[Opening of Hearing // 6 October 2016]

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

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

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

Adv T Madonsela: I’m Thuli Madonsela, the Public Protector.

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

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


Adv T Madonsela: Thank you, Advocate Makhene. Mister President, you don’t have to introduce yourself.

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

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

Mister President, the Executive Members' Ethics Act requires whoever is the Public Protector to investigate any allegation that is duly made by the Member of Parliament regarding the violation of the Executive Ethics Act, whether suspected or alleged. It doesn’t give me discretion, Sir. It is a must. If the report is filed in terms of the Public Protector Act, as was done in the first complaint by Father Moyebe, then that gives me discretionary power to say I will investigate or I will not investigate. I may not investigate because I
don’t have resources. I may ask that this matter be investigated by
SIU, I may recommend to the President to appoint a Judicial
Commission of Enquiry, but unfortunately if it is filed in terms of the
Executive Members’ Ethics Act I don’t have those powers. That is
why we investigated. The second thing was, if it is filed in terms of
the Executive Members’ Ethics Act, it must be done within 30 days
and if we can’t complete it within 30 days, we have to report to you
that we can’t complete it within 30 days.

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

Having done this investigation, I do believe that we were right,
that we should have been given resources to appoint a structure
similar to a Commission of Enquiry, because the vast amounts of
paper that have to be perused and the number of witnesses that have
to be looked into are extensive, and it is a serious matter, Mister
President. Why is it serious? It is not so much serious for other
people. It is very serious for Mr Jonas, because Mr Jonas is a Member
of Executive. He is required in terms of the Executive Ethics Code to
abide by the Code, to not allow his personal interests to conflict with his official interests, to put the public interests first, to put his Constitutional interest first and he has now made this allegation that should have been tested. Whether it were tested by us or they were tested by a Commission of Enquiry, they should have been tested, because at the end of the day if they remain untested and people are accusing him of lying or he is lying, you have an uncertainty that needs to be cleared about is he lying? If he is lying, then what it is going to happen to him?

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

That is one of the things we just needed to clarify. The second complaint is ... no, so the first complaint was that the two people were offered jobs and that you allowed this ... you may have allowed this thing to happen. The second complaint is that ... coming from the same people, is that the Gupta Family has used the power given by these relationships that are established with Ministers and Board Members to get tenders and to get preferential treatment in terms of
how those tenders are processed. It is a two-stage process, it is the appointment of Ministers ... of these two Ministers and appointment of Board Members, and then thirdly the award of tenders and these Dominican Order Catholic Bishops or Priests also asked us to look into licences that may have been given to the Gupta Family. We haven’t looked into that. It will not be part of this phase of the report. They asked us to look into State contracts. We haven’t looked into the entire set of State contracts.

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

It is not an allegation to the Lawyers. It is a suspicion and the Constitution allows the Public Protector to investigate both an allegation ... suspected or alleged improper conduct. He asks President ... and this one can be clarified just to explanation. He asks why did Cabinet get involved in the conflict between the Gupta companies and the banks, and why these matters were not dealt with by the National Consumer Commission or with the Banking Ombud? Is it normal that Cabinet gets involved in these matters? Then he
makes ... it is a very short report. He makes then a remark if there may be corruption? He doesn’t say there is corruption. He just says we should look into whether there may be corruption? So that is the only complaint. It is not really allegations. It is a suspicion. The person is just asking us to enquire and find out if this happened? That is basically ... we have submitted to the Presidency a set of questions based on the issues we have identified and at this stage I want to leave it at that, because I have clarified the process.

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

It says we are giving you a sense of what do we have and we are asking you what is your response to those things? If we don’t get any further information, we could make adverse findings. We don’t even say what those adverse findings are going to be. That is how we have framed it this time to avoid the possibility that there is a sense that we have pre-concluded these matters. There is no finding against anybody at this stage, there is no finding against any single person.
We have just interviewed people and we have asked for example ..
the starting point was always in a situation like this – the two
Lawyers can confirm that, Sir – is that you always start with the
people who are accusers. So our journey has started with interviews
... with subpoenas of Ms Mentor and Mr Jonas. Then we went to the
people they claim could verify their version and documents that
could verify their version, we did that and then any other witnesses.

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

It turns out that the person who had declined to be interviewed
was Mr Ben Martins. It wasn’t Mr Hlongwane and he is being
subpoenaed today, so that he can provide his evidence under oath.
The reason everyone’s evidence has to be provided under oath Sir, is
that we have to give equal weight to the evidence and if yours has
been issued outside oath and somebody issued theirs under oath, the
one who tells us a story under oath stands the possibility of going to
jail for perjury, and the one who gives their evidence outside the system doesn’t stand the possibility of going to jail, and you can’t give equal weight then to these two sets of evidence. We will then ask Mr Hlongwane, using the Canadian approach that says, “Anywhere, anytime we can meet you, because of the timelines that we have”. That is basically how far we have gone, Sir and I just want for the record to say there are no findings at this stage against anyone that we have investigated. We have just informed some people of what we have collected, that implicates them or touches on their name, because we are required to do so in terms of Section 7(9) of the Public Protector Act.

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

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

Adv T Madonsela : Okay, that is perfect.

Mr M Hulley : ... and they are submissions, which President Zuma would associate himself with. They have been prepared in consultation with him. He understands the import and the nature of the submissions, which are to be made. The submissions largely deal with procedural aspects, to
the extent that we intend to demonstrate that the Enquiry or the interview in terms of Section 7(9) of the Public Protector Act is premature and we would like to demonstrate to you why it is that we make that submission, and in those circumstances it renders such a meeting procedurally unfair in a way that doesn't speak to the import of how these matters ought to be conducted, and we would like to demonstrate to you through the Act, as well as through judgments, which we think are supportive of those submissions.

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

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

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

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

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

We understood the letter of the 2nd of October, with the nature of the
complaint that was set out there, as well as the detailed matters upon
which President Zuma was called on to respond, were set out there,
in our view the time period of two and a half days is plainly an inadequate period of time. We say so for the fact that you would have gaged from the response and the indication that the President gave when he was requested to, that you would have seen the lead time is on average about two weeks. The President’s diary of course is fixed well in advance.

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

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

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

And (2):

“Refers to a denial of the allegations made by the Honourable
Deputy Minister, Mr Mcebisi Jonas by one Mr Hlongwane.”

The correspondence goes on to say that:

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

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

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

I think the important aspect that we want to dwell on, with reference
to the Subsection that I have read, is the pertinent comment of the
Public Protector where she says she doesn’t know who is lying. In
other words, we read into that comment an establishment of … or a
lack of establishment of what is anticipated in Section 7(9), which calls on an implicated party. “Implicated” has a very specific English usage and it means that someone has examined the veracity of what has been said and satisfies themselves that it calls on someone to venture a response, and we think in light of that comment that can’t possibly be the case. I go on to make reference to a further quote that was given at the same time, and it reads as follows:

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

Now the reference once more in connection with the previous point that was made is the acknowledgement that “There are a lot of holes and that will take time”, and that fits into the early or the primary representation that me make and that is premature. It is premature to put these matters, where on a plain reading – and we must understand in its plain sense – that the Public Protector has not satisfied herself sufficiently that Mr Zuma ... President Zuma is an implicated person. The second point that we make is, even if we are wrong on either of those, even if we have difficulty with entering into the mind of the Public Protector and satisfying ourselves from where we sit that she had the requisite evidence to formulate that Section 7(9) or then to be invoked, we think it is premature for a second
reason and that is we haven’t been provided with the evidence, which is referred to undercover of the letter of the 2nd of October.

We think as a rule of nature justice it is not proper only to set out explicitly what the allegations are, it is important to set out the founding documents and the evidence to which you make mention.

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

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

“Such person or his or her Legal Representative shall be entitled, through the Public Protector, to question other witnesses, determined by the Public Protector, who have appeared before
We understand the reference to “such persons”, meaning such persons that implicate President Zuma and we understand that the meaning of “through the Public Protector”, that the Public Protector will host an opportunity where either directly Mr Zuma … sorry, President Zuma or his Legal Representatives will have an opportunity to examine those witnesses and in so doing, assist the Public Protector in determining what she referred to earlier on when she says, “At this stage I don’t know who is lying”. We would have and important and vital interest in assisting you in making such a determination.

So in the sequencing, as we understand it, is that that would have to predate any opportunity which Mr Zuma now has for an opportunity to put his version of the events as he understood it, as he would now better understand – based on the evidence and based on the answers that would have been elicited in examination – as to what matters he needs to respond to, the seriousness and the import of them, the context in which they were given and all the other matters which flow from an examination of a witness, to their credit and to their discredit, the Public Protector would now be in a much better position to make such an assessment. We fear that if we were to proceed with the interview, it might well satisfy the schedule that you might with respect have in mind and that is to allow everyone an opportunity to be heard, and we appreciate that, but in our view it must be a fair opportunity, it is must be exercised judiciously. In
other words, the person who has been implicated ... and of course in
the ordinary usage we know what that means, if the Head of the
Executive has been implicated in a matter which has serious import
and concern, then with respect to the procedure all the evidence,
whatever transcripts of what had transpired earlier – if there is no
good reason why they ought to be withheld – then they ought to be
provided. I can’t give you the quotation, but there is a seminal
judgment by Ngcobo J, as he then was in the NPD, the case of
Tshabalala ... *State v Tshabalala*, which establish as a rule of fairness
where if someone is going to be implicated in the commission of an
offence – and I’m minded this is not a criminal Enquiry – then
whatever documentation has been relied on to demonstrate his
complicity, must be made available to him, unless there is good
cause.

Now I understand in respect of one of the Complainants,
whether their identity was mistakenly shown or otherwise of course
– we will treat that with the respect that it deserves – but in our view
even in respect of that witness there are mechanisms which our
courts have employed to protect the identity of persons, but that the
fact that they are so-called whistleblowers does not shield them from
an examination of whether they are lying, whether they are telling
the truth, whether there is any substance to the allegations that I
make. Now one is minded by the distinction which you draw with
respect between the different complaints and reference made to that
aspect being a suspicion. The fact of the matter is, the suspicions is
either well founded or it is not and President Zuma must have an opportunity to demonstrate whether it is well founded or whether it is not. Suspicion still brings with it a negative connotation, still brings with it a negative finding and I dare say for both personal reasons, but also for the reasons of good governance and the proper conduct of the Executive, President Zuma is not minded to let any adverse suspicion sail on by without having been given the proper opportunity to address it, to examine it and in turn when he is called on to give evidence on it, to be able to put it in its proper context and to give a proper explanation, as he understands it, under pain of an adverse ruling after the entire process having been embarked on of a ruling having been made. Now of course we are very new in living with the ruling that emanated from the matter of the EFF and the Speaker of Parliament in the Constitutional Court.

We now know the importance of whatever the conduct of the Public Protector says and does, we know the import of the findings that are there. Now that having been said, we are also minded by the ruling in the SCA of Nugent J in the matter of Mail & Guardian v The Public Protector, where your predecessor's report was reviewed and set aside, and the court made some very cogent or poignant comments about the manner in which the investigation ought to be conducted. I don’t want to labour the point, but I think the last point is to be made – and I don’t think it should be an elephant in the room – the fact of the matter is that President Zuma has today announced the appointment of your successor and that there is a new Public
Protector that would be ... that would take office on a designated date. We know well that there is a very shortened period in terms of which you are able to exercise the responsibility that you have. We don’t think that that brings about any urgency with having to deal with this matter expeditiously. That there is a general urgency, that it is a matter of sufficient public interest, but we don’t think that that urgency is accelerated by your term of office with respect.

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

*We think that that matter in and of itself, particularly where an incumbent is in the *(indistinct)*, has been identified, there has been a Parliamentary process, which has been engaged with, there can be no uncertainty that the work of the Public Protector would continue and we think the fact of your vacating office in another 6 or 7 days cannot be a matter which unduly creates urgency, which means that these matters which were brought to your attention ought then to be given lesser value to for the sake of finalising the report on a certain date. We are a little bit troubled that the reference is made to an*
“exit strategy”. The Office of the Public Protector is not going anywhere, there is no exit. They are there, they are a Chapter 9 Institution, charged as we understand through the rulings that have emanated, through the empowering legislation, both in the Act and in the Constitution, with a very important part of underpinning our Constitutional Democracy. That institution is going to remain there. Parliament in its wisdom will make sure it has the necessary capacity to undertake its work, balanced as it is against all the other resource issues that we face.

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

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

Adv T Madonsela: Thank you, Mister Hulley, for that very well thought-out and elaborate representation. I just want to know before I respond if Adv Makhene or the President would like to add anything in support of
what Mr Hulley has presented for my consideration?

Adv B Makhene : No.

Adv T Madonsela : Nothing?

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

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

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

That is just generally in our adversarial justice system. In our adversarial justice system also once the accusing parties have finished their case and presented witnesses in support of their case, then the accused person or Respondent can respond. We call our adversarial system an accusatorial system and if for example the people who are accusing you and the people they have brought to support the accusation, and the evidence they have provided to
support that accusation reaches a point where no conclusion can be
drawn that you did anything wrong, in the normal court system, in
the normal adversarial justice system your Attorney or your Legal
Representative can approach the court and say, "We request a
discharge, because there is no case to answer". That is the
inquisitorial ... that is the accusatorial justice system and it is
adversarial in nature. It is a system that says if those who are
accusing you provide nothing and put nothing on the table, you owe
nothing to the process.

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

I have had to deal with this for 7 years and even before I
became Public Protector it is one of the things I had looked at from
an administrative law point of view, that this institution is an oddity,
because it is really a tiny island of inquisitorial justice in a system
that is predicated on adversarial justice and accusatorial justice. So
in accusatorial justice you place the burden ... and in fact the Public
Protector operated exactly the way Mister Hulley, you are asking us
to operate. That is why we landed in court in the Oilgate matter,
because what the Public Protector used to do was, you look at what
the Complainant has brought. If it is vague, you might not even
investigate, but if you proceed, you proceed with the understanding
that the Complainant must provide the pieces of the puzzle and most
of the reports that I used to see would say the evidence has not been
able to provide sufficient evidence and then we issue a closing
report.

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

In the last case that I dealt with it was said in the Section 7(9)
Notice we had said that already we have conclusions and therefore
we prejudged this matter, and then coming to ask you questions is a
charade. So I carefully drafted the Section 7(9) Notice to avoid that
accusation that we have now made any conclusions and I carefully
worded my statements to the public, not to say that we have any
conclusions at this stage, because even if we do have, the public
doesn't know the idea of a *prima facie* case. If you say now so and so is implicated, to the public that person is guilty. If you come back tomorrow ... our reports have been leaked previously. If we change whatever we were thinking of, the public comes back and says, "We are intimidated, we had a deal", something wrong happened that made us change our case.

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

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

The only thing that differs there is that we now provide some background information that contextualises the story. We also provide specifics around who said who, but these matters have been in the public domain since March this year. Everything that Mr Jonas said has been in the public domain since March and to the extent that that information was given to us, we provided it in the letter to the
President on the 22\textsuperscript{nd}. So there is not going to be anything new than what was in the public domain. Everything that Miss Mentor said is in the public domain. The only person you could say the accusations by him are not in the public domain, but the issue \textit{per se} is in the public domain ... I guess what I'm saying is, in inquisitorial justice you don't have to ... you don't have a right not to say anything until somebody has solidified a case against you. Inquisitorial justice system gives everyone a fair chance to speak when there are no closed ideas.

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

All we have to provide is what we think is answerable, you are answerable for, in terms of how the Act is formulated, in terms of how the Constitution is formulated, because this is supposed to be your internal integrity agency to monitor ethical conduct in Government, not criminal conduct outside there. Once it goes outside there, it is a different story. Here we are talking about people who are employees of the State, who are answerable to the State because the State is ... it is their employer, when there is a suspicion.
that they may have done something wrong and of course if they explain themselves and say, “I didn’t do these things that you are accusing me of, here is my version”, then that is it. We met with one of the people who are accused for example is Mr Gupta. We met with him for more than 4 and a half hours. He gave us his version of what he knows and we have taken what he has to do, and we are putting it in this basket, because that is not accusatorial justice, where you have this side and this side, and they have to match. In inquisitorial justice you have one basket of facts from everyone who is supposed to provide information.

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

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

Adv T Madonsela: That is what I’m explaining exactly, Sir. I’m saying we issued the Section 7(9) on that request. If you see, the Section 7(9) responds to the letter from the DG, it does that. The Section 7(9) Notice was
issued after we received a letter from the DG that was requesting us ... in fact it had requested the information by Friday that week, but I was out of the country and we battled ... I remember being out of the country and for the whole day working with the team to try and meet this requirement, and because we are now asked to provide the information we had to then contextualise it in the Act, which is Section 7(9) says if there is evidence that implicates you. We then provided the information requested by the Presidency under Section 7(9).

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

Adv N Kanyane : Yes, it was sent.

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

Mr M Hulley : Sorry, I’m not with you?

Adv T Madonsela : I’m saying Sir, go back to the letter you wrote to me, very erudite
letter that you wrote to me in response to the Nkandla Section 7(9).

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

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

I agree with you that the Public Protector could conclude this matter, but it would take time. Even for the most experienced Public Protector to conclude this matter it would take time, because you are saying there is a Supervisor. No, the Supervisor is the Public Protector. It is more like having your Commission of Enquiry and then the Judge leaves, and then you hire a new Judge. It is not going to be easy for the new Judge to carry the matter forward. They will do their best, but it is going to be difficult. That is why in the judicial
system you have part-heard matters finished by Judges. That is something we were discussing actually and saying that in the Judiciary when the Judge leaves, the part-heard matter is not dealt with by a different Judge, because you bring your brain into it, you bring memory. I have been part of the interviews, so I have context to everything that has happened. So it is not just the paperwork, I have context. So I have to use that to present what I have.

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

So I do disagree with you, Sir, that it doesn’t matter who finishes the matter and I’m certain that even a Court of Law would agree with me, because that is why they bring back their retired Judges. Even if they had somebody acting as a Judge and they are no longer acting, they still bring them in to do part-heard matters and that explains ... I just want to explain Mister Hulley, Sir, before I give you an opportunity, about the exit strategy. The exit strategy that we
are looking at ties up what is it that I can conclude fairly in terms of
the law and leave(?) there, and how do I then manage the process
going forward? Until … yes, a new Public Protector has been
appointed, but that new Public Protector, Sir, is appointed with effect
from the 15th of October this year, which is her job starts on Saturday
next week. Until then I am the Public Protector and whatever
decisions I have to make, I have to make them in the best interest of
all of the parties involved.

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

That is a level junior to her current position and she is acting at
a senior position. So she herself will still have to acclimatise to this
new position where she is not at their level. She has to re-supervise
and quality assure everything that they have to say. I’m just saying if
we now bring the new Public Protector per se, that is not even a
solution, but I’m saying even the most qualified of Judges, common
sense has taught the judicial system that a part-heard matter is
better finished by the person who is hearing it, but that is not the
reason we are rushing this case. From day one we cut this case into two. When we were saying there are holes, those holes ...

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

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

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

Mr M Hulley: May I with respect venture to suggest that there are other ways that one can ameliorate the situation that has been set out. The fact of the matter is of course you have been there a long while, there is institutional memory. I’m sure that personalities bring with them
their own style and their own manner of doing things. I think with respect Parliament went through a thorough process in appointing the incumbent, satisfied itself that ...

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

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

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

Mr M Hulley : No, maybe I should.

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

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

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

Mr M Hulley : No, I hadn't, I was interrupted. The point was quite simply this, is to say ... is to suggest and that is to say, I understand that you are in a rush and want to complete it during your term of office, and you have
set out all the reasons why it is convenient for the same person who heads the institution or a Judge who is sitting on a matter. The point that we make in balancing the rights of those persons who are implicated, as opposed to the difficulty that might otherwise ensue, where a new incumbent comes into the office with their own personality, with their own style, their own modus and manner of doing things, sometimes in institutions if there is a proper handover of case management, it might set off whatever otherwise might negative against the work that was then done.

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

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

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

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

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

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

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

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

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

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

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

Adv T Madonsela : No, but it is not made by the President.
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<tr>
<th>Mr M Hulley</th>
<th>But we would like insight into it, so that we can give the context.</th>
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<tr>
<td>Adv T Madonsela</td>
<td>Okay, then if you were to allow the interview to happen, you will get the context, because ...</td>
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<td>Mr M Hulley</td>
<td>No, with respect, with respect, if I might just make the submission?</td>
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<td>Adv T Madonsela</td>
<td>No, can I just make a ruling here? Allow ...</td>
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<td>Mr M Hulley</td>
<td>Can you make the ruling after I make the submission?</td>
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<td>Adv T Madonsela</td>
<td>Please. Okay, can you make the submission, so that I can proceed?</td>
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<td>Mr M Hulley</td>
<td>I will, thank you very much. The submission is quite squarely this, insofar as the letter dated the 2nd of October is meant to be a response to the initial letter that was sent, in our submission that can hardly be the case. I have pointed out to you in the letter of the 13th of September two matters are brought under President Zuma's consideration. The first is to say:</td>
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<td>&quot;The purpose of this meeting, why we are gathered here today, is to brief you about the investigation into allegations of State capture,&quot; not to question you, to brief you.</td>
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<td>The further point is:</td>
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<td>&quot;The meeting will also enable me to afford you an opportunity to answer the allegations made against you, to the effect that you ought to have known or allowed your son, Mr Duduzane Zuma, to exercise enormous undue influence in strategic Ministerial appointments, as well as Board appointments at State-owned entities.&quot;</td>
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<tr>
<td>Adv T Madonsela</td>
<td>Thank you, can we do that then?</td>
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| Mr M Hulley | With respect, if I can make the submission, I think that you might
find it easier then to make your ruling?

Adv T Madonsela : Yes, Sir?

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

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

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

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

Mr M Hulley : ... it renders the process procedurally unfair and we cannot understand why there would be this rush to make sure these matters are dealt with? Our plea to you ...
Adv T Madonsela : Okay, thank you. Can I now make a ruling Sir, because I’m worried about time?

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

Adv T Madonsela : Yes.

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

Adv T Madonsela : Right ... yes.

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

Adv T Madonsela : Thank you so much. I think that is very helpful and the ruling I’m going to make is that I’m going to treat the President the same way that we have treated other witnesses, including Mr Gupta, that the President will be able to answer the questions that he can answer. If there are questions where he needs ... he doesn’t have the evidence and he can’t recall, we will record that and we will request you assist
him to provide written representations in that regard. Can we
proceed then?

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

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

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

The offer that has been made to everyone, because nobody is
above the law, is we had offered you an opportunity to respond. It is
not true what your Lawyer is telling you now, was telling this
investigation, that you did not have an opportunity to respond. We
sent you the request for an investigation in March and we asked you
if you have any comments in response to the accusations? What we have since gotten are the details of the accusations, but there is nothing that is an ambush. The Section 7(9) Notice that your Lawyer, Sir, is referring to anticipates two instances of evidence. There is a case where you already are the person who had been fingered – rightly or wrongly – and then during the investigation the evidence surfaces, and at that stage you are then notified that of that accusation that has been made we now have this evidence, and in that case since you have been part of this process the evidence ... you don’t need many days.

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

Adv N Kanyane: On Saturday.

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

The context only was provided two and a half days ago, so it is not true, but secondly, it is not an ambush because you had known the ... these very same accusations you have known them since March this year. Section 7(9) Notice also anticipates people who had never been in that before, who in the context of this investigation their
names come up. We have had Ministers in this investigation who nobody made these public accusations. Maybe some of them were even mentioned superficially and suddenly evidence emerges about them. We have now then served them with Section 7(9) Notices and say, “Your name has come up, this document implicates you”, but that is specific documents. With you, you were not there at the Gupta house, nobody says you were there.

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

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

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

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

Adv T Madonsela: Thank you, Advocate Makhene and Mister Hulley. I would rather request, if it is acceptable to the Lawyers, that the response
regarding where do we go now be given by the President, because
Sir, it is your name that has been used in this investigation and it is
you who will be held accountable for this process.

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

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

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

**Adv T Madonsela** : Thank you.

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

My understanding of the letter of March was informing me that
there is a complaint that has come about the issue of State capture
and the Guptas, and that the Public Protector was looking at it,
almost assessing it and what it says I think towards the end is that if I
had any comment to make, I can do so. It was not necessarily saying,
“Can you respond to these issues?” and therefore we did not
understand it as saying, “Look at it, prepare yourself, you will have to
come”. I could have made any comment, as the letter .. so it did not
give the impression that at some point I will have to come in. I didn’t
have it. Perhaps if the matter was on, hence it has been on for some
time, at some people might complaint that there should be
investigation. No one could tell at the end who will ... come out if the
investigation started, who would be implicated? I think it is different
from then what comes in that says, “You are implicated, we would
therefore need to have a meeting with you”. The one ... the initial
letter, not now this one, the one that came after that said it will be
briefing and the second point was that we will then discuss the
young Zuma, Duduzane.

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

Therefore, I'm willing to answer the questions, but I think I do
need legal advice with the matter. It is not a simple matter. I would
be fair if I know ... if people have said things about me. There are
many things that people say about me in the majority of times that I
have never done and never said, not only in matters of this nature,
even politically people say many things about me. I have done things
proper thought ... what is the word, “Was there rationale in what you
did?” From that point of view I would really request that you give
me some time to look and get the advice from my legal people as
well, and look and read, because I have not even read the allegations
that have come, what is in the papers that have been there. Legal
people were looking at them and we could arrange for me to then
answer the questions after this, but for today I would be really ill-
prepared.

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

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

Adv T Madonsela : Thank you, Mister President. I note with gratitude your response,
your willingness to respond at a future date, which basically was
what Mr Hulley was asking, that we postpone today's proceedings
and rather go at a future date. I note also your reasons for that, in
that you are saying we may ask you questions that you are not
prepared for, because you thought that the questions that would be
asked would have to do with Duduzane’s relationship with the Guptas and what may have been said at that meeting. The questions will not … will include the relationship between Duduzane, they will also include your relationship with the Gupta Family, because the stuff that we are dealing with is only the stuff that was in the Media.

I understand President, that you are a very busy person, I know that you also struggle to cover all bases.

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

For us it is not about you refuting people’s allegations, Sir. It is about you just telling us what do you know? For example my first question would say, if you can explain what is your relationship with the Gupta Family, how it started, when and how did you meet the Gupta Family? I would ask you to describe your relationship with the Gupta Family and if they are your friends, and if they are your friends, for how long have they been friends? I would ask how often do you visit them? So that has nothing to do with any document that
you may have to study. I would ask, besides visiting the Gupta Family, have you been to Saxonwold and what was the purpose? I would ask if the Gupta Family has ever given you any gift? So those are just simple questions. You don’t need a Lawyer to advise you. None of them are legal in their nature. They are just factual questions. I would ask you to tell us about the relationship between Duduzane Zuma and the Gupta Family, and I would ask you how did he start working for Sahara Computers and the capacity in which he was employed?

Of course if you don’t know any of these, because this relates to young Mr Duduzane Zuma, you would say, “No, I don’t know that”. I would also ask about their being appointed to Directorships in the Gupta family and I would just ask you did you know about this or did you not know about this, and if you were involved in any way? Then I would ask you if you know about Duduzane residing in Saxonwold?

I would ask you about allegations, that Mr Ajay Gupta made Mr Duduzane Zuma a billionaire?

We have got a version from Mr Ajay Gupta. I would ask you about if you are aware of the companies that Mr Duduzane is involved in? I would tell you what allegations are made against the Gupta Family and find out if you are aware of those allegations, and I would ask you if you were present – because this allegation has been there all along and even the Media asked you about Ms Mentor saying you were there in the room – I would ask you were you there or were you not there? I would ask you if you saw the Media
statement by Minister Jonas and what would be your response?

Then I would ask you about Mr Themba Maseko, if you are aware
that he said you asked him to help the Gupta Family, and did you and
if you didn’t, that would be it. I would ask you about Mr Malema
alleging that Mr Fikile Mbalula said he heard he was going to be a
Sports Minister from the Media, if you know anything about that? I
would ask you if you know about Ministers that have visited the
Gupta residence and if you know about such visits, and if you have
been concerned about it?

I would ask you about an allegation that one of your wives was
assisted to get allegation(?) in Waterkloof by the Gupta Family and if
you are aware of that? So it is all simple questions, nothing really out
of the ordinary. I would ask you why you removed Minister Nene?

That you have told the world, just I would want it on the record, why
you removed Minister Nene? I would ask you why you appointed Mr
Des van Rooyen? I would ask you why you removed Mr Van Rooyen?

Those information about … then I would ask you about your
responsibilities under the Executive Ethics Act, which is conflict of
interest and things like that. Then I would ask you if you have ever
considered that your son’s relationship with the Gupta Family and
your alleged friendship might pose a conflict of interest? But that
would depend on what was the answer earlier and depending on
whether you confirmed that relationship or not, this question would
arise. So they are just factual questions really, nothing legal, no legal
questions. It is an inquisitorial thing, which with or without a
Section 7(9) I would have asked you these questions about ... and I
would ask you about declarations, because we have looked at your
declarations and just on the declarations there is really the issue of
the house only, and then there is the issue of the owner of this other
house, or who is the owner? It is just really simple things and that
would be it. Then the issue of your own house has emerged. That
would be all. I don’t quite understand, because these are not ... so as
you can see here it is not us accusing ... saying so and so has accused
you of that. It is us, because it is an inquisitorial, trying to find out
what do you know?

Mr M Hulley : I think with respect ...

Adv T Madonsela : Because that is not the Criminal Justice System where we can say,

“Respond to this one having accused you”. It is us getting to know
what in your version has been happening (indistinct – background
noise) and then we take that version directly from you, and we move
forward. That is how we operate with everyone, just get their
version of what they know about these things and then ... we have
done that with all of the witnesses.

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

Adv T Madonsela : But Mister Hulley, with due respect the President had said that there
are legal issues that he needs advice on, so I have indicated the whole
set of questions. I think it would be proper at this stage to say the
President does he need a Lawyer to help him to remember these things, because they are factual issues, they are not legal issues?

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

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

Mr M Hulley: Yes.

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

Mr M Hulley: Legal power with respect.

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

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

Adv T Madonsela: Yeah, but that doesn’t change the honesty around those answers. All I’m asking ...
Mr M Hulley: If I can maybe answer the question, then you may have some insight?

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

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

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

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

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

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

Adv T Madonsela: Because he wasn’t ... but the President hasn’t spoken, Mister Hulley, after I have indicated to him the nature of the questions, that they really are about the historical facts coming to this. There is very few issues here that relate to specific allegations and I am suggesting that the way forward is the President would answer those questions that are easy to answer, and those that need legal advice, then the President can then say, “No, this one I don’t have an answer right
now, we are going to provide you with an answer” and that for example was an approach that was taken by Mr ... in fact by virtually everyone. In some cases they didn’t remember the date on which things were happening. They knew exactly what they did, because all of this is about what you did and what you didn’t do, and you don’t need ...

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

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

Mr M Hulley: No, but in terms of the context of which other persons have stated that that relationship is an undue one, we would have to give consideration to the answer, not that it changes the answer, but it is framed in a particular manner, which gives consideration to the import of what the President’s duties are, which gives import into the allegations that have been made, where he has been properly advised and with respect, the request is that there can be no distinction made between simplistic answers and answers which are a bit more complex. They all fit into the Enquiry, which the Public
Protector is conducting at the moment and in my submission if the Public Protector is willing to go on to a postponement in respect of certain sort of questions, the balance of convenience in my view, given the fact that the President has stated he has been unable to traverse any of the questions – the first time that he will hear them is when you mouth them – the balance of convenience and fairness would dictate that at that later opportunity you deal with full gamut of all the questions.

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

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

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

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

Adv T Madonsela: Of course I do understand and you are on the record, and that is all I can offer you, is that we will give you a copy of the recordings and the reasons I have given for why I don’t think the President should
be given further time to reflect on these matters.

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

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

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

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

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

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

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

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

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

**Adv T Madonsela**: I honestly cannot. If it coming across like that, because you are not
even allowing the President of the Republic of South Africa to speak for himself. You keep insisting on a particular way. The President has graciously and respectfully suggested that he hasn’t had an opportunity to be advised on the specific questions and because of that he needs a future date. I have indicated what the questions are and I have said these questions don’t need a future date, but should we come across one that the President thinks he cannot answer now, I’m willing to skip that one. We then can agree as a team here about when then can we meet?

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

Adv T Madonsela: Yes, Sir.

President Zuma: I was answering them to the Journalists, not the Public Protector, who must at the end make a finding. I have answered the Nene issue, gave a long answer as to what is it that happened, as well as the appointment of Van Rooyen, but these matters ... as you know Van Rooyen’s appointment raised emotions in the country. The issue about Duduzane as my son has raised a lot of issues, impacting on his own personal things that he does somewhere there, because he does his own business, but what has happened is that he has been put in the corner of the Guptas by people ... some people have come to ask.
I have given explanations. Now what I think we may do, because I would need ... even the questions I did not know how the questions are.

Adv T Madonsela: We don’t give the questions in advance, Sir.

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

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

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

I mean when the Jonas thing came I did not know I will ever have to answer any questions, because it had nothing to do with me, because people meeting and talking about whatever they talk about and I would have thought the matters get to those people, deal with them and the matter is over, but if I have got to answer the question, I have to have given it a good thought, what does this mean? I mean the fellow, Jonas, was never appointed a Minister, but the issues that he was offered to become the Minister of Finance – he was a Deputy
Minister by that time – what does that mean really? I know that I'm the only person who appoints Ministers. No other person can make an offer to somebody about my responsibility. I'm just saying these are things that I need to think about, why would such people make such assumptions? What would it mean at the end?

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

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

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

President Zuma: No, they would not differ.

Adv T Madonsela: Would you offer a different answer?

President Zuma: No, I would not offer a different one. I wouldn’t offer a different one.

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

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

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

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

Adv T Madonsela: I’m trying to understand you, Sir.

President Zuma: No, no ...

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

President Zuma: No, if I give an answer to a friend or to a Journalist I can phrase it anyway, saying exactly the same thing, but the words I use there, if it is the Public Protector might say, “But what did you mean by this word?” as you phrase your question. The Public Protector has got to...
consider this at the end and take a decision.

Adv T Madonsela: Yes, Sir.

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

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

There is no other knowledge you have, other than the knowledge you have and it shouldn't change. I'm battling Mister President, with ... I know that your Legal Representative feels very strongly that you should only answer after this meeting has been deferred. I'm battling, because these allegations have been made, but maybe before ... I had already made a ruling, that for me as a
Presiding Officer at this stage I have made a ruling that we proceed, but having said that, let me hear you about then if ... also I think he also argued very strongly that the matter should be deferred to the next Public Protector and I indicated that ...

President Zuma : Who are you ... oh.

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

President Zuma : Yes.

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

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

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

President Zuma : Yeah, I know, I know. I was going to say, because I don’t know exactly the volume of the papers, but we could indicate likely that in
a few days’ time as to when we would be ready, because I think given
the discussions and given your feeling that we need to deal with it,
we have got to take that into consideration.

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

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

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

Mr M Hulley: Madam, I have got a suggestion, that we stand down and we consult
with the Chief of Staff and see whether that process Mister President,
is in fact possible and if it is, we can propose a date. If it is not...

Adv T Madonsela : I would appreciate that, Sir.

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

Adv T Madonsela : Thank you, yes.

President Zuma : Just before I go ...

Adv T Madonsela : Yes, Sir?

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

Adv T Madonsela : No, Sir ...

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

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

Adv N Kanyane : Kanyane. It is not voluminous.
President Zuma : Not voluminous?

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

President Zuma : Okay.

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

President Zuma : Okay.

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

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

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

Adv N Kanyane : For some more documents?

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

Adv N Kanyane : It is fine.

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

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

President Zuma : Okay.

Mr M Hulley : Thank you.
[Go off record // Short adjournment // Back on record]

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

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

Adv T Madonsela: Yes.

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

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

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

He returns late in the afternoon on the 12th. Then the scheduled time they have given is about eighteen-hundred-hours (18:00). The 13th he has obligations, which will be Thursday, but that is the date that he would be able to reschedule because of the nature of the engagements being local or their being local participants. Just to give some insight, we would like the benefit of
consulting with him on Monday, late afternoon/evening before he departs to Nairobi. So the suggested date would be Thursday, the 13th and obviously one is ever so mindful that it is your last week, Madam Public Prosecutor, when you would have been ... or holding that position and it is really why we go through this schedule, is just to demonstrate that but for one, there are international engagements, which otherwise wouldn’t be able to ... but we lay the schedule bare for you, so that you can give some consideration or a revision, if necessary.

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

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

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

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

**Adv T Madonsela**: Yes.

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

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

**Mr M Hulley**: Yes.

**Adv T Madonsela**: Can we ... I’m sorry, I have my own file that has these things and it is
me who left the file, which was given to me and when I went ... thank you, Sir. In my letter I did specify the allegations. This was the 2nd, which would have ... which means it was at least 5 days ago. In my letter I also indicated ...

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


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

Adv T Madonsela: On the 3rd?

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

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

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

“I'm affording you as the President of the Republic and as a person to whom I am likely to make an adverse finding against”...

Adv B Makhene: Which page are you reading?

Adv N Kanyane: The last page.

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

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

“I further confirm my commitment to meet with and get a comprehensive presentation of your version on 6 October 2016.”

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

If you have any objection to the process, you object in advance.

I admit that the letter was emailed to Adv Makhene and the PA on Sunday, and of course nobody sits and watches their email 24 hours and we had indicated we would do so on Friday, having been requested to do that. I also admit that the stash of documents, which is not very comprehensive, was sent to all of the parties by the team on Saturday.

So you knew when you received these documents on Monday that we will have this meeting on Thursday, the team knew that. The DG on the other hand knew exactly what the particulars were, because we had a meeting with the DG in Presidency, Dr Lubisi, the previous week. It was on Monday, that week, where we have a recorded meeting indicating what the allegations were and then just only confirming that we are ready to provide the paperwork. At no stage did we receive any communication from yourself, Sir, from the
DG or from your Lawyers objecting to the process. Even at the final end yesterday we received a letter, which was read to me this morning when I was at Gallagher Estate. That letter did not say we are not meeting today to hear your version. It asked me whether or not the Media reports that say there is a report that has findings is true and secondly asked me if it is true that I’m dismissing ... or something along those lines – because it was read to me, I didn’t see it – I’m dismissing Mr Hlongwane, which answer was “no” to both issues, to say no, he will just be invited to bring his evidence under oath.

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

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

Mr M Hulley : Might I respond?

Adv T Madonsela : Okay, please respond?

Mr M Hulley : Might I respond then just to give that clarity? First of all I think an
acknowledgement must be made that it was a lengthy letter. As I said in anticipation of receiving a response, there was a scheduled consultation with President Zuma after the ANC’s MEC on Sunday night. That consultation was had. Of course at that stage no documents were received from your office. The President’s schedule, being what it is, the first opportunity ... yes, it is true that the letter was received on Monday. First opportunity we had again to consult was yesterday and at that stage ...

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

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

Adv T Madonsela: I’m asking though when you consulted with President Zuma ...

Mr M Hulley: It was after the letter.

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

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

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

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

Adv T Madonsela: But then with the two of you then, if you had the ability to meet with
the DG, why was it not possible to peruse the document? As you have indicated it is only a 22-page letter. We peruse hundreds of pages over the same period when we deal with the processes.

Adv B Makhene: I’m working on something else. I was working on FICA and other things.

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

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

Adv T Madonsela: Well, we haven’t changed from paragraph 2.

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

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

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

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

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

Mr M Hulley: With respect Madam Prosecutor, I think we have made our submissions. We have made a request of you, I think you have heard it out of the mouth of President Zuma as well. We have laid bare
what the difficulties are. It is not a contrive situation to make sure that this matter falls within the realm of your successor or any of those matters. It is a genuine attempt to assist and we are going to assist, whether it be yourself or your successor, I think the President has expressed a …

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

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

Mr M Hulley: I think then we must respectfully convey to you that under that conditions …

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

Mr M Hulley: And is there any purpose or should I excuse myself?
**Adv T Madonsela**: No, Sir, you are here to support Mr President, but Mr President Zuma is the one who is employed by the State of South Africa in this capacity. You are employed as his Advisor, but not as his mouth. Mister President, I am requesting that we proceed with the answers you can give. Any additional answers ... what we can do, we have noticed that on the 10th you are going to be chairing a meeting of the ANC, which meeting sometimes you don’t chair. When you are out of the country somebody else in the ANC chairs.

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

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

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

“For the purposes of conducting an investigation the Public Protector may direct any person to submit an affidavit or
affirmed declaration or to appear before him or her to give
evidence or to produce any document in his or her possession or
under his or her control, which has a bearing on the matter being
investigated, and may examine such person.”

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

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

The important part is Section 5, because it says:

“A direction referred to in Subsection (4)(a) shall be by way of a
subpoena containing particulars of the matter in connection with
which the person subpoenaed is required to appear before the
Public Protector and shall be signed by the Public Protector on
the person subpoenaed.”

Then Subsection (6) says:

“The Public Protector may require any person appearing as a
witness before him or her to give evidence under oath.”

So that is it. Right, can we hear your view Sir, because we have really
been chasing our tails? We have wasted your valuable time and yet
we just have been discussing process, and this process matter was
never brought to our attention before we came here. I have read the
questions to you, Mister President and you can apply your mind. I
have just asked you to explain your relationship with the Gupta
Family and things like that. I’m also making then an offer that the only reasonable ... because we have to be reasonable. We can’t defer to a future that is unattainable and the future of the 13th is an unattainable future. I am saying then that we proceed and then on Monday Adv Makhene wanted to know if these questions could be answered by way of written. What could have happened is that after ... on President Zuma being accused he could have answered those questions, these allegations that are being made by an affidavit and just said, “This is what I know” and then ... 

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

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

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

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

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

Adv T Madonsela: Alright.

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

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

So you need an opportunity to say, “But if you are saying this, how does it tally with that?”. If I don’t do that, I take your cardboard statement against somebody who has had an opportunity to give me context to theirs. I then weigh those. I may need more text. That is why they have a Hearing ordinarily, even in inquisitorial Hearings you have a Hearing. So this is what ... I still am suggesting Mister President, that maybe you get your Deputy to chair Monday’s
meeting. In that way we will meet ourselves halfway.

President Zuma: Oh, my Deputy?

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

Adv B Makhene: Only on Mondays.

Adv T Madonsela: Pardon?

Adv B Makhene: Mondays.

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

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

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

President Zuma: Yeah, on Sunday I’m not here.

Adv T Madonsela: That is the problem. Since you are not here on Sunday, then Monday
is the only option. Maybe you could chair the meeting, part of it, on
Monday and then half of the day we do this. It is just trying to assist
each other. Monday is the only day that we can try ... can you find out
from Busi what is it that I can opt out?

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

Adv T Madonsela : We have no phone?

Adv N Kanyane : We don’t have phones.

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

Mr B Dhlamini : No problem. For Monday?

Adv T Madonsela : Yeah, go to the protectors.

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

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

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

Adv T Madonsela : Yeah, so anytime anywhere my team is saying we can go to the
President, wherever he is on Monday, but after he has then done half
the meeting. So what about you, you are employed fulltime, aren’t you able to consult with him?

Adv B Makhene: Yeah, but I’m booked for an operation.

[Discussions amongst each other]

Adv N Kanyane: Should I pause?

Adv T Madonsela: Yes, please.

[Go off record // Back on record]

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

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

President Zuma: You mean now? Yeah.

Adv T Madonsela: Which obviously we have eaten 4 hours of your time as the President of our country, taking care of all of our lives, we have eaten 4 hours of your time discussing procedure. That 4 hours could well have been used to discuss these issues and that 4 hours could well have
been used to then identify what leftovers could be dealt with elsewhere. That having been said, I don't want to cry over spilled milk. I am then saying if Mr Hulley is not going to be there on Monday, I am reluctantly happy to proceed going forward, that we go on to the meeting on Monday. I am going to say, although this is not our procedure, but because we are now trying to facilitate the process, which basically gives you different treatment, but what can we do?

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

Adv N Kanyane : Madam?

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

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

Adv T Madonsela : Yeah.

Adv N Kanyane : Okay.

Adv T Madonsela : Outside procedure we will give you this document. You have ... we still are open or we still insist that we meet on Monday, that then we be given this document at least maybe a night before then or at least a couple of hours before we have a meeting, be given your response at least in time for us to make sense of your response and if we need...
further particulars, because the idea is just to deepen our understanding of your answer, because when I ask you something, you give me an answer, then I will ask, "Is this what you mean?" and then I then ask, "What about this?", which is not possible through a letter. Then we have to write each other letters, but ... is that possible to move forward? That is granting your wish, Advocate Makhene.

Adv B Makhene : (Indistinct).

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

Adv B Makhene : This Sunday?

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

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

Adv T Madonsela : Yeah, we will work out our own schedule. We do have something, but we will find a way and we are agreeing that we will follow you wherever you want. If you want at your house, we can meet you at your house. If you want ... I don’t think Luthuli House is ideal, but we are in your hands. We don’t want a spectacle. We just want a private conversation. We are then suggesting, since Mr Hulley is not going to be there, you retain a Lawyer of your wish with the advice of Mr Hulley, who will be there to advise, since Adv Makhene is not going
to be there. That is the best accommodation I can make. Remember a Lawyer ... Mr Hulley would have assisted with answering these questions. It is now just a question of ... I can’t interview the President all by himself. In fact that is part of the reason ... if you look at the “secure and comfort”, a lot of stuff that was discussed at that meeting is not in the report, because I met you alone and that is why we have insisted this time that we meet you with your Lawyers, because as you have said yourself, you need a Lawyer to say ... maybe if you have explained something in a manner that doesn’t really work well, for the Lawyer to clarify it and put it in context or if I ask a question that your Lawyer thinks it is not proper, your Lawyer should then stop me from asking that question.

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

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

President Zuma: I’m sure we could discuss that, yeah. We could discuss that I think.

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

Adv B Makhene: I’m not sure, we won’t have time, because ... I can’t agree, because tomorrow I’m not here at all. I don’t know if we can (indistinct – speaking simultaneously).

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

Adv T Madonsela: “Madam Protector”.
Mr M Hulley: I beg your pardon.

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

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

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

Those are not ... this is not a matter where I’m representing a client who has been accused of having pilfered an apple from the Green Grocer. It is a serious matter and with the weight of that responsibility I’m saying the time that is there, these are scheduled things that the President have. You can come in any day of the week, you will see a host of Ministers who also have urgent matters call on
the President’s time. We do not have the monopoly of ousting all of
those people and saying in the context of what we are busy with your
Ministry or your obligations don’t ... or need to take second fiddle. I
know that this is a serious matter ...

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

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

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

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

In the preliminary part of the investigation you are just
supposed to say what do you know about it? This is nothing
different from that, because this is about the President of the
Republic of South Africa being the first employee. I don’t like the
insinuations, Sir and that is why I have to respond to you, because
both me and you are going down on a record and this very record
may well go to court tomorrow, and the insinuations you keep
making are that I am making exceptions, I am trying to make my
institution important. I have played open cards here. The President
was given an opportunity from March this year to respond to this or
to make a comment. He chose ... he said he chose not to, but already
by then it was clear that one of those three people were suggesting
that he had violated the Executive Ethics Code. That is not new, that
is not coming today.

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

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

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

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

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

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

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

Mr M Hulley: Thank you.

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

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

Adv T Madonsela: Just on those small issues I do take exception.
Mr M Hulley: No, I must readily apologise. I was merely saying...

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

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

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

It was in that context that I was conceding the request from Adv Makhene. Nobody else has been given these to answer. Everyone is asked ... you are given the essence of what are the allegations, but the specific questions are never given to you in advance, but just to try and assist you I was then saying, okay, let's give you the questions in advance, you answer them at your leisure, but we know that you might not fully appreciate the questions we
have asked, so let's meet on Monday. Now he is saying no, the
questions can't be answered before Monday, because your time may
to permit. So I'm saying can an arrangement be made to make sure
that your time permits?

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

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

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

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

Adv N Kanyane : Uh-uh (negative).

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

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

Adv T Madonsela : Okay, because that came up in the last interview we had.
Adv T Madonsela: Yeah, if you can kindly read the bottom? I’m going to give it to Adv Makhene and to Mr Hulley, if you can read my hand? I’m just adding that because that is a question that was not there and it is the last part. It relates to the Jacob Zuma Trust and to the Jacob Zuma Foundation. That is all.

Mr M Hulley: Sorry, what is the second word there, sorry, “The Zuma”?

Adv T Madonsela: Family Trust.

Mr M Hulley: Family Trust?

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

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

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

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

Adv T Madonsela: Yes. Yeah, that is where ... it comes from there, from Prof Makhoba, that Doctors write in this strange way and they say that is part of the culture, it makes them look educated.
Mr M Hulley: It means I'm in the wrong profession.

Adv T Madonsela: No, no, it is not Lawyers. I have never heard a Lawyer.

Mr M Hulley: Because my handwriting is putered(?), so that is ...

Adv T Madonsela: I have never heard a Lawyer arguing for it, but I was shocked that anybody could argue it, because we should apologise for handwriting that can't be read. That is why I was asking you to read it in my presence, so that I can sort out my deficiencies right now here, but are you clear then with the questions?

Mr M Hulley: Yes, I am. Thank you very much.

Adv T Madonsela: Okay.

Adv N Kanyane: Is it fine if I do it like this, I give them this then?

Adv T Madonsela: Yes.

Adv N Kanyane: Are you sure, PP?

Adv T Madonsela: You are happy with the annexures?

Mr M Hulley: So those are the questions and the annexures?

Adv T Madonsela: It is just the statements, not ... okay.

Adv N Kanyane: It is what is annexed here.

Adv T Madonsela: Alright and you have my version (indistinct), you have a ... it is the same list for us, so that ...

Adv N Kanyane: Yes, because it is mentioned in the annexures.

Adv T Madonsela: Okay, so that is it then.

Mr M Hulley: Can I just get some clarity? Is the anticipation that before the time that the President will indicate on Monday, we should give you an affidavit that would ...

Adv T Madonsela: That would be preferred, because then it would help me to ... but
even if then it is given to us, because we don’t want to waste his time by asking him un-useful questions, because it is supposed to be an earnest exercise that is trying to get his version as properly as possible and if we haven’t read his affidavit and then we ask him questions, we can’t then ... or even no, let’s say we don’t ask questions that we should be asking and then we arrive at conclusions, the idea is to make sure that when we finally weigh everything, we put it in one basket, we have all possible versions that need to be considered and at the end of that process ... for example, let’s say for whatever reason ... I’m not saying we are going to make any finding against you.

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

As a Lawyer we have different training, but I think we have reached a point where Mister President, you have been extremely helpful in getting us to then do Monday. Although I had said we would like to get your questions on Monday morning, if that is not possible, let’s at least get them some .. at least maybe two hours or so before we meet with you, so that we can apply our mind, we can apply our mind to our answers and formulate proper questions.
Adv B Makhene : Where do they go to? Where do we send the affidavit?

Adv N Kanyane : You can send to me.

Adv B Makhene : Do we have your email?

Adv T Madonsela : It should be there.

Adv N Kanyane : I have given my card.

Mr M Hulley : Thank you.

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

President Zuma : Thank you, thank you.

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

President Zuma : No, thank you very much.

[Go off record // Hearing adjourned]