay. President, we keep talking about you in your presence and it is
11 very uncomfortable for me, because you are here and we are not
12 discussing matters of the law. We are discussing matters of
13 convenience and I'm really just appealing that you may assist me
14 here, because these are issues about you rescheduling. It is not a
15 question that should be answered by your Lawyer. It is a question
16 that should be answered by you, to say how can you help me to assist
17 you, because for me it is very important that I hear your side of the
18 story.

19 It was in that context that I was conceding the request from
20 Adv Makhene. Nobody else has been given these to answer.
21 Everyone is asked ... you are given the essence of what are the
22 allegations, but the specific questions are never given to you in
23 advance, but just to try and assist you I was then saying, okay, let's
24 give you the questions in advance, you answer them at your leisure,
25 but we know that you might not fully appreciate the questions we

1 have asked, so let's meet on Monday. Now he is saying no, the
2 questions can't be answered before Monday, because your time may
3 to permit. So I'm saying can an arrangement be made to make sure
4 that your time permits?

5 **President Zuma** : I'm sure, let us communicate on Monday to see what can happen. I
6 think rather than not to move forward, I think let us see whether on
7 Monday we can get some time. I think on principle, unless there is
8 anything changing, we could communicate if there is anything
9 changing, what would be left is to communicate what time.

10 **Adv T Madonsela** : Okay, so it is going to be on Monday. Thank you, Mister President.
11 From our side we are going to give you these questions. Let's leave
12 them now, even though they are not in a neat form. Do you have
13 yours, because mine has just got something ...

14 **Adv N Kanyane** : Yes, I have the questions. Of the annexures we may first need to
15 make copies.

16 **Adv T Madonsela** : Okay, can you just write ... because on the version there isn't any
17 questions about gifts to or from the foundation, if you can just edit
18 that and ... because I was going to ask the question. I don't want
19 again to ask you an ambush question, remember. Everything that we
20 are going to ask ... is it there?

21 **Adv N Kanyane** : Uh-uh (*negative*).

22 **Adv T Madonsela** : So just let's ... is this the last page?

23 **Adv N Kanyane** : That is the last page, yes.

24 **Adv T Madonsela** : Okay, because that came up in the last interview we had.

25 **[Discussions amongst each other]**

1 **Adv T Madonsela** : Yeah, if you can kindly read the bottom? I'm going to give it to Adv
2 Makhene and to Mr Hulley, if you can read my hand? I'm just adding
3 that because that is a question that was not there and it is the last
4 part. It relates to the Jacob Zuma Trust and to the Jacob Zuma
5 Foundation. That is all.

6 **Mr M Hulley** : Sorry, what is the second word there, sorry, "The Zuma"?

7 **Adv T Madonsela** : Family Trust.

8 **Mr M Hulley** : Family Trust?

9 **Adv T Madonsela** : Sorry, I was told that if you write in a manner that people can't read,
10 it suggests you are educated. Seriously, I learnt that from Prof
11 Makhoba, he said that is what the Doctors say, that writing in such a
12 way is ...

13 **President Zuma** : There are two people who have that handwriting, it is Doctors and
14 Lawyers.

15 **Adv T Madonsela** : But I was shocked when Prof Makhoba told us that. I was surprised
16 when he told us that Doctors believe that is a sign of being educated.
17 I said, "How can they be so crazy"? Because he was asking them to
18 stop writing in a scribbly way, that they should write in a way that ...
19 they said, "No, that is a sign of being educated". Now for me it just ...

20 **Adv N Kanyane** : I heard the Health Minister saying that, when he questioned that, he
21 said Doctors should write legibly, they say it is ... what do they say, "It
22 is practice, it is the culture of the profession".

23 **Adv T Madonsela** : Yes. Yeah, that is where ... it comes from there, from Prof Makhoba,
24 that Doctors write in this strange way and they say that is part of the
25 culture, it makes them look educated.

- 1 **Mr M Hulley** : It means I'm in the wrong profession.
- 2 **Adv T Madonsela** : No, no, it is not Lawyers. I have never heard a Lawyer.
- 3 **Mr M Hulley** : Because my handwriting is putered(?), so that is ...
- 4 **Adv T Madonsela** : I have never heard a Lawyer arguing for it, but I was shocked that
- 5 anybody could argue it, because we should apologise for handwriting
- 6 that can't be read. That is why I was asking you to read it in my
- 7 presence, so that I can sort out my deficiencies right now here, but
- 8 are you clear then with the questions?
- 9 **Mr M Hulley** : Yes, I am. Thank you very much.
- 10 **Adv T Madonsela** : Okay.
- 11 **Adv N Kanyane** : Is it fine if I do it like this, I give them this then?
- 12 **Adv T Madonsela** : Yes.
- 13 **Adv N Kanyane** : Are you sure, PP?
- 14 **Adv T Madonsela** : You are happy with the annexures?
- 15 **Mr M Hulley** : So those are the questions and the annexures?
- 16 **Adv T Madonsela** : It is just the statements, not ... okay.
- 17 **Adv N Kanyane** : It is what is annexed here.
- 18 **Adv T Madonsela** : Alright and you have my version (*indistinct*), you have a ... it is the
- 19 same list for us, so that ...
- 20 **Adv N Kanyane** : Yes, because it is mentioned in the annexures.
- 21 **Adv T Madonsela** : Okay, so that is it then.
- 22 **Mr M Hulley** : Can I just get some clarity? Is the anticipation that before the time
- 23 that the President will indicate on Monday, we should give you an
- 24 affidavit that would ...
- 25 **Adv T Madonsela** : That would be preferred, because then it would help me to ... but

1 even if then it is given to us, because we don't want to waste his time
2 by asking him un-useful questions, because it is supposed to be an
3 earnest exercise that is trying to get his version as properly as
4 possible and if we haven't read his affidavit and then we ask him
5 questions, we can't then ... or even no, let's say we don't ask
6 questions that we should be asking and then we arrive at
7 conclusions, the idea is to make sure that when we finally weigh
8 everything, we put it in one basket, we have all possible versions that
9 need to be considered and at the end of that process ... for example,
10 let's say for whatever reason ... I'm not saying we are going to make
11 any finding against you.

12 There should still be any time ... if we are thinking that having
13 heard that version we still think there might be something wrong
14 that you did, there should be time between that possible thinking
15 and any report that I could come up with, whether it is a final report,
16 whether it is a process report, whatever I am going to end up with. Is
17 that fair to you, Sir? Okay, no, then it is manageable. I don't want to
18 ask you that question.

19 As a Lawyer we have different training, but I think we have
20 reached a point where Mister President, you have been extremely
21 helpful in getting us to then do Monday. Although I had said we
22 would like to get your questions on Monday morning, if that is not
23 possible, let's at least get them some ... at least maybe two hours or
24 so before we meet with you, so that we can apply our mind, we can
25 apply our mind to our answers and formulate proper questions.

1 **Adv B Makhene** : Where do they go to? Where do we send the affidavit?

2 **Adv N Kanyane** : You can send to me.

3 **Adv B Makhene** : Do we have your email?

4 **Adv T Madonsela** : It should be there.

5 **Adv N Kanyane** : I have given my card.

6 **Mr M Hulley** : Thank you.

7 **Adv T Madonsela** : Sincerely appreciate ... we are going to (*indistinct*) and thank you
8 sincerely for giving us this opportunity.

9 **President Zuma** : Thank you, thank you.

10 **Adv T Madonsela** : And the huge slice of your very busy life.

11 **President Zuma** : No, thank you very much.

12 **[Go off record // Hearing adjourned]**