



Judicial Service Commission Interviews

2 February 2022

Chief Justice Interviews

Interview of Supreme Court of Appeal President, Mandisa Maya

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Deputy President Petse (Chairperson):

Good morning, fellow commissioners. Would you please settle down? I'm happy to see you all again this morning, looking fully refreshed to face the day. I have three announcements before we commence with the proceedings of the day. Arrangements have been made with the media that they will be, from today, they will be allowed once the candidate is called in and takes his or her seat, to take photographs for just a minute and once they are done, they will excuse us and then we'll proceed with the business of the meeting. Then the second one is that due to circumstances beyond our control, we'll have to take our lunch adjournment today at ten to two, before loadshedding kicks in at two. The hotel does have backup generator, but we need to take a break so that to allow the IT people to setup, you know, to migrate from, you know, power to generator whilst we are having lunch, then we will resume at three and then again at 16h00 or ten past four, we will have to take another short adjournment, forced short adjournment because another bout of load shedding will kick in at 16:20. Our tea adjournment at ten past four will be for 15 minutes only. And then at 25 to five we will reconvene and continue until we finalize today's interview. Thank you.

Commissioner Breytenbach:

Acting President, may I, it's Glynnis Breytenbach. Good morning sir, may I say something, please?

Deputy President Petse (Chairperson):

Yes, you may, Commissioner Breytenbach.

Commissioner Breytenbach:

Thank you, sir. I just want to point out that I'm in Cape Town and our loadshedding is scheduled for eight o'clock tonight. So, I will lose connectivity, probably at eight o'clock tonight.

Deputy President Petse (Chairperson):

Eight o'clock tonight, you say?

Commissioner Breytenbach:

Yes, sir.

Deputy President Petse (Chairperson):

Hopefully we'll be long done by that time.

Commissioner Malema:

We'll be done at three, Commissioner Breytenbach.

Commissioner Breytenbach:

[indistinct 0:15:42.2] fine.

Deputy President Petse (Chairperson):

Thank you. At this stage will be the candidate be brought to the venue? Thank you.

President Maya:

Good morning, everyone. The paparazzi is making me nervous now.

Deputy President Petse (Chairperson):

Thank you very much. Good morning, President Maya.

President Maya:

Good morning, Acting President Petse and Commissioners.

Deputy President Petse (Chairperson):

Are you well this morning?

President Maya:

You don't want to know the answer, DP. But I'm, let me say I'm as well as can be in the circumstances and I hope you won't be too rough with me.

Deputy President Petse (Chairperson):

I will allow you a few seconds to settle down and take a deep breath before we ...[intervenes]

President Maya:

I'm settled, DP, let's do this.

Deputy President Petse (Chairperson):

Thank you. As a member of the Judicial Service Commission yourself, shall we place on record that you know each and every member of the Commission, seated around this table?

President Maya:

Yes, I do, Acting ... I don't know what to call you. Let me call you DP, then I won't confuse myself.

Deputy President Petse (Chairperson):

And speaking for myself, I've known you for some, what 30 years or so?

President Maya:

Ja, it's been a lifetime.

Deputy President Petse (Chairperson):

You are also one of the four candidates nominated by the President for the position of the next Chief Justice of the Republic of South Africa, in accordance with the dictates of the Constitution.

President Maya:

Yes, DP. DP, can I ask a favour please. This is something I should have mentioned at the outset, just for housekeeping. It was just brought to my, well, I was reminded only this past Friday, of a farming cooperative that my family and I incorporated many years ago. We had lofty, you know, ambitions to farm our rural land, our family's rural land but it never got off the ground and I simply forgot about it. I know I should have mentioned it in my application form and I just forgot and I do apologise for my carelessness. It was just that tiny aspect.

Deputy President Petse (Chairperson):

Thank you, President Maya. Point noted.

President Maya:

Oh, I may mention that none of us have any intention of farming, so I've already given instruction for its deregistration.

Deputy President Petse (Chairperson):

Thank you. First and foremost a word of welcome would be appropriate to this session of the Judicial Service Commission.

President Maya:

Thank you.

Deputy President Petse (Chairperson):

And might I indicate upfront that it is our onerous duty and responsibility to interview you as with all the other candidates, with a view to advising the President in due course as to who is, who we consider eminently suitable to be appointed as the next Chief Justice of the Republic of South Africa. You were born in 1964 in the rural town of Tsolo, Eastern Cape.

President Maya:

Yes, DP. My mother's hometown, which is where she and my dad met.

Deputy President Petse (Chairperson):

And for the record, would you please confirm that you are a South African citizen by birth?

President Maya:

Yes, I am.

Deputy President Petse (Chairperson):

You are married with three adult children?

President Maya:

Yes, DP.

Deputy President Petse (Chairperson):

And you hold three degrees namely BProc, LLB and LLM?

President Maya:

Yes.

Deputy President Petse (Chairperson):

You were appointed to the band at youthful age of 37, I think it was?

President Maya:

35, DP.

Deputy President Petse (Chairperson):

35?

President Maya:

Ja.

Deputy President Petse (Chairperson):

And when was that? What year was it?

President Maya:

That was in 2000. Sorry, I was actually 36. I just started acting at 35 and I never went back to practise. I stayed on the bench until my permanent appointment.

Deputy President Petse (Chairperson):

Thank you. You are currently the President of the Supreme Court of Appeal, having been appointed to that position in 2017?

President Maya:

Yes.

Deputy President Petse (Chairperson):

Having looked at the bundle of documentation that you submitted, I see that you have come a long way to reach your current position. You started off as an assistant clerk in a firm of attorneys in Umtata?

President Maya:

Yes, DP. Best memories of my career.

Deputy President Petse (Chairperson):

And before you were called to the Bar you had stints with the Department of Justice as Assistant Legal Advisor.

President Maya:

Yes, DP, working in the State Law Advisor's office.

Deputy President Petse (Chairperson):

And also, as a lecturer, law lecturer at the University of Transkei, as it was then known?

President Maya:

Yes.

Deputy President Petse (Chairperson):

And in the run up to the first democratic elections, you were associated with the Independent Electoral Commission as an investigator?

President Maya:

Yes, DP.

Deputy President Petse (Chairperson):

Then you acting stints, as you have already mentioned, commenced in 2005 and you never went back to practise again, because you were permanently appointed as a puny judge in May 2000?

President Maya:

Yes, in 1999, July 1999. You said 2005, that's when I started acting at the SCA.

Deputy President Petse (Chairperson):

Oh, I'm sorry. Yes, thank you for that correction. And whilst you were a puny judge of the High Court, you had sat in the Labour Court and thereafter the Supreme Court of Appeal in 2005, acting in the latter court until you were permanently appointed in 2006?

President Maya:

Yes, DP.

Deputy President Petse (Chairperson):

What special attributes did you have that made those who invited you to act, both in the High Court and also in the SCA, ending up snatching you for good?

President Maya:

I like that phrase. Well, simply, DP, I think it's just my industry and my personal qualities. The person who got me started on this path is Advocate Dumisa Ntsebeza, who was at the time already, he had moved from Transkei to Cape Town but he still used to come and do cases in the Transkei Division. So, I would meet him in Motion Court and I think he saw how I performed there and he kept saying we are looking for women acting judges in that Division, please let me, you know, forward your name to the powers that be, that's where JP Edwin King and his deputy, the now, JP Hlophe. So, that's why I say, it must have been my industry and he also knew me personally and I dare say that my best qualities in addition to hard work, just my honesty and integrity and he must have, well, he and the others who then subsequently got me into the, onto the bench, must have recognized those qualities in me. Those three qualities, really.

Deputy President Petse (Chairperson):

Yes. And I can also attest to that because I, whilst you were at the bar, I briefed you on a number of occasions.

President Maya:

Indeed, you did.

Deputy President Petse (Chairperson):

And while still practising as a member of the bar, you took up membership in various legal organizations and that continues until today?

President Maya:

Yes, DP. At the time it was the professional organizations. We had NADEL which was not very active in those days and BLA which was, you know, ready to go doing things, so my interest in NADEL quickly fizzled out and I stuck mostly with the BLA.

Deputy President Petse (Chairperson):

Have you received any awards or honours from lawyer's organizations, other bodies or institutions here at home and abroad that you can share with the Commission?

President Maya:

I have quite a few, DP. Let me start with academic ones. I was awarded a Fulbright scholarship, that's how I managed to do my Masters in the US, back in those days which was not something easy to come by. And then I, when I was there, I joined, well, it flowed from my, it was one of the benefits of that scholarship, I became a fellow at Georgetown Law University in their gender department and that fellowship is an honour in itself. And later I became a commonwealth law foundation fellow but you know, life always catches up with us at awkward times. I was supposed to have gone, it had a program for its fellows, induction program, you know, they take you to a few international commonwealth countries to observe relevant practises there. But unfortunately for me, I fell pregnant, I was already on the bench, I fell pregnant with my last born and the time of induction coincided with the time of the delivery of the baby and much as I wanted to go, I could not. So, my interaction with them was rather limited and only electronic. I have been awarded, at professional level, I have recognized by two women groupings, prominent women groupings in the legal field. SAWLA, which is the South African Women Lawyers Association and a women judges association, of which I'm currently president, the South Africa chapter of the International Association of Women Judges which, you know, awarded me, you know, recognition awards twice because, well, they said, because of the work I have done to promote gender equality and my contribution to the jurisprudence of our country. I have, I've even been awarded a recognition award by the Eastern Cape Business Chamber in the category of law, recently. My alma mater, one of my alma maters at Duke University in the USA awarded me a very prestigious award at the height of the Covid-19 pandemic. That was one of the highlights of 2020 for me. They chose me as their international law alumni for 2020. Oh, and incidentally, they recognized two other South Africans in that year. Former Deputy Chief Justice Moseneke for his work in the human rights area and another, a woman who is a former, one of the former Chief Justices in the US, Justice Margaret Marshall, who was born and bred here but then started here, a Wits alumni, alumnus rather, but she left for the US and made a big name for herself there. Oh, I have been awarded three honorary doctorates by three universities. Walter Sisulu University, Fort Hare and Nelson Mandela University of which I'm very proud. I think that's about it, DP. Oh, and maybe, I should mention the fact that I was recently appointed as Chancellor of the University of Mpumalanga, a fact of which I'm very proud, which is an honour also.

Deputy President Petse (Chairperson):

Thank you, President Maya. Your CV makes reference to the fact that you served as acting Judge at the Constitutional Court for two terms in 2012.

President Maya:

Yes, I did.

Deputy President Petse (Chairperson):

Which you have confirmed in your documentation. How did you find the experience at the Constitutional Court?

President Maya:

I thoroughly enjoyed the intellectual rigor that came with the work. The collegiality in that court to the extent that when a vacancy arose, shortly after my acting stint, I made myself available, applied for the job along with Deputy Chief Justice Zondo. I was recommended, I was one those recommended by the Commission, but there was one vacancy and I did not make the President's cut. It chose CJ Zondo. But it was an exhilarating experience which I thoroughly enjoyed.

Deputy President Petse (Chairperson):

You also had the rare honour and privilege to serve as an acting Judge in, acting Judge of Appeal in Lesotho and acting Judge in the Republic of Namibia?

President Maya:

Yes, DP, but perhaps I should explain. Those were just onetime, you know, events, which usually happens. The neighbouring countries are not well-capacitated in terms of their

judiciaries and frequently they make use of South African Judges. So, in both instances, I was one of senior Judges who had been asked to go and deal with sticky cases that none of the Judges there could deal with. In short, it involved the perineal problems with their Chief Justice and in Namibia, it's a case that involved a sitting Judge in their Supreme Court. Something to do with a servitude over land he occupied, long-running problem that had been sensitive. So, that's how I came to work in those two countries.

Deputy President Petse (Chairperson):

Like the previous candidate, I do not propose to take you through your judgments because I believe that your record speaks for itself. A fact confirmed by various lawyers, professional bodies and organizations. But I just have this one question for you.

President Maya:

Yes, DP?

Deputy President Petse (Chairperson):

What inspired you to write the judgment in the case of Afriforum and UNISA in both English and isiXhosa which was, as far as I am aware, is the first ever in this country?

President Maya:

Ja, I was just thinking about that this morning. It is actually a former Commissioner of this body who ignited my conscience about cultural, issues of cultural identify and our languages which we are losing. Our children hardly speak our language. In fact, us do not speak our languages. We cannot even finish one sentence, you know, in our home, in our mother-tongue without infusing English or some other language. So, I was inspired by a question he had put to me during one of my interviews about what we can do, you know, to save our dying cultures and I had, you know, always read Constitutional Court Judges' written, especially by Justice Froneman, who used to make a point of having dual, you know, language judgments, whenever the opportunity arose for him and I would envy that so much. And when this judgment came along, this matter came along, I thought it was a perfect opportunity to write

in isiXhosa and I did, but we sat together in the matter and I had indicated at conference that colleagues, I'm going to do something that has never been done before. I'm going to write this judgment in isiXhosa, and I, the looks on all your faces, you know, I could write a book on them. But we had that matter in the last term of, was it 2019? It took a while to produce, it was a tough exercise. It came out about five to six months later, which is very late, but I had, because I made this pledge that it needs to be done, it was a long judgment and the jargon, legal jargon mostly does not have equivalents in normal parlance, to the extent that I had to enlist the assistance of an interpreter, sorry, a Xhosa translator who checked my first effort and made, you know, significant changes thereto but I also, you know, when her draft came back, I insisted on, you know, by making my own, you know, infusing back my own understanding of the language. And you also assisted, DP, as a first language isiXhosa speaker. And we managed to produce, I think, a solid product, as least insofar as language is concerned.

Deputy President Petse (Chairperson):

Thank you. You also made time to participate in extra judicial work with various organizations and institutions of higher learning, both in South Africa and abroad?

President Maya:

Yes.

Deputy President Petse (Chairperson):

And you have delivered several papers both here and abroad?

President Maya:

Yes, I did.

Deputy President Petse (Chairperson):

Your nomination by the South African Chapter of International Association of Women Judges, received overwhelming support from various organizations, associations, universities both here at home and abroad, and other bodies, even individuals. Too many to enumerate.

President Maya:

As far as New Zealand, DP, I suppose women all over the world want to be seen, heard and acknowledged. This just roused a lot of interest, you know, straddling continents.

Deputy President Petse (Chairperson):

Thank you. President Maya, we have now reached a stage where I must afford you half an hour to tell this Commission and the nation at large how you see the role of the Chief Justice in our democratic State and also share with us with your vision of a functional, efficient, accountable and independent judiciary in the Republic of South Africa.

President Maya:

Thank you for the opportunity, DP, but I have a special request to ask which I plead should not cut into the 30 minutes, to first give a brief report on certain undertakings I made to this Commission during my interview for the position of SCA President in 2017. I won't take long, I promise. But don't start timing me just yet. May I do that?

Deputy President Petse (Chairperson):

I will allow you that opportunity but before you make your presentation, I just want to add this, whilst you are making your presentation, will you also touch upon the myriad of challenges facing the judiciary at the moment, both in terms of the tools of trade, conditions of service, delays in rendering judgments and the like.

President Maya:

I have a long list, DP, and I am scared that the 30 minutes you have allocated me, may not even be enough, but I'll do my best.

Deputy President Petse (Chairperson):

This is your opportunity.

President Maya:

Thank you, DP. In 2017 the Commission had asked me to describe the vision I had for the SCA and in answer I said I was inheriting a very efficient institution, staffed by diligent and experienced Judges and that, in my view, only a few tweaks were needed to improve it. I then identified three areas that comprised my to-do list. My first target was gender diversity and I lamented the shortage of women Judges in that Court and other Courts. I'm very proud to report that with your support, Commissioners, in the two rounds for interviews for judicial vacancies at the SCA, five in 2019 and another five vacancies in October last year, we were able to achieve the appointment of a total of six women, two coloured, one white, and three African. One of the four male Judges we appointed, sorry, of the four male Judges we appointed, two are African, one is coloured and from the Cape Flats, and I always mention that when I speak about him, because he come from a really, you know, disadvantaged background and the last male is white. And now, please listen carefully, Chair. There are currently 23 Judges in your Court, the SCA, 11 are women, and 12 are men. So, we are fast closing the gap and this is despite the fact that we keep losing our women Judges to the Constitutional Court. The eight most senior Judges at the SCA are black and five black women Judges are presiding over cases as we speak. This is against a starkly different picture of the SCA I found in 2005 when I started there and the project to transform the Court still continues. The SCA has another five, I think, vacancies to be filled later this year and there will be, I promise you, there'll be no shortage of women candidates in that round as well. My second target was the lack of collegiality in the Court. I have no doubt that you, Chairperson, will vouch for me that we have vanquished that demon. You yourselves, Commissioners, have heard various candidates who've appeared, you know, before you, speak about the positive changes that have taken place in that Court under my watch. My third target was fair allocation of work and judgment writing allocations that promote skills of, transfer of skills and ensures that all SCA Judges get a change to write, you know, judgments in matters of substance. Again, Chairperson, I'm sure you who shares the responsibility of allocating work to our colleagues down there, will confirm that that project is running smoothly. So, in sum,

Chairperson and Commissioners, the SCA has turned a critical corner in the last while. It has changed its institutional character for the better. All is well there, as can be, although it is, you know, it is ongoing work we can never relax and I dare say that I have delivered on the promises I made before you five years ago, about five years ago. Now, to my vision for the judiciary. As I warned earlier, Chair, my wish list is long and to make sure that I use my 30 minutes efficiently, I've prepared a timed note which, with your leave, I will read so that I get everything in, and hopefully the Commissioners will help me flash some of the things out during open questioning. But before you start timing me again, please allow me to first apologise to all my colleagues in the judiciary, that I express views on the state and path of our institution and our role in a changing world and how I think we can improve things without the benefit of their inputs. South African Judges have not had a meeting under one roof to jointly discuss the state of the judiciary, its challenges and needs since 2009 and yet so much has happened within the institution and the world around it. The sharing of views, you know, at that kind of meeting, would have enriched my, one's perspectives on these matters tremendously. I apologise because I'm one of the leaders of the institution and one of the culprits for the omission but let me say this, I and many, many, if not all our colleagues, fervently hope that convening that Judges' meeting for which Judges have clambered over a long period of time, will be the first order of business for the new Chief Justice. Now, I start with my understanding of the role of the present-day Chief Justice, because the job has evolved significantly since the days of Chief Justice Langa and even Ngcobo. It's multifaceted, it's extremely demanding but it's possible to juggle all the many functions which it entails because there's ample support around a Chief Justice, a South African Chief Justice in the office of the Chief Justice, the Heads of Court cluster and the judicial officers themselves because they are highly educated professionals. I think it's important to highlight, at the outset, that a Chief Justice and the Heads of Court are not bosses of anyone. They are only first among equals and that demands collaborative and consultative leadership. There is a great wealth in occasional lekgotlas of the entire constituency as we experienced until 2009. I can't overstate that point. The core function of a Chief Justice, Chair, in my view, which is shared equally with all other Judges, is to sit in Court, preside over cases and produce judgments expeditiously and her vote in the adjudication of cases carries the same weight as those of her colleagues. Then follow the additional numerous and unique responsibilities that attach to the position. The Chief Justice is responsible for the administration of the Apex Court and exercises final authority over the functioning and management of all Court, in terms mainly of Section 165 (6) of the Constitution and Section 8 (2) of the Superior Courts Act. These duties entail, among others, oversight of all the Courts, the office of the Chief Justice which is a national department, chairing judicial institutions such as this body and the South African Judicial Institute of Education, swearing in various public officials and convening meetings in

various constitutional bodies. The list goes on. And, generally representing the South African judiciary in local and international judicial formations. She is the face of the institution. I think it is important to note that our country has been through a lot in recent times and faces many serious challenges. So, the need for an impartial, independent, effective, accountable, responsive and cohesive judiciary, has never been bigger than it is now. Whoever is appointed for this position, bears the responsibility of insuring that the institution remains strong, retains its integrity and firmly executes its role of protecting and promoting the constitution and the law so that our country, especially the poor and most vulnerable members of our society, are guaranteed access to justice. It must be someone who is equipped to inspire stability and cohesion within the judiciary itself and inspire public confidence in the judiciary. Fortunately, there is no need to reinvent the wheel as almost all the fundamentals for an independent, impartial and efficient judiciary are already in place. The blueprint which includes the establishment of the judiciary's own department in the OCJ and a training institute for Judges' training and continuing education, run [silence – 0:55:01:3] in crises some have lamented. Yes, it is not perfect, but there is still a relatively, maybe not even relatively, there is still an efficient system of administration in place but there's a lot of work to be done, Chair, to get the institution working optimally to execute its constitutional mandate. Now, some of the key issues that I've identified is requiring attention, some very urgent attention, are the following in no order of importance. Among my top worries is the report of the 2021 Afro barometer survey. I think that the public's trust in the judiciary has declined. As we all know loss of confidence in the judiciary does not [indistinct 0:56:19.1] well for the Rule of Law and our democracy and I think this is something that needs the attention of the judiciary itself, to do an introspection and check if we are to blame for this change of attitude towards the institution and of course the State organs that are enjoined by the Constitution to protect and support the judiciary, must assist us. I am happy to note that the Heads of Court, led by Chief Justice Mogoeng recently had a very fruitful meeting with the Department of Justice, sorry, the Justice Portfolio Committee which clearly showed the legislature's willingness and enthusiasm to support the judiciary and one hopes that those engagements will carry on with frequency as we go forward because the challenges are too big and we all need to work together for the good of our country and her people. And, South Africans at large must assist too because this institution is their asset. This is their institution. Secondly, Chair, there is the challenge you mentioned as you were, you know, alerting me to your own list of issues that cause you sleepless nights, the challenge of delayed judgments which is just [indistinct 0:57:48.8] to the efficient and accessible judiciary that delivers judgments expeditiously, envisaged by the Constitution. This has proven such a big challenge for the institution including the in Apex Court, unfortunately, but there is not just a glimmer, there is significant hope that we can turn things around in that regard because a number of Courts, you know, manage to execute their

judicial function efficiently and it seems from my observations and investigations and enquiries, that firm leadership, strict implementation of the said norms and standards and strict case flow management is the cure because Courts with those practices have good outputs as the annual performance report that the OCJ prepared for us, and was presented by the acting Chief Justice recently, showed. Now, I've spent a bit of time on the Apex Court, Chair, because of its importance. I watched some of yesterday's proceedings with Justice Madlanga and I heard the issues raised with him as criticisms that have been levelled against that Court, and I have a few ideas to say on how things could be improved there. Sorry, I'm getting cold. I think it's adrenalin that made me warm when I walked in. Maybe, I see that Commissioner Malema is quite upset, can we turn the aircon down a little bit? Thank you. Thank you, Chair. I state at the outset that I've not been at the Constitutional Court in about a decade now, but I have followed its progress over the years and I keep in touch with many of the colleagues there. The judiciary's annual performance reports show that the Court's workload, especially in relation to applications for leave to appeal, has indeed grown exponentially since its jurisdiction, that is the Court's jurisdiction, was increased in 2013, but interesting when one checks the Court's appeal and new [indistinct 1:00:32.8] statistics, between 2015 and 2017, when the increased jurisdiction was already in place, those statistics appear to be roughly the same today as then, you know, early on. Up to around 2017, and I've checked this carefully, there were no significant delays in the Court's works output, but it has [indistinct 1:01:03.9] significantly in recent times. Now, in my view, the work done in the Constitutional Court is similar to the work done in the SCA and the rules of the two courts are not dissimilar. The main difference is that the Constitutional Court sits and bunk, which of course must slow down the Court's processes to some extent. Now, I do believe that the manner in which the SCA operates to achieve quick turnarounds, for which it's well-known, might work there too and my conversations on the subjects with my colleagues there, who came from the SCA, confirmed that belief. It seems to me that what is needed in that Court is good organization and time management. Just working smartly and firmly instilling the SCA culture that you do not even leave Bloemfontein at the end of the Court term, until you have at least prepared a decent draft judgment in all the matters heard during that term, so that those matters can be finalized at the latest at the beginning of the next term. It seems to me that a review of the Constitutional Court's Work Practice Manual is absolutely necessary for the reasons pointed out yesterday, Chair. It sets out the timeframes that it sets out, you know, I do believe may contribute to the cumbersome, some of the procedures are cumbersome and they cause time lags but can be chopped down. But I must say that it was heartening to hear Justice Madlanga report that there are moves to address, you know, that issue and I know for a fact that there are contemplated moves to amend some of the Court's rules, especially relating to the operations of their general office, to enhance the Court's efficiency. But in that regard, I should point out

a seeming anomaly that may have strained that process because according to my research, Section 29 of the Superior Courts Act, which provides for the making of the rules of the Constitutional Court, is yet to be proclaimed, unlike Section 30 which provides for the SCA and Uniform Court Rules which is operational. Minister Lamola will, you know, I'm subject to correction. I may have been overtaken by events, but according to my research, it still remains, you know, unpromulgated and that may perhaps be an issue for you to look into quickly if the rules of that Court are to be amended in the short term. Now, I start with appeals, Chair, and my first step would be what we do to set matters down for hearing only when they are ripe for hearing and the record is complete. When I acted at that Court, the process in the matters, you know, already set down, trickled in in bits and pieces until the very day of the hearing, and sometimes even during the hearing you're getting things, you know, being submitted from the Bar and I'm told that, by colleagues there, that that situation has not entirely changed. Now, that is not good practice, especially in a senior Court, because it does not allow the Judges a proper opportunity to prepare for the hearing, so that they can engage counsel on all the issues and in turn it hampers the speed with which judgments will be delivered because the Judges are catching up with the issues after the hearing and sometimes are even forced to ask for further submissions from the parties, at that late stage. And the practice, may I just add this other practice, Chair, of holding conference directly after a case hearing, which the Constitutional Court previously used, and the SCA still uses. It has great merit because it forces thorough preparation by the Judges before the hearing and allows the sharing of views directly after the hearing, while the debates are still fresh in the Judges' minds and it can be determined quickly if there is going to be disagreement and the Judges can start engaging meaningfully towards that direction and immediately start writing the competing judgments, all shortly after the hearing. I must confess though that, as you know, Chair, that the SCA also waits for the allocated scribe to produce the main judgment before work on a dissent, if there's going to be one, can start. But I think, that is perhaps something we can also consider as it will improve our turnaround times even more. So, my point in sum is that holding conference directly after the hearing saves time, you know, in the long run. The comprehensive conference that is already in place, can of course be retained. It is necessary but the first one is important. Now, about the troublesome applications for leave to appeal, there appears to be a general feeling in that Court that requiring all Judges to be part of a quorum, of the quorum to deal with applications for leave to appeal is unnecessary and time consuming and that hearing them in smaller panels of say two or three Judges, as the SCA does, would allow the duty Judges to dispose of an application for leave to appeal by dismissing it and that would free up time for judgment writing. And where the duty Judges consider that the matter should be set down for hearing, or they disagree or for any other good reason, they would circulate a memorandum to the rest of the members of the Court for a final

decision on whether the matter should be set down. That would of course necessitate an amendment of the quorum provisions of the Court in Section 167 (2) of the Constitution and Section 12 (2) of the Superior Courts Act that prescribe minimum panels of at least eight Judges. I favour the amendment approach, I must say, as it would also formally address the unfortunate phenomenon of evenly split judgments with no ratio that we have seen come from our Apex Court. That said, litigation is increasing exponentially. South Africans have become very litigious and there may soon come a time when the Constitutional Court needs capacity. It may be now. As I understand it, that Court can comfortably house 15 Judges today and a constitutional amendment increasing the number of Judges, if that route were to be adopted, would be necessary, of course. Now, ideas which I find appealing have been bandied about that such a development, that is employing more Judges, coupled of course with a quorum amendment to at least seven Judges instead of eight, seven, which I still think constitutes a fair number, you know, a fair-sized panel of Judges, that would allow two Courts to sit on more times than the current twice or once a week that we see at the Concourt and increase that Court's output. And it would still be possible to have the traditional big panel of 11, if needs be, for the traditional important constitutional matters. Or collapse the, what Minister Lamola asked yesterday, collapse the Constitutional Court and the Supreme Court of Appeal into one Court as Justice, my colleague Justice Mathopo suggested here in October and strengthen, that's possible, we could strengthen the appeal processes in the High Court, the Full Bench sittings and that in fact would remove a whole layer, expensive layer in the appeal process and actually enhance access to justice. But we can debate these ideas further at a more appropriate stage. The third point, Chair, is the project of Court modernization and digitization which is Chief Justice Mogoeng's baby to enhance Court efficiency and speedy access to justice. It must now be implemented fully in all Courts. I'm sure Minister Lamola will agree with me. We have seen its importance and efficacy with the introduction of virtual Court hearings hastened by the Covid-19 pandemic, especially for civil cases. The development of the Court Online solution, which will improve the management of Court records and minimize loss of critical documents in Courts, must be prioritized. CaseLines which allows for the filing of Court process by uploading it electronically and dispenses with the need for paper records, is still a pilot project used in the Gauteng Division and with JP Mlambo's help, only partially for petitions in the SCA, we want to extend it to appeals proper now, and I know for a fact that there are other divisions that have been clamouring for its rollout to their Court for a while now. Next, Chair, is the fact of the talk of creating a single judiciary. That started, I think, during former Justice Minister Penuell Maduna, that was many years ago. I would push for its implementation and bring all our Courts under one roof in the shortest term possible. We all know that there are many serious challenges in the Magistracy and fortunately, the Minister and the Chair of the Justice Portfolio Committee, who know all about these issues, are here.

We just heard in the media, a few days ago, about Commissioner Magwanishe's anger at what he found at Palm Ridge Magistrate's Court which has, sorry, which has no recording, transcription machines to record Court proceedings. Imagine what will happen if those matters, the judgments in those matters are taken on appeal or review. It has no CCTV equipment which allows child rape victims to testify in safety because the Department of Justice unfortunately, well, that is what is reported, unfortunately allowed the relevant contract to lapse without making alternative arrangements. These problems and more are experienced by the Magistracy across the country and that sector of the judiciary has asked to be linked to Judges under the OCJ's care so that they too can benefit from the individualized attention that Judges get and experience the judicial independence which the judgment in Van Rooyen said many ages ago, they are entitled to, because they are judicial officers and not civil servants as they are currently treated. The transformation of the judiciary remains a big challenge, Chair. Yes, great strides have been achieved in terms of rape, oh, did I say rape? Race, well, I live in South Africa but gender diversity still remains a big challenge. You know, there's this big misconception that the judiciary and even the professions, are more transformed in terms of gender than they actually are. It is important to clarify that women are still hopelessly under-represented in all spheres of the law and it remains critical to close that gap and have a substantial number of women, all the way up to leadership which the Magistrate, you know, strangely has impressively achieved. We must just find out what has been done there. So, that example of the Magistracy tells us that with the right will and determination it is possible to achieve meaningful gender equality in this institution and elsewhere. I find it most heartening that my reminder to the Chief Justice during my 2017 interview for the SCA Presidency, about the program to fast-track women into the judiciary, started by former Justice Minister Brigitte Mabandla at the instance of the South African Chapter of the International Women Judges Association, many years ago, when I was asked the perennial question of how we can improve gender diversity in the institution has finally been resuscitated and I'm informed by the SA[indistinct 1:15:55.0] that it will start in earnest in July. That will be a gamechanger if one considers that all the women that were candidates in Minister Mabandla's, you know, pilot program, became Judges. Three of them sit at the SCA. One of them was a JP, Justice Molemela now, Judge Gwele, Judge Soma Naidoo, I have Judge Karelse, Judge Nicolson, appeal Judges who came from that program. Imagine if we had not allowed it to die when the tenure of Minister Mabandla, you know, terminated. We would be far, but it's never too late to do the right thing, I suppose. So, yes that program is coming into action but we must not doing the other things we've been doing in the meantime. Advocating for women to be given quality work in the professions by the State Attorney, you know, that can never be overstated. Government must give, you know, black lawyers and women lawyers quality work, so that we have a pool from which we can tap when we look for Judges and we have people

who are ready, who have had experience in this niche areas of the law. Commercial Law, you know, when they go to the Bench and we do not get these comments, these, you know, painful comments that the quality of judgments, you know, is being eroded and that comes from the, I mean, the full questions is that the judgments, the quality of judgments is becoming poor because of transformation, because you are getting more black people into the system. Now, these chickens come home to roost at some stage, so give people a chance, give them an opportunity to get the adequate experience so that they can do a proper job when called upon to do so. We are not going to wait, all of us here, the black people are products of bantu education, we did not get the best education there was, but despite all those odds, we managed to get ourselves somewhere. It is our kids, the generation that has been able to go to model C schools and private, you know, fancy private schools, that have been able to compete neck and neck with the other races and black children have proven themselves there, that they, you know, black people are equally gifted as other races, but we are not going to wait for that generation to rise, to institute transformation. We have to do it today, yesterday actually. I'm sorry, I got a bit emotional there. So, get women into the judiciary and when they get into the judiciary, give them the same opportunities as their male counterparts who, by the way, are not better intellectually-endowed than those women. Now, linked, let me calm myself down, Chair, this upsets me. Linked to gender diversity, Chair, are concerns that have been raised by among others, advocacy parties that the judiciary cannot achieve gender equality and equity when it does not even have policies that accommodate women's challenges. For example, the judiciary, and I learnt it, I took it for granted that we did, I learnt this only recently, the judiciary has no anti-sexual harassment policy, as if we live, we come from this bubble somewhere, we are not part of society. We don't experience the problems that are experienced, you know, by society generally. No, anti-sexual harassment policy and the reported consequences of this gap are that the few sexual harassment incidents, which the few courageous victims, because it's not easy to report that kind of thing for various reasons, those few cases that have been reported to the powers that be, have not received the attention they deserve because they are treated, if treated at all, as acts of misconduct in enquiries that take forever to finalize. I understand that there's no maternity policy as well which some may raise eyebrows at Judges pregnant, but Judges do get pregnant. I was the first Judge to fall pregnant on the Bench and the Department of Justice, which administered the judiciary then, simply did not know what to do with me and as time to give birth came nearer and I kept asking and asking what would happen with my leave, the late Mr Labuschagne who was our advocate, JB Skosana now then, and our Big Brother in the department, just said in frustration, Judge, I will just advise the Minister to give you the four months, sorry, the four months' leave allowed under the Basic Conditions of Employment Act, because I don't know what else we can do. But judicial officers are not civil servants and they must have their own legal

protections if we are serious about these issues. Let me start with the other one. The other issue, Chair, is the full capacitation of the Office of the Chief Justice. The whole notion of establishing that national department was in addition to offering support, administrative support, to the Chief Justice and the institution. It was to create institutional independence for the judiciary which now has its hand tied behind its back, because it has no control over its own budget and expenditure. You know, we've been walking this path and JP [indistinct 1:22:32.7] and all Judges have been walking this path for a while now. The issue of resources is critical and it's a big problem, not just for the judiciary but for the taxpayer too, because Judges not having a say at all on the tools that are needed for the execution of their work, judicial work, not just work, impedes their performance and sometimes even results in wasteful expenditure such as being provided with expensive laptops which cost upwards of R34 000,00 because they come with useless accessories we'll never use. We are not consulted when those things are procured for us. We are provided with leather-bound diaries. I got one recently and I was asking, who still uses a big book diary in 2022? And other paraphernalia about which again, we are not consulted and instead, Chair, sacrifices a need in respect of critical support and tools of trade such as some things, you know, as important as Court assessors who assist Judges in criminal proceedings, acting Judges who help Judges with case backlogs. Minister, I know your view on this and I respect the rationale for the decision to do away with extra judicial, sorry with extra judicial acting appoints, which is a critical, you know, tool in creating skills transfer among other benefits. In my Court at least, we end up sacrificing, Chair, subscriptions for law reports, books, legal books, law journals. I mean, things that are core to the execution of a Judge's functions, core functions, you know? Research, legal research and being able to produce recent, well-researched judgments. This is, that's one of the consequences of this. So, Chair, ja, I think I've said enough on that. If the OCJ is just given the power, the tools to just run its show, I'm sure we won't have these problems. Access, improving access to justice is a key, key challenge in this country. I'm happy to note that the Rules Board, with the assistance of the Justice Ministry, has done and is doing a lot of work to eliminate, for example, the outdated hurdles that would impede our people's access to Courts such as the oppressive jurisdictional boundaries and other requirements that impede our people's access to Courts and it is devising creative ways of bringing justice closer to our people in townships and villages but because these measures are still in the pipeline, I won't talk to them, but I would just like to say something about the mechanism of mediation provided for in the new Uniform Rule 41 (a) which will assist greatly in unclogging Court roles and reduce litigation costs when used effectively. And I mention it because, as Minister will be aware, it still lacks the backing of primary legislation, which I understand is in the works though and we'll allow among other useful features, full court annexed mediation, which will be run by Judges themselves. The SAJEI and this is, you know,

exciting news, the SAJEI is fully onboard and will, with the help of a group of our Judges whom I believe under, they attended training on mediation in Utah, in the USA last year, and are busy compiling a syllabus for a rollout in the judiciary at large. So, the SAJEI, I'm told, will run a comprehensive training session for Judges [indistinct 1:27:30.4], they managed to sneak in the rules before the primary legislation, which is commendable I must say and work, you know, full steam ahead, so I hope, well, I have no doubt that the Minister is actively attending the promulgation of the necessary litigation with all due haste. I understand that there's also collaboration with Nigeria, which already has an established system in place. While I still have your attention, Minister, there's another issue in respect of which we hope you can use your influence. I know you're not a Minister of Police but you sit in the security cluster. The Courts need assistance to achieve meaningful convictions in cases of rape and we know the problems with getting DNA evidence that gets lost or the equipment used to, you know, to process it, is in a state of repair and we here that it takes forever to fix those, you know, that equipment and in the interim the DNA samples, you know, go stale or they become lost. We know that in the end this is important. We have been reliably, it's a fact, that with DNA evidence, solely DNA evidence, 50%, as much as 50% of those cases, you know, convictions will be achieved in respect of them. So, if you can please whisper in the ear of your colleague and press him to do something in that area. We would appreciate it as South Africans. There is another issue, Chair, that will likely not enjoy any sympathy here as well in the country's [indistinct 1:29:49.5] financial status, but it is still important to mention. It's a very sore point for Judges and importantly, it may impinge on the independence of the judiciary and affect something you mentioned yesterday, affect the quality of Judges who are tracked in the future. And maybe even cause some Judges to leave the institution now. And that is the fact that Judges have not received salary increases in four years, but that of course can be addressed elsewhere. I just mention it because of its importance. I will stop there for now, Chair, but in conclusion, I ask to briefly address four descript points, briefly, that I believe need attention. The first one is a comment I've heard bended around that it would not be a good idea to move me from the Supreme Court of Appeal because I've done so well there and moving me would likely destabilize the Court. I don't know if that's supposed to be a compliment, but I and many other colleagues find it most patronizing and even patriarchal maybe. To my mind it implies that I lead a bunch of incompetents who would fall in a helpless heap if I left the SCA and that bunch includes you, Chair. Nothing could be further from the truth. As I said earlier, the SCA is staffed with strong, capable Judges, black and white and as I previously stated, eight most senior Judges in that Court are black, five women Judges are already presiding. No shortage of skill and experience and leadership quality there. And let me highlight this. I will have spent 30 years at the SCA, I will have led it for 19 years if I stay there until my retirement and I doubt that is healthy for the Court and the people it serves. Now, the second point, Chair, relates to

this idea of intellectual prowess these administrative capabilities. First, they are not mutually exclusive skills. I, myself am proof of that. During my tenure as leader of the SCA, I have been awarded, as I mentioned earlier, three honorary doctorates by three different universities and I was installed a Chancellor of a fourth one. Almost all the South African deans of law, formally nominated me to be Chief Justice of South Africa, despite a demanding schedule of juggling relentless administrative duties and my core function of sitting in Court, my core function as a Judge, I have managed to hand down upward of 200 reported judgments on a wide range of legal subjects, most of which, all of which have been reported. During my very first stint the Western Cape High Court in 1999, I broke a record of having two judgments reported consecutively in the South African Law Reports in the second volume. I think it's in the second volume of 2000. Only one Judge, a senior permanent Judge, had achieved that before, I think it was Judge Deon van Zyl. No one had two judgments in one, especially in the green books, in one volume. Now, that trend, because of my industry, that trend continued throughout my High Court stint, despite working in a small division, Umtata, and it got me noticed and invited to act at the SCA, fairly early in my judicial career. Third point, Chair, is that if I'm appointed to the Constitutional Court, I would be coming in from the cold and that might cause a discord and resentment among the Constitutional Court Justices. Chair, I enjoy good relationship based on mutual respect with each one of those Justices. The entire five who came from the SCA, were my juniors at the SCA and I was their President whom they supported and still do, and vice versa. I'm sorry, I don't like mentioning names, but I think I have to in this case. Justice Kollapen and I worked together very well, I must say, at the South African Law Reform Commission, which I chaired and he was my deputy. Justice Madlanga and I, as he said yesterday, are old, we've known each other since our youth. We are old colleagues. When, notably, when he interviewed here for the Constitutional Court vacancy in 2013, he told this Commission that he had been prepared to step back and not apply if I applied because he thought I deserved to grace the Bench of the Constitutional Court, to use his words. But the timing was not right for me and I encouraged him to apply, which he did successfully. Now, acting Chief Justice Zondo, one of the heads who supported gender diversity in the judiciary, long before it became fashionable, he and I worked together at the Labour Courts in 2004 already, but unfortunately, I could not stay long. He had wanted me to act at the LAC and I said no, I was not familiar with the Court, let me start in the Labour Court and get there, you know, familiarize myself with the ropes. But then I got the call from the SCA before I could sit, you know, in the LAC, so I left. ACJ Zondo and I acted together at the Constitutional Court. We interviewed here together for a vacancy in 2012. We were both recommended for appointment, as I said earlier, he was chosen I was not. I stayed on at the SCA enjoying that Court's leadership, not long thereafter. Now, I say this without fear of contradiction that ACJ Zondo and the rest of the Constitutional Court Justices respect me and

they would support my leadership. I have no doubt about that. My fourth and last point, Chair, is that I believe that it's actually a huge advantage that I do not come from the current ranks of the Constitutional Court. What others describe as coming in from the cold, I see as bringing fresh perspectives and a wealth of experience from my time in the High Court, my long years at the SCA and the almost seven years in the institution's leadership, which has accorded me access to the other ranks of the judiciary and given me a holistic view of the entire institution and its challenges. It must always be also said that there is a longstanding lack of synergy between the Constitutional Court that sits up there and the rest of the judiciary. There is lack of synergy between the Superior Courts and the Magistracy and the other Court and we need a Chief Justice who is sensitive to these gaps and has the ability to bring cohesion and unity to the institution so that all our Courts can feed of an strengthen one another. So, all four excuses in my view, have no substance, Chair. I'll leave it at that for now. Thank you, Chair. I think I'm still within my 30 minutes.

Deputy President Petse (Chairperson):

I would rather not comment on that. Thank you, President Maya, for that presentation. At this juncture I will also take a pause and allow the members of the Commission to put such questions to you as they might have.

President Maya:

Before we do that, Chair, could I just ask a quick comfort break? Just five minutes.

Commissioner Malema:

I wanted to do the same, Chair, after such a brilliant presentation, we must listen to ourselves briefly.

Deputy President Petse (Chairperson):

President Maya, your motion has been seconded. So, we'll take a comfort break for, should we make it ten minutes?

President Maya:

Ten?

Deputy President Petse (Chairperson):

Ten minutes, so we'll reconvene at 20 to 11.

President Maya:

Thank you, Chair.

Commissioner Schlemmer:

President? Sorry?

Commissioner Mpofu:

I think Commissioner Malema also ...[intervenes]

Deputy President Petse (Chairperson):

Just give me a moment.

Commissioner Schlemmer:

It's not a hugely important point, it is teatime now.

Commissioner Mpofu:

Might as well take it.

Deputy President Petse (Chairperson):

So, how long should we adjourn for?

Commissioner Mmoiemang:

The program says until ten to, Acting President. That's what the program says.

Commissioner Mpofu:

When is the scheduled tea break?

Deputy President Petse:

Ja, let's make it until quarter two.

Commissioner Mpofu:

Ja, thank you.

[tea break 1:40:09.3]

[resume 1:59:58.1]

Deputy President Petse (Chairperson):

Fellow Commissioners, will you please settle down for us to resume with the proceedings. Thank you. Fellow Commissioners, in keeping with the traditions of the Commission, we'll, all those members who wish to speak, alert me and I will make a note of them and give them the opportunity to put whatever questions they might have to the candidate in accordance with the order in which their names have been recorded. I confirm that I already have three names. Honourable Minister Lamola, JP Tlaetsi and Commissioner Shabangu-Mndawe. For the benefit of the recording team, I would ask each and every Commissioner who wants to speak, to press the mic, record your name, then I will take it from there.

Commissioner Madonsela:

Noted, Commissioner Madonsela.

Commissioner Mpofu:

Mpofu.

Commissioner Magwanishe:

Magwanishe.

Commissioner Malema:

Malema.

Commissioner Nyambi:

Nyambi.

Deputy President Petse (Chairperson):

Okay. I'm making a note of the names, Commissioners, please give a moment.

Commissioner Tshepe:

Tshepe.

Deputy President Petse (Chairperson):

Okay. Commissioner Mmoiemang. Commissioner Dodovu. Commissioner Xaba, Commissioner Lucas, Commissioner Singh.

Commissioner Mpofu:

Chairperson?

Deputy President Petse (Chairperson):

Commissioner Advocate Mpofu, I've got you, you're noted.

Commissioner Mpofu:

Earlier, yes. No, I'm raising something else. I know that you noted me earlier. I just wanted to ...[intervenes]

Deputy President Petse (Chairperson):

No. Okay, let me first record the names of all the Commissioners who want to speak and then I will give you an opportunity to say whatever you want to say.

Commissioner Breytenbach:

[indistinct 2:05:28.7]

Deputy President Petse (Chairperson):

Professor Schlemmer. Was that Commissioner Breytenbach?

Commissioner Breytenbach:

Yes, please, sir.

Deputy President Petse (Chairperson):

Thank you, noted.

Commissioner Barnard:

And Barnard please, Acting President.

Deputy President Petse (Chairperson):

Noted, Commissioner Barnard. Commissioner Matolo-Dlepu, I think I had your hand up a short while ago. No, unfortunately you'll be number 17 on my list. I hope that your questions will not have evaporated by then?

Commissioner Tshepe:

President, do you have my name?

Deputy President Petse (Chairperson):

Advocate Tshepe, yes, I do.

Commissioner Tshepe:

Thank you, President.

Deputy President Petse (Chairperson):

Advocate Cane?

Commissioner Cane:

I haven't put my name.

Deputy President Petse (Chairperson):

Okay, sure.

Commissioner Cane:

May I maybe ask for a question if necessary?

Deputy President Petse (Chairperson):

Noted. Commissioner Malema, I nearly overlooked you. You'll come in as number 18, I hope you don't mind.

Commissioner Malema:

I was number three.

Deputy President Petse (Chairperson):

Okay, I think I've got everyone who indicated that they want to speak. Commissioner Mpofu, you indicated earlier on that you had something to say?

Commissioner Mpofu:

No, Chair, I just wanted, maybe we can talk about it offline. I was going to suggest that we don't take names in this manner. Because it just becomes a little bit undignified because if we're all going to be shouting and then we're not sure if you got the name and so on. I think we leave it in your hands, Chair. The subject, sometimes you start that side, sometimes you start with the people on the ...[intervenes]

Deputy President Petse (Chairperson):

I started on this side yesterday, so I thought that you know, today I must start ...[intervenes]

Commissioner Mpofu:

No, yesterday you started that side so today you could start, and then another time start with the ones online, but we'll be in your hands. If we end up being in the last when we put our hands up first ...[intervenes]

Deputy President Petse (Chairperson):

Well, the most important thing is that if you want to speak, then I record your name.

Commissioner Mpofu:

Yes.

Deputy President Petse (Chairperson):

Because ultimately, you know, you'll have a chance to say whatever you want to say. Thank you, Commissioner Mpofu. Honourable Minister?

Minister Lamola:

Thank you, Acting President. It's difficult to say Acting President when the President is here. President Maya, good morning.

President Maya:

Morning, Minister.

Minister Lamola:

Thank you and I must say that I got a sense from your presentation that you are standing on your own, on your credentials and not on the basis that you are a woman.

President Maya:

Thank you, Minister.

Minister Lamola:

Is that impression correct? I thought you would want to say something.

President Maya:

I agree with you, Minister. I'm not here simply because I'm a woman, I'm a Judge, a worthy Judge, I think I've proven myself over 22 years and the fact that, very important, that I'm a woman of course, but it's just one of the, I'm not good because I'm a woman. I'm just a good woman Judge.

Minister Lamola:

Thank you. I wanted you to say it. Thank you. The Constitutional Court in the certification judgment alluded to our kind of unique separation of powers.

Commissioner Malema:

Sorry, Minister. Chair.

Deputy President Petse (Chairperson):

Commissioner Malema?

Commissioner Malema:

How are we going to deal with the clapping of hands? Because it's unacceptable, it's wrong.

Deputy President Petse (Chairperson):

Yes, it is. In fact ...[intervenes]

Commissioner Malema:

We run a risk of rent-a-crowd. That's where it will go.

Deputy President Petse (Chairperson):

Yes.

Commissioner J Malema:

If people clap hands in here, we run a risk of people who are going to ask people to come here and clap hands.

Deputy President Petse (Chairperson):

Yes, I take ...[intervenes]

Commissioner Malema:

It must not be allowed.

Deputy President Petse (Chairperson):

I take your point, Commissioner Malema. You know, it's also something which doesn't go well. We have to maintain the decorum of the, you know, solemnity of the occasion. So, I would ask the people who were responsible for that clapping to desist and that they should just keep silent and observe the proceedings. Thank you.

Minister Lamola:

President Maya, my first question relates to the Office of the Chief Justice in line with the separation of powers principle. The Office of the Chief Justice was an invasion which emerged from the interaction between the executive and the judiciary and was always perceived as a transitional phase towards the ideal and [indistinct 2:11:18.5] that suit the South African separation of powers. What lessons and features of the OCJ model, do you believe must be considered in the final end policy?

President Maya:

I think, put simply Minister, I think they also, well, it's acquitted itself very well from its, you know, consecutive clean audits, it's done a really good job and I think it should be maintained

as is save to just give it, I don't have the terminology, but we do know that not all the powers over the judiciary, which we traditionally exercise by the Minister of Justice, were transferred to the OCJ and that's what I was saying that, you know, it must become a full national department now. All powers of a national department should be transferred to it, so that it runs the show fully. And, of course, it might need to be capacitated. For example, I'm glamouring for, you know, the bringing in of the Magistracy and the other Courts and I don't know that it has the capacity to deal with that huge influx of human resources and the responsibilities that would come with that. So, I would ask that simply as it is, it's doing well, just capacitate it fully now.

Minister Lamola:

Section 44 of the Superior Courts Act, maybe I should read it, I'm not sure if you have the Act.

President Maya:

I do have a copy of the Act, Minister, let me just find it?

Minister Lamola:

Ja, gives the powers to the Chief Justice to determine the budget of the OCJ and also after consultation with the Heads of Court and it then gives the OCJ the responsibility to account and all that. Is that not a solution to the issues that you are currently raising? Because, for example, I'm not sure, I would not really want to, we have not had a situation where there is that determination by the Chief Justice, despite certain instances where we want to engage on the matter. I think you understand what I'm trying to say?

President Maya:

I would say yes, Minister.

Minister Lamola:

So, what is your observation in terms of what should be the relations that could happen between the executive and the judiciary, as you become Chief Justice, because there are those that believes that, there's that interface that should happen, but obviously they could be amongst your colleagues that believe that there should be a Chinese Wall or a Berlin Wall where there must be no discussion, any kind of discussion it affects the independency of the judiciary.

President Maya:

There is one South African people, one flag and all three arms of government are working towards having that entity. So, engagement is going to be necessary, you know, at various areas of you know, us trying to achieve serving the South African people. Just a practical example, I mentioned the engagement we had with the, led by Chief Justice Mogoeng, I think it was in 2019, 2020, just before Covid, with the Justice Portfolio Committee. I had not had that exposure with the other arms of government and I was just surprised with the level, you know, of mutual understanding and cooperation that arose from that, without in any way, you know, infringing on each other's, the independency of the judiciary because that's always the tricky horse. We have to work together. There has to be an interface as long as we ensure that, you know, in whatever endeavour we are, we are pushing towards, we just carefully watch out for the boundaries.

Minister Lamola:

Ja, for your comfort, I agree with you. The second one is in relation to modernization, which you said you hope I will agree. Indeed, I agree. And then it also falls within the same kind of category of engagement to make the reality, because we all want to see it being a reality and if there is that engagement, I believe it can, it is doable, it can be done. But my question is, your involvement with the modernization and digitization project currently, because you do have, I know, as a pilot in Gauteng, but I know there's been some glimpse of kind of modernization even in the Supreme Court of Appeal. So, what has been your role to move towards modernization and what do you envisage it being as a Chief Justice going forward?

President Maya:

Firstly, Minister, I was part of a delegation that was invited by a world leader in this area, China, delegation led by CJ Mogoeng. It was CJ Mogoeng, JP Mlambo, who heads our date and IT committee, the Judges', the judiciaries committee and a couple of other senior Judges and I, just to observe how it works. I mean, China is lightyears ahead of everyone in the world, I guess. So, that gave me an opportunity of actually seeing how far we can take this thing and exactly what it can do for the institution of the judiciary and enhancing access to justice. I mean, they even took cases by telephone in China. They have all sorts of creative ideas. They use, you know, they have a vast country of course, but they are able to reach each corner of that huge continent and run an efficient judiciary. That's one. So, I have a fair idea of what Court modernization, not a fair, I have a full idea of court modernization. I attended the BRICS together with the Chief Justice and JP Mlambo. Again, we went to Brazil where there were, you know, there was a conference on this very issue and you had the US, the UK, all those first world countries who again were shown to lag far behind China, but was speaking about blockchain and 5G back then, you know, concepts that the countries were still trying to understand. So, I know what it's all about and what good it can do for us and fortunately, and I know that you are a huge proponent of that and I suppose the fact that you're a millennial, you know, gives you a natural aptitude towards some of us older, you know, we struggle with it. So, I know that the judiciary has the necessary support to implement it fully, Minister. There may be constraints, budgetary constraints and all that, but we will get there. So, I'm all in in street parlance. I'm all in for it.

Minister Lamola:

No, thank you, President. Indeed, you have the full support of the executive on this project, as the judiciary and the executive is willing to help you to do it in a manner that you still believe will protect the independency of the judiciary. On the point that you have raised on the Section 29 of the Superior Courts Act, I don't want to bring to you judicial controversy and executive controversy, but you know what why it is not being implemented?

President Maya:

Yes.

Minister Lamola:

So, how are you, and I know that you have said that there's not been a meeting of the Heads of Courts and I will assume that you are raising this in your personal view? It is not a view that has already been conversed with the Heads of Courts?

President Maya:

Not at all. Not at all. I must make that declaration.

Minister Lamola:

Yes, I wanted you to come with that, you know where it is stuck and ourselves as the executive, who are ready to implement the Section 29, if yourselves as the leaders of the judiciary says we should do so.

President Maya:

Then one would have to speak to the colleagues and make sure that the necessary happens.

Minister Lamola:

Thank you. My last question relates to the one last matter. You may decide not to answer it if you want not to, because I think, as I answered the question, you'll begin to get where it comes from. It is the fact that as a Chief Justice, you are going to chair the small JSC that discipline your colleagues and I've heard, as we started the interviews with the Judge, with acting Judge President Petse, you know each other very well for many years. Petse. Yesterday he said he has known Justice Madlanga for over 40 years. Which I suspect is something that all of you, you know each other at that level as Judges.

President Maya:

It's a small community, a very small community, Minister and we all come, you know, way back.

Minister Lamola:

So, how are you going to sit and be the chairperson of that when you know each other and sometimes there are issues of conflict of interest, you have to recuse, so how are you going to ensure that there is discipline and that Judges who are supposed to go through that process, are taken through the process and you as a leader of the judiciary, sit as you are supposed to sit when it's your colleagues, it's your friends? As you know each other as, I can hear.

President Maya:

It should not be an insurmountable challenge, Minister. I'm a Judge, impartiality is the name of the game. DP Petse and I may have known each other for 40 years, but that does not mean we necessarily have a close relationship. There are relationship and there are relationships. And whenever, you know, a matter involves a colleague with whom I enjoy, you know, something extra, then I would simply have to recuse myself and there will be an alternative, the Deputy Chief Justice to step in in that case. I don't have close relationships with all my colleagues.

Minister Lamola:

Ja, my worry is that you might have to recuse yourself at each and every ...[intervenes]

President Maya:

No. One thing, I'm known to be a warm person but very firm and when I become firm, people are usually surprised, is that the same person. So, it's not a problem for me. Not all Judges are my friends or close, you know, close colleagues.

Minister Lamola:

Ja, thank you. Thank you, Acting Judge President Petse. I always say Tshepe. Petse.

President Tshepe:

And I do not mind.

Deputy President Petse (Chairperson):

Thank you, Honourable Minister. Advocate Cane has got a follow up question. So, I will afford her the opportunity to put her question.

Commissioner Cane:

Thank you, Acting President.

Deputy President Petse (Chairperson):

Thank you.

Commissioner Cane:

Good morning, President Maya.

President Maya:

Morning Commissioner.

Commissioner Cane:

I would just like to follow up on the Minister's question because it's a very uncomfortable thing for colleagues to discipline one another and it requires a great deal of courage and it's self-sacrificial in a way, because it's the last thing on earth one wishes to do. I need an assurance from you, along the lines of the Minister's question that that is really something you are prepared to lead in doing and perhaps in answering my question, you could deal with the

recent disciplinary matters that the small JSC has had to deal with. Very, very difficult, quite traumatic matters. At least one of which you were not present in. Perhaps you could give us an explanation in that regard, please?

President Maya:

I imagine that you are speaking about the matter of Judge President Hlophe?

Commissioner Cane:

Yes.

President Maya:

You know, Judge President Hlophe is not even my friend. I was laughing to myself when I heard him explain, I think it was during his hearing before the tribunal that the CJ and other colleagues had been invited to his wedding, I was not invited to that wedding, we don't have that kind of relationship, but we have a close relationship. When I was quite young, fresh from the US, he was fresh from Cambridge, we were working together at the University of Transkei, you know, these youngsters who had just come back to the country. We were excited to do great things for the university and we had that, you know, and he was the head of department, of my department and then he went to Cape Town and coincidentally I happened to start my judicial career there, when [indistinct 2:26:05.9] SC identified me, the person he would have spoken to would have been JP Hlophe, who was the Deputy Judge President in that Court at the time and then DJP Hlophe would have spoken to JP Edwin King. So, it's a very sentimental issue for me, where I started this path. Cape Town, which was a very difficult Court, I mean, we know about the challenges of that Court, but it was extremely difficult, even back then. There was an issue that concerned me and another, I'm being longwinded now, but on the first week of our arrival there with the other black acting Judge, there was a huge article in the Cape Times, castigating our appointment to that Court. So, and there was a, you know, those dynamics always make for uncomfortable situations and JP Hlophe was there to protect us and defend us. And we worked together. He is one of the Judges, he and Judge Jeanette Traverso, one of my, you know, main mentors, helped me, during a very, Cape Town is a big division, rigorous division and I was as nervous as anything. I mean, starting, I started, my first case was a case dealing with ME, a Full Bench thing with 18, huge records sitting in a full

bench and I was literally trembling. And JP Hlophe and Judge Traverso are the people who comforted me and they showed me that, hey, we're here to support you, you know you can do this. So, I have that kind of relationship with them and people knew that I started my judicial career there. Imagine if I sat in a matter that involves him and low and behold, I write a, you know, I find in his favour. We, even the threat of a perception, you know how it is, the judicial independence is a very delicate course. So, even at the SCA, many cases came involving JP Hlophe, and all my colleagues, I'd made it clear to the President party that look, I have had a prior relationship with this chap, I would really be uncomfortable sitting in judgment of any of his matters. So, I always avoided anything to do with him. But his is the only, he is the only case that I avoided, if you want to put it that way. And I gave full reasons for that. I explained to the JSC that look, I can't sit in that one. I will send an alternate. The other one was the case of Judge Mtata, but I had not been able, I don't know, I just can't remember what the reason was, that I was not able to come. And then Judge Navsa was acting at the time. Was I on, I can't remember now? But Judge Navsa came, but you will recall at the tail-end of those proceedings, I was there. I came, I did not recuse myself when I was able to avail myself. So, it's only Judge Hlophe, and I know a lot has been made of that, nothing sinister, Commissioner, it's just that I have that special, he's one of my, I look upon him as my big brother. Let's forget about the other business.

Commissioner Cane:

Thank you very much.

Deputy President Petse (Chairperson):

Thank you, Advocate Cane. Commissioner ... you're covered?

Commissioner Tshepe:

Yes, I'm covered, thank you.

Deputy President Petse (Chairperson):

You are covered, thank you. JP Tlalets?

Judge President Tlaetsi:

Thank you, Acting President and good morning, President Maya.

President Maya:

Morning JP.

Judge President Tlaetsi:

I know that you are well. Just one thing that I would want to clear up. I'm glad that in your response to the Minister, you indicated that you stand here on your own medal, your own credentials and that brings me to the issue that the power to appoint the President of the SCA and the Deputy, the Chief Justice and the Deputy Chief Justice, best with the President, the State President. He or she nominates and appoints and it is for the first time that South Africans have been given an opportunity to play some role, perhaps it will be defined later in this process. And what has happened before, I had known that we have always had good women Judges with impeccable credentials who could have been appointed and who could still be appointed. It shouldn't appear as if it is actually a miracle. Now, this brings me to the next question, which was asked yesterday. Is South Africa ready for the appointment of a women Chief Justice? I don't know if your answer is South Africa has always been ready, perhaps those who appoint, who are vested with the powers, may not have been ready?

President Maya:

You know, well, thank you so much for asking that question, JP. Look, I fully appreciate the sentiment behind it. I respect it, but I don't think it's a proper question to ask because it implies all sorts of negative things. But short answer is, South Africa has always been ready to have a female Chief Justice, at inception, as you point out, we had strong capable women in the Constitutional Court. We had Justice Mokgoro, we had Justice O'Regan and we know them, what they are capable of and in other Courts as well. So, there's never been a shortage of women who could take up leadership in any of the realms of this institution of ours. And, I tell you this, that question actually annoys a lot of women and I've had people ask, was it ever

asked if South Africa is ready for a black Chief Justice and if not, why? Why are we asking about it, about woman as if we are this homogenous, this special group that needs to be done a favour just keep checking if they are ready and then at some stage we think, oh, maybe, maybe now. No, that's not who women are. We are as capable as men, I need not say that, I need not say that, JP. Women are able to do things, well, things have changed, things have changed, men can give birth now, so maybe, I won't go that far.

Judge President Tlaetsi:

I thought the star witness didn't understand that. Thank you on that. Yes, something that I would want to clear up now, like may have happened in the past, and I wouldn't want it to stay there as you go through this process. There was one issue that occupied the JSC in the previous interviews for the position of the Constitutional Court Judge and I know you had to recuse yourself, and on record, I don't think much was said about the reasons why you recused yourself, but there were some discussions between the candidate and the Commissioners in your absence and I think, Justice Cachalia stood in for you?

President Maya:

Yes.

Judge President Tlaetsi:

Now, maybe you could, if there's been any developments, clear it up. The reason why I'm asking this, is that if you are appointed Chief Justice and you have a fellow colleague or Judge who might feel, and actually, I think she's going to be a candidate in the next round of interviews, she might feel somehow prejudiced and feel that I would not get it, and some may go further and say, since that time, she has not acted in the SCA. Is there something that's going on here and whether you're going to recuse yourself there? Up to when are you going to recuse yourself, if that is the case, because two ways – either you'll be chairing if you are appointed, or you will be representing the SCA if you're not appointed. Is there anything that perhaps you can clear up?

President Maya:

I'm glad you raised that, JP. Look, it's a difficult situation and I don't want to say much about it, for my own part. No secrecy about it, it's something that arose during, you know, and I think the media was also there when this came up. Briefly, we are about to start interviewing for the Constitutional Court and I find on my desk, and I see that other Commissioners have been, you know, furnished with this document, something from the JP, sorry, from the CJ, which was, I think, I've unfortunately, well, Mr Chairman, he can remind me, it was such a long time ago, but for the first time we learnt that the CJ was going to ask the candidate, I'm not going to name her, the Chief Justice was going to ask the candidate about an incident that had happened at the Constitutional Court involving her clerks. Out of the blue. And I was in distress, because I immediately realized that I had to recuse myself, I could not possibly sit and it was almost nine, we had to start, and I had to find an alternate and I was, you know, furiously calling colleagues, senior colleagues and the most senior person I think was in Vryheid, another one was at a bereavement, or something, I could not find, and I went down our list until I found Justice Cachalia, who had his own commitments but graciously agreed to assist the Commission, so he came in. And the Commission knows fully, you know, fully, you know, what had happened, what the, you know, how that came about. I had lost, from what the CJ and the DCJ had said, had been said about me, I had, I was compelled to file a complaint against that colleague, but as things progressed, I realized that actually, if I followed through with it, it would bring the judiciary into disrepute because we had a dispute that involved the tree-top charges in the country and it came to a stage where it was the word of one against the other, it was just ugly. So, I just withdrew my complaint and I decided to walk away from it. But unfortunately, my daughter was involved in this thing and her view was that you are, meaning me, you're an established Judge, you can afford to walk away from this thing, because you are established, you know you've achieved all you want from your career, I'm at the beginning of my career and there is this, you know, stain against me now that I have to deal with. And so, that's how this thing has stayed alive and I may mention that it's a matter of public record. There is an appeal actually, against the decision that was made by the JCC. I don't know at which stage it is. So, that's what it is. Now, I've had to recuse myself each time the candidate has made herself available for a vacancy in that Court, for obvious reasons. But I can tell you this, JP, we are all adults. Speaking for myself, I don't hold grudges. We are here. I mean, this is not about this job, this job we have that comes with such immense power, it's not about us. It's about this country, her people. There is no time for personal issues. We fight with colleagues, you know, we, judges are as human as everybody else. There are disagreements between colleagues all the time, but we make up because we realize that the goal is to achieve, to execute, you know, that constitutional mandate in this book. So, I don't foresee, I will not sit, I would comfortably sit in an interview that involves her and not

hold anything against her, and actually, vote in her favour if I believe she has what it takes. And I would work with her anytime, anywhere and I make that declaration here, without any problem at all, because as I say, this work is not about personalities. It's about our country and her people. There is no time for personal squabbles and I have said I'd be short, but that in a nutshell is my answer.

Judge President Tlaetsi:

Unfortunately, I got more than I bargained for.

President Maya:

I'm sorry.

Judge President Tlaetsi:

And the rule is, never ask a question that you are not too sure about the answer. But then, I think it's important that if needs be, that if there's still anything out of it that you provide leadership in your present capacity and in your future, should you be appointed.

President Maya:

Yes.

Judge President Tlaetsi:

And then, something that I also asked yesterday, what's your view about the Chief Justice, the judiciary, viz-a-viz the media?

President Maya:

Sorry, just the last?

Judge President Tlaetsi:

The role of the Chief Justice and then the judiciary, viz-a-viz the media, how to handle the media, how to deal with the media issues?

President Maya:

As I indicated, I watched some of yesterday's proceedings and I did hear, fortunately when that matter arose, and I want to throw back something, something very interesting you mentioned with which I fully agree. JP, the OCJ, our department, has a communications department with a spokesperson. Now, you said something, the interesting bit is what you said that you know, we could have an office within our institution, perhaps manned by a retired Judge and I was thinking to myself that look, first, the UK Supreme Court for example, has a fully professional press office that deals with all issues that affect the Court. Anything the media wants to know that has to do with the Court, they deal with and I believe they are professional journalists as well in that office and communication specialists and all sort of fancy people and which we seem to already have in the OCJ, as I mentioned. Now, with the additional of a Judge that would perhaps deal now with the more sticky issues, which require, you know, legal information. I'm thinking of a case, for example, where there's something viral on social media, that shows that the public misunderstood the import of a judgment. Now, the communications people may not be able to deal with that and you don't want the Heads of Court and the Chief Justice, do not necessarily have to deal with that. Now, if you have a retired Judge, sitting there, they would be able to just play, let me say, play and educative role and issue a statement, just dealing with that in a tactful way to make sure that, you know, to address the misunderstanding and any other issue. You know, I'm just thinking about something else now. We have a cadre, a large cadre of retired Judges who are in perfect health and it makes me so jealous, because these Judges, they are working. They are working in the neighbouring countries. They are doing arbitrations, full steam ahead. They are working and there is so much that they could do. But that's another issue, I guess. They can do so much; we can employ them in all sorts of ways. You know, including in the JCC for example, because I know that the colleagues who man the JCC and the JCT are uncomfortable about dealing with issues concerning their colleagues. But if you use a retired Judge, for example, someone who is, there's distance now, then it becomes, and Judges are very busy in any event. I know that my Judges who sit in the JCC struggle because they have a very heavy

workload and they must deal with these other matters and write judgements in these other matters. So, ja, in short, I'm sorry about going so far out, I would implement your idea by beefing out the communications office we already have, put a retired Judge there to deal with all those things. Of course, that retired Judge, if there ever was need, would consult the Heads of Court cluster for guidance and a mandate if something serious, you know, arose, that they felt they needed help with.

Judge President Tlaetsi:

Unfortunately, my time is up. Thank you very much, President.

Deputy President Petse (Chairperson):

Thank you, JP Tlaetsi.

Commissioner Malema:

I just want to make a follow up.

Deputy President Petse (Chairperson):

Please do, Commissioner Malema.

Commissioner Malema:

Thank you, Deputy President. Thank you, President. Is it wrong for Judges to recuse themselves from time to time when they think there could be a perceived, you know, biasedness or anything of that sort, where you feel, as a Judge, look, whether the facts are right or wrong, it doesn't matter, but for the sake of the image of the judiciary and for the perception, I will recuse myself. Is it wrong or is it the right thing to do and does it help to enhance the issue of the judiciary?

President Maya:

That is actually part of the Judges Code of Conduct. You're expected to do that to avoid bringing any disrepute to the institution. Because just even a perception that you might be biased, you know, is detrimental.

Commissioner Malema:

So, it will be unfair to use two of your recuses both on Judge Hlophe and on the matter we referred to earlier? It will be wrong to use that one to create an impression of a permanent recuser. A person who just permanently recuses herself. Because I don't want to leave here and then during the deliberation an impression is created that you are going to be recusing yourself all the time, because you did this and that on two or three occasions.

President Maya:

Two occasions.

Commissioner Malema:

Ja, on two occasions, on Hlophe, and the one you were referring to. And now an impression wants to be created that you are going to be this absent Chief Justice who is going to be conflicted and not preside over critical matters.

President Maya:

No.

Commissioner Malema:

It will be unfair, if anyone wants to use that argument, where you did the right thing as a judge, and recused yourself.

President Maya:

I couldn't put it any better, Commissioner Malema, I agree with you.

Commissioner Malema:

Thank you.

Deputy President Petse (Chairperson):

Thank you, Commissioner Malema.

Commissioner Matolo-Dlepu:

Chairperson, a follow up. A follow up.

Deputy President Petse (Chairperson):

Commissioner Matolo-Dlepu.

Commissioner Matolo-Dlepu:

Thank you, Chairperson. Good morning, Justice Maya.

President Maya:

Morning Commissioner.

Commissioner Matolo-Dlepu:

One of the things that you, a follow up on your question from our colleague here, regarding the public's perception of judgments, whether do we need somebody to explain, because I'm not talking about political perceptions and everything, but I'm talking about how the public interpret judgments and you have found a lot of perception, which is coming out wrongly to the public, either maybe the media is part of that, in interpreting the judgment. Don't you feel that somehow, we need an office or communications office, to try and interpret, you know, in plain form what this judgment means. I'll tell you why, I mean, the Afriforum judgment actually was very misinterpreted and the public are left with that feeling that the Afrikaans is being favoured and everything. So, I think you must look strictly into that. If not for the benefit and the education of the public, not other issues.

President Maya:

I fully agree with you Commissioner. In fact, this is something we often talk about. Look, judgments are full of legalese. They are sophisticated documents by enlarge, when they, when an ordinary South African should be able to pick it up and read it and be able to understand it, and we've always felt that there's need for something to be done to educate our people. Not just about our judgments, even about the Constitution, their rights under the Constitution. The only thing we do, you know, to reach out to the public when we deliver our judgments, is this what you call media summaries, which are just a tiny extra of the case, and that is certainly not enough. It seems to me that I don't know which, maybe an organ of state or the judiciary, but someone has to take responsibility, just to educate our people about the law, their rights and the judgments that come out of the Courts. And it's just something, maybe that would be an agenda item, for example, in the Judges' conference, I'm pleading for, what role the judiciary itself could play in bringing about something of that nature. Sorry, a platform of that nature. I was just having a chat with a colleague of mine who is involved with the Rules Board and she was telling me about moves that some of the things that the Rules Board is presently engaged in, such as setting up help desks in all Magistrate's Courts, you know, in the townships and looking at creative ways of, you know, just transmitting information to people using a cell phone, which almost everybody in the world has. But it's something that needs to be looked into, it's important. It's important.

Commissioner Xaba:

Just a follow up this side, Acting President.

Deputy President Petse (Chairperson):

Yes, you can. Noted, Commissioner Xaba. You may proceed.

Commissioner Xaba:

Thank you so much. Good morning, President.

President Maya:

Morning Commissioner.

Commissioner Xaba:

Thank you. I just want to make a follow up, something I did yesterday. There is a, there is what is known as traditional approach that says Judges speak through their judgments and we also have a Constitution that gives you the right to freedom of speech as an individual. Now, the question was, what is your take when a senior Judge falls into temptation of entering into a policy discussion on matters in some cases would like come before him or her at some point? What is your take? I'm, we are, I'm raising this point because this is a senior position, you'd be the head of one of the arms of the State and when you speak, the nation listens. What is your take when you would now not follow this traditional approach and you claim that the Constitution grants you a right to freedom of speech and therefore, you know, a right to participate in any policy discussion? Thank you so much.

President Maya:

Thank you, Commissioner. I hope you won't mind the manner in which I'm going to answer the question. I'm on record before this Commission, I think as recently as 2017, in an exchange with the Chief Justice who was asking a related question about, you know, Judges, the right they enjoy along with the rest of society to freedom of expression and I espoused the traditional view, which is considered as conservative, that Judges speak through their judgments. Yes, we speak on public platforms, I do that all the time, but only for the discrete purpose. It would be scholarly platforms that, and your presence there would be for the purpose of educating the public about the law and our institution and related matters. No more. That's my view. And I mean, most Judges believe that it's dangerous for Judges to put themselves out there. It's just, I mean, that's the honest truth.

Commissioner Xaba:

Thank you so much.

President Maya:

It's not desirable.

Commissioner Xaba:

Thank you so much, President.

Deputy President Petse (Chairperson):

Thank you, Commissioner Xaba.

Commissioner Barnard:

Follow up, Acting President. Commissioner Barnard.

Deputy President Petse (Chairperson):

Oh, Commissioner Barnard.

Commissioner Barnard:

Thank you.

Deputy President Petse (Chairperson):

Please proceed.

Commissioner Barnard:

Thank you. President Maya, just on something ...[intervenes]

President Maya:

Oh sorry, he's online, I'm sorry, I'm looking for him. Good morning, Commissioner, sorry.

Commissioner Barnard:

Good morning. Just on the statement that you made that judgments contain legalese. Now, if one thinks that the purpose of judgment is to give the litigants reasons for, you know, why the judgment has been made, if it's right that judgment should contain legalese, is it not so that there should be a drive to write judgments in a way that they are understandable. In other words, not needing to have a press conference afterwards, for example, to explain?

President Maya:

You're quite right, Commissioner, and you would know one of the first lessons, one learnt at the SCA was that you right simply, you know, simply and keep it crisp for many beneficial reasons. Simple and crisp and I remember that one of my senior colleagues gifted me on my birthday with Fowler, Fowler's Use of English which espouses exactly that. And that's why we

discourage the use, even with, you know, it's a sore point for some of us, the use of Latin, because what people are not going to understand what *ex abundante cautela* means, for example, and why do you want to use high flown language in any event. So, ja we should, we have an obligation to keep our judgments simple but it doesn't always happen and actually, I had wanted to say, when I spoke about the Apex Court, that one of the things, one would want to work on, is just to keep the judgments short, shorter and simpler, you know. But that's something we can deal with some other time.

Commissioner Barnard:

Thank you very much. Thank you.

Deputy President Petse (Chairperson):

Thank you, Commissioner Barnard.

Commissioner Schlemmer:

Chair, may I ask a follow up question, please?

Deputy President Petse (Chairperson):

Please do, Professor Schlemmer.

Commissioner Schlemmer:

Thank you very much. Good morning, President Maya. The discussion thus far concerning the legalese and making judgments simple and easy, how do you then see the role of the Apex Court, the SCA, in the development of the law and the interpretation of the law, if your judgments are very crisp and short and not containing legalese? How are you going to work around the fact that quite a lot of, well, quite a number of some of the recent SCA judgments, that dealt with issues like prescription for instance, missed the point and now created new precedent that is actually not beneficial to litigants, especially those that do not have money

to take this on appeal to the Constitutional Court. We now have new precedents where people didn't understand the basic principles of prescription, it seems. So, if your judgments are going to be, well, less complicated, less legalese, how should the lawyers of the future then be trained in understanding legal argument, using legal principles correctly? Would you mind helping me there, please?

President Maya:

You can produce a short and simple judgment with all the essentials in it, Professor Schlemmer. I was very lucky, I started with the SCA in 2005 when there were giants in that Court, and actually, those guys were the proponents of that view that keep your judgments, especially if you are the Apex Court and we were warned against, you know, addressing this thing of picking up all the low-hanging fruits, addressing everything and you're criticized if you did that, that's puny Judges do it. If you can decide the case on just one point, do that. It is actually safe to do that, especially if you have not had, for example, the benefit of a good argument. Just decide on that [indistinct 2:59:17.0] issue and you can be sure that that issue will come back before this Court again and you can, you know, deal with it at that stage. Short answer is, it is possible to produce a great judgment which is short but it still contains everything that needs to be said on the subject. As to the quality of the judgments, Prof, sorry, Commissioner, it's work in progress and you're going to get these things and you must just find ways of improving ourselves and I'll tell you this. We started something at the SCA a while back, but then, we didn't actually start it, back in the days we had, for example, Judge Harms, a natural born teacher, who would, you know, occasionally give us training on IP, IP Law which was his forte, and we picked up on that in later years, when we realised that, I mean, we have Judges, for example, brilliant Judges who come from the Magistracy and would have missed a whole lot of experience on Commercial Law. I'm not putting myself in a better position, I missed out on that experience as well, coming from the Bar. But that's another issue. Now, you have those kinds of people, industrious, intelligent people, but they don't have the basics and a whole lot of us, because of our background, we missed out on this, on some of these experiences, unfortunately. So, we decided to pick up on what Judge Harmse was doing for us, back then, and we had peer training, peer training sessions. I would invite even retired Judges to come, just start with judgments writing which SAJEI does, but I don't, you can never have too much education and I think, having a group of senior Judges, a few senior Judges, you know, under one roof, discussing something may even be more beneficial. So, invite and have some of our most senior Judges judgment writing, Shipping Law, you know, all these subjects. I'm not quite sure what stopped us from doing that.

Because we had established a pattern, but it's something we are going to start again, and especially use our retired Judges. So, hopefully with those initiatives, we can give you and the rest of South Africa, better judgments Commissioner.

Commissioner Schlemmer:

Thank you, Chair.

Deputy President Petse (Chairperson):

Thank you, Professor Schlemmer. President Maya, would you please pull the mic closer to you when you respond to questions.

President Maya:

I'm so sorry. I'm so sorry, DP.

Deputy President Petse (Chairperson):

Commissioner Shabangu-Mndawe?

Commissioner Shabangu-Mndawe:

Thank you, sorry. Thank you, Acting President. Good morning, President Maya.

President Maya:

Morning Commissioner.

Commissioner Shabangu-Mndawe:

I want to first declare my relationship with President Maya. She is the President of the Women Judges Organization; I'm the President of the Women Lawyers Organization and we talk a lot regarding issues that affects women Judges and women lawyers. Secondly, SAWLA, my organization, supported her nomination and the signature on that letter is my signature, Chairperson. That's what I just wanted to declare in this house. May I continue with my question, Chairperson?

Deputy President Petse (Chairperson):

Thank you, Commissioner. Yes, you may proceed.

Commissioner Shabangu-Mndawe:

Thank you. President, I want to touch on the transformation and empowerment of women. Doing that, can you please address the comment by the BLA where they are saying that under your Presidency, in 2017, five of the seven Judges that acted at the SCA were white. 2018, six of the Judges that acted at the SCA were white. 2019, three of the eight Judges that acted at the SCA were white. 2020, five of the seven Judges that acted at the SCA were largely white males. I'm asking this question, President, because it will be very sad if this trend can continue, if you are appointed as the Chief Justice. Can you please clarify on that?

President Maya:

Thank you for asking that, Commissioner, because I saw it and it's just a complete misunderstanding of what we are trying to achieve. I'm just going to mention, just a tiny issue. I, at some stage I wrote to Minister Lamola, sorry, asking if we could get two extra acting appointments, over and above the SCA compliment who would come and act at the SCA purely for transfer of skills. There is something, Commissioner, that we need to acknowledge. Black practitioners who become Judges, started on the backfoot and it is a fact that it is the white male Judges who have the most experience in a Commercial Law, these niche areas of the law. So, the SCA, oh, and let me just, a fact that I should have mentioned is what the Constitution enjoins this Commission to look at when choosing Judges, which is a judiciary that broadly represents, you know, the demographics and [indistinct 3:05:59.6] of our society,

so it is not a sin to appoint white Judges, whether in an acting or permanent position. I want to make that clear, but I am a major proponent of transformation. If you look at who acts and who gets appointed and this Commission is my primary witnesses, who gets appointed at the end of the day? As I had pointed out in that letter I wrote to Minister, that I'm transforming this Court, I'm getting junior people, junior women who need transfer of skills, so my aim is to get, I will get two white males and my two women, black women Judges and we try, when we set out panels for sittings, we put those people together for the infusion of skills and experience. Now, I'm not going to go, I'm not going to say much more. All I'm going to point out to you, Commissioner, is look who gets appointed at the SCA ultimately. I pointed out here, earlier, that during my leadership there have been two rounds of appointments. Five vacancies during each round. Who was appointed during those interviews? It's women. Largely black. African males and only two, is it even two, only two white males. Women, especially black women and males are appointed at the SCA. So, I cannot be accused of being anti-transformational, not me. I refuse to accept that. But I'm not going to deny that I do invite the skilled white Judges, but not exclusively, so that they can give us these skills that we don't have. I mean, I said in 2017 that I have no experience in Shipping Law for example. I had sat for the first time in a Shipping Law just before I came for that interview and we had only one expert in Shipping Law at the time in the Court, Justice Wallace, who we had to make sure, during each sitting, that he would be in that case and it so happens with insolvency, insurance and so on, you can't overlook that. We need the transfer of these skills and experience that white people have, you know, had access to, when we didn't. They have it and we must get it and the only way to get it is to get them to come and work with us and share these experiences. So, I don't know if I've answered your question, but that's my attitude towards that issue.

Commissioner Shabangu-Mndawe:

Thank you, President Maya. You indeed answered my question. My second question, President, you alluded to the fact that the judiciary does not have sexual harassment policy. It's surprising.

President Maya:

Shocking.

Commissioner Shabangu-Mndawe:

Shocking in this, we are living in a very, very difficult time as women, where women are harassed be it at school, at workplace and everywhere, where judiciary does not have such policy, it's really shocking. President, when you are appointed as a Chief Justice, how soon can you make sure that this policy is in place?

President Maya:

Yesterday, Commissioner.

Commissioner Shabangu-Mndawe:

Thank you, President. My last question to you, access to justice. We always spoke about this, it's a concern between me and you and all other people who love this country. There are women somewhere in the rural areas, deep, deep rural areas, where justice to them is taboo, they don't even know when are they going to access justice. When appointed as the Chief Justice, what programs or ways that you can put in place to make sure that those women out there access justice to the fullest? Not bits and pieces, but to the fullest.

President Maya:

I happen to come from bundus, Transkei bundus, so I'm a village girl, so I know exactly what you're talking about. It's something that needs creativity and careful thought, Commissioner, but I just like to keep my program of action, you know, simple, uncluttered so that I can achieve, you know, when you have a big, you know, a whole lot of issues to deal with, you can easily get lost there. I thought, because if you recall, one of my targets in my vision for the institution, is to bring all the Courts under the rubric of the OCJ and I have this lofty idea of bringing in traditional courts as well, and I believe that through those traditional courts, we'd be able to achieve something. But it's something that I would like to debate with other interested people and develop and see just how far we can go, but we need to bring traditional courts close.

Commissioner Shabangu-Mndawe:

Thank you, President and thank you Acting President.

Deputy President Petse (Chairperson):

Thank you, Commissioner. Commissioner Tshepe?

Commissioner Tshepe:

Thank you, Acting President.

Minister Lamola:

Follow up ...[intervenes]

Commissioner Tshepe:

It is a follow up, Minister, and I will be done.

Minister Lamola:

Okay.

Commissioner Tshepe:

Good morning, President Maya. Thank you for engaging with us. I just wanted a follow up on a question that Commissioner Mndawe raised about the issue you raised about the lack of policies relating to women issues, particularly sexual harassment and the maternity leave policy. Obviously, you say you want to deal with it as in yesterday. You are part of the leadership of the judiciary, currently, and for me that is a such a key issue and I would like to know that it is not something that waits for someone of your stature to even be appointed a

Chief Justice, but it's something that could be implemented right now, with your leadership. Is that something that is possible, I would imagine, and I just wanted your view and comment ...[intervenes]

President Maya:

You make a great point. Actually, through the Women Judges Association, we are already, we liaise, once I found out about this and heard, we have stories of what is happening, you know, on the ground, and we don't want to get into that here, the South African Chapter of the International Association of Women Judges, immediately liaised with our mother body in Washington DC, because they have been working with the IBA and many other, you know, relevant stakeholders on these issues and you know, surprisingly, in many countries up north in our own continent, they already have established policies in place. One can go to town on those, so they have all the experience on that. So, my chapter is already in the process of starting that process here, educating and we will, once we get our ducks in a row, which should be very shortly, we will liaise with the SAJEI, because that should be part of training, actually. When we talk about social context training, we also talk about these things. So, we have, we've already kicked the can forward, but because we've not had, and you know how Covid has made things awkward, but we've not really had many Heads of Court meetings in the recent while. It is something I'm going to propose to my colleagues in that cluster, we'll package it, I know what I'll say to them. And of course, I'm not going to single-handedly implement a policy. I have to consult with my colleagues and they have to give their concurrence and all that sort of thing.

Commissioner Tshepe:

Thank you, President Maya. Thank you, Acting President.

Deputy President Petse (Chairperson):

Thank you, Commissioner Tshepe. A short follow up question, Honourable Minister?

Minister Lamola:

Thank you, Acting President. Judge President Maya, I want to put you more into shame that I know the former Chief Justice used to say that we are even bitten by politicians. We can't. So, the ANC has a gender policy ...[intervenes]

President Maya:

I know. In fact, my association, when we host our AGMs, our conferences, we rely on your [indistinct 3:16:09.6] Minister, [indistinct 3:16:10.3] I have made requests to you, many times for help, because we have nowhere else to get it.

Minister Lamola:

So, I want to ask you, on this one that you are raising of the appointment, additional to the establishment, that I confirm that you did write to me and indeed we could not agree because you are not the only Head of Court who wrote to us requesting to continue with the same practise, which affect the National Revenue Fund and it has got budget implications which National Treasury has raised with us. And I just want to state that will it not be possible to do this transformation that you spoke about, within the establishment that you have? Because the current financial situation of the country is precarious. We have written to all Heads of Courts on this issue, because if we allow the Supreme Court of Appeal, we must allow everyone.

President Maya:

Yes.

Minister Lamola:

And the costs are enormous.

President Maya:

No, you're quite right, Minister. We understood where you came from. I agree, we have to be creative and work with the resources we have within ourselves.

Minister Lamola:

Thank you, Acting President.

Deputy President Petse (Chairperson):

Thank you, Honourable Minister. Advocate T G Madonsela.

Commissioner Madonsela:

Thank you, President, Chair. Good afternoon, President Maya.

President Maya:

Afternoon, counsel, or Commissioner, sorry.

Commissioner Madonsela:

Yes, you've been the President of the SCA now from 2017, as the head of that Court and you are now applying, or rather, making yourself available for appointment as the Chief Justice of the country, in other words, you will be the Head of the Constitutional Court and the judiciary as a whole. I would like to ask you a question that has to do with access to justice, ultimately, but I go to that point via other ways. And I want to ask a question concerning the coherence of jurisprudence that comes out from our Courts, right from the SCA to the Constitutional Court. On the rare occasions that I've had a moment to read some of the judgments from the Supreme Court of Appeal as well as the Constitutional Court, it appears to me, and please, correct me if I'm wrong, that there are too many instances in which the SCA is upset by the Constitutional Court. Firstly, is that correct? If that is not correct, or if it is correct, is it not important for both Courts that we have a coherence of jurisprudence coming from the SCA, affirmed by the Constitutional Court. In other words, shouldn't the SCA get it right as an Appeal

Court rather than it being too often upset by the Constitutional Court and what will that have? I ask this because of the importance of the certainty about the law, because it ultimately impacts on access to justice because if litigants do come to lawyers for advice, they would know readily what the law is, because it has already been firmly established, either by the SCA or the Constitutional Court. So, what is your comment on that? Do you think that there is some disparity or there is a trajectory in which the SCA is too often upset by the Constitutional Court and is it a good thing or a bad thing?

President Maya:

Thank you, Commissioner. The first principle is that the law must be certain so there has to be coherence. But, and please make sure that you ask, put this question to ACJ Zondo on Friday. Many, I, a colleague has told me that as many as 95% of the applications for leave to appeal, from the SCA that go to the Constitutional Court are thrown out. So, the tiny percentage you speak, you know, your question arises from it, only a fraction of the cases that actually do get set down for hearing there, but of course, even those matters, they are important matters, the fact that they get set down, and if a majority of them, even if they're just a tiny proportion that come from our Court, then we must do something. But your question actually is not far apart from what Professor Schlemmer put to me. We're trying, Commissioner. We're trying to get it right.

Commissioner Madonsela:

Thanks. As a leader of the Supreme Court of Appeal, you have a Court that sits in blocks and in the Constitutional Court you'll sit as a block. A full Court, not panels of Judges. It seems to me that it is at the SCA level, you would have had to allocate cases to various panels of Judges. In allocating cases, you would be identifying cases which are important, or you regard as important, and allocate to a particular panel, but you will not have that choice in the Constitutional Court. I want to find out, if in the SCA, have you been able to tackle, as a head, as a leader of that Court, cases which you regard as important for the judiciary to stamp its judicial authority on a particular topic?

President Maya:

Sorry, you mean me as a presider?

Commissioner Madonsela:

Yes. And if you have, which of those cases do you think are, come to your mind readily?

President Maya:

Ja, I've heard that I don't sit in important cases and I'm not even sure what that means, Commissioner.

Commissioner Madonsela:

I did not ...[intervenes]

President Maya:

Afriforum ...[intervenes]

Commissioner Madonsela:

I didn't want to ask the question in that way, because I didn't ...[intervenes]

President Maya:

Ja, I appreciate it.

Commissioner Madonsela:

I didn't think that it had any merits, but ...

President Maya:

Afriforum, they, because, it looks like people judge cases by their controversy. I sat, I presided in a matter that involved President Zuma, not so long ago, where he had been ordered to pay the costs on a personal basis. I presided in that, I may not have written the judgment, but I led that case. I have, okay, let me dig myself into a hole, because I was going to say I've sat in cases that involved political parties, but let me not do that. But I've sat in important cases. I've said in Customary Law cases, a neglected area of our law which happens to service a huge component of my people, your people, our people, and I've written judgments there. Sand fleet. I've written a few cases on customary, I mean, I wrote on the right to bury on a farm owner's land, I think that's a critical case. I've written, I've written in rape cases. Look, all cases that come before our Courts are important. South African being the rape capital of the world, I consider rape cases to be some, if not the most important of the cases that come before our Courts, because through our judgments there, we tell society that this is unacceptable, it will not be done and I've sat in many of those matters, Commissioner. I sat and developed, well, I hopefully developed, I wrote my first substantive dissent there and went against senior colleagues which was very intimidating.

Commissioner Madonsela:

And have had to deal with the ...[intervenes]

President Maya:

The vicarious ability of a ...[intervenes]

Commissioner Madonsela:

Course and scope of employment?

President Maya:

Yes. I've written on a wide range of cases. I may not have sat in many politically controversial cases, but I've sat in important matters that required, you know, senior colleagues to determine

them. There are many of them. I have a list of my judgments somewhere, that list. I've sat, by the way, I've sat in over, in close to 600 cases, just at the SCA. And you can imagine the wide scope that it covers. So, ja.

Commissioner Madonsela:

President, thank you for that.

President Maya:

Thank you, Mr Madonsela.

Deputy President Petse (Chairperson):

Thank you, Commissioner Madonsela. Commissioner Nyambi?

Commissioner Nyambi:

Thank you, Acting President. Afternoon, President.

President Maya:

Afternoon, Commissioner. I must also indicate that as somebody coming from the province where when the sun rises the people works harder, called Mpumalanga. I attended the inauguration of President Maya as a Chancellor and the Premier of that province, Honourable Mtsweni-Tsipane and the vice-Chancellor, Professor Mayekiso and the Minister of Education in South Africa and the Chair or the Council, Professor Mabunda. All of them quoted your friends that are saying you are a person with a serious sharp legal mind and fine grasp of the law across a broad spectrum. I must indicate that as somebody that has been here for some time, the stories of SCA as told by people that came here to be candidates to be interviewed, I was only assisted when we interviewed the last people to be appointed at the Constitutional Court, especially Justice Mathopo. And he credited you for having dealt decisively with the division of that Court, as you tried to explain it. And we have got some serious challenges in

a number of divisions. Probably, if you can take us through the day, you set your foot in that office for the first time, as the leader, and the challenges that were there and how you were able to deal with it, without us, just assuming that you dealt with these things. I want to have a sense of how you dealt with those challenges. Because we have heard those many stories, but when we interviewed Justice Mathopo, who is now at the Constitutional Court, he was able to assist us to have a sense, but now we are fortunate to interviewing the very same person who dealt with the challenges. Take us through that first day and how you were able to deal with those challenges.

President Maya:

I suppose the question is, how did I turn the SCA around.

Commissioner Nyambi:

Exactly.

President Maya:

Alright. Thank you, Commissioner. Look, I cannot take all the credit for the positive changes that have taken place in that Court, despite all the wrangling and scratching among colleagues, which resulted in the unhappy situation that the Commission knows about. At any stage of my tenure in that Court, there always was the Judges, and this is apparent from the fact that that Court has always been one, if not the most efficient in the country, so people always worked very hard, it was just a few things that made the situation untenable for some of the colleagues. So, my colleagues, all the colleagues I've worked with, always cared deeply for the Court's welfare and their work. It just needed, you know, they say it takes one person to start a revolution, it just needed one person, Commissioner Nyambi, to stand up and say the emperor is naked, this is what is going on and once that was done, you know, people were shaken. I remember, after the interview where I'd made the revelation here, I was thinking, my goodness, there's going to be a big fallout when I go back at the beginning of term. But we managed that. But what I'm saying is, once the challenge was laid bare and I made the effort to, remember, when I mentioned that to the Commission, I said, we had already started a process but it was early days and it was difficult, of what do they call it, this training in cognitive bias and inclusivity training. It's social context training in simple terms. We'd already

started that so, I managed to prevail on colleagues, with the help of colleagues such as DP Petse and many others in the Court to turn the situation around. I guess, the short, simple answer, Commissioner Nyambi, is that as we all know, communication, speaking frankly about things, is the one thing that will repair any relationship, even a marriage, even a love affair. So, being able to talk our problems through, but the difficult thing was to get everybody to agree to undergo therapy, because that's what we did. That was the toughest bit. But we managed it because colleagues now suddenly realized that we actually have a problem and it looks like we might be able to fix it. So, it is through, well, I am the one who was the whistleblower, but with the goodwill of my colleagues, we managed to, you know, to turn the situation around and maybe I should just take this opportunity to thank my colleagues for their cooperation and willingness to listen to me and you know, help me in what I was trying to do for all of us. So, I thank them for their grace, for that. That's simply, that's my answer.

Commissioner Nyambi:

Thank you, President Maya. My last question. In your view, what is the most efficient proper way of constructive engagement of the arm of the State as somebody aspiring to lead one of the arms of the State, which is the judiciary.

President Maya:

I'm not entirely sure I understand the question, but I take it, it's not dissimilar to what, I think it was Minister and another colleague about engagement with the other ... It was the Minister, I think. We, I intend for the judiciary to have a relationship with the other arms of government to the extent that the Constitution expects us to and as I said to the Minister, there has to be an interface, we have to engage, I mean, we're all working towards one goal and it will, one endeavour of ours, we need the assistance of another arm of government to achieve. So, we can't work in silos, if I can put it like that, Commissioner. We have, as long though, as long, let me stress this, the independence of the judiciary and the exclusive terrain of the other arms of government, is not disturbed, we can cooperate.

Commissioner Nyambi:

Thank you, President Maya. We are fortunate, as Mpumalanga, to have you as somebody leading that beautiful university.

President Maya:

It is beautiful, Commissioner, thank you.

Commissioner Nyambi:

Thank you, Acting President.

Deputy President Petse (Chairperson):

Thank you, Commissioner Nyambi. How I wish all the other Commissioners who are going to speak after you, would emulate your good example and be short and to the point. We'll see from Commissioner Notyesi, who is next.

Commissioner Notyesi:

Thank you, Acting President. Good afternoon, Chief Justice Maya.

President Maya:

Good afternoon, Commissioner.

Commissioner Notyesi:

Thank you. I just want to first remark on this because I just want to focus on the leadership issue that has been ... In 1986, you could not do your fifth year in BProc because of the unrest at the university.

President Maya:

Yes.

Commissioner Notyesi:

And you were part of the students that also experienced the brutal murder of Batandwa Ndondo, it happens during that time. I just want to, I want you to reflect on that, how it impacted in your perception and ideology as a person of South Africa and the path that we have to go through. How that impacted your life as a person?

President Maya:

Commissioner, that, I don't find anything extraordinary about that experience, first, because it's the experience of all black South Africans who were alive at that, you know, during that eon. You know, it's, how can I put it, the scars, because that was traumatic, Batandwa Ndondo was my classmate, I sat, he was my desk mate in our Statutory Interpretation class, so you can imagine how I felt when that happened. And almost all of us have had, if not all of us, had our own traumatising experiences but I think those experiences have actually given us the ability to be able to implement the values that are espoused in this Constitution, because we know precisely how this Constitution came about when it speaks about human dignity, when it speaks about equality and all the other things, Bill of Rights that it provides for. It speaks to, it seeks to heal the wounds we suffered and develop a new country, a normal country, you know, for our children and the next generations. So, I think, experiences like those just serve to add depth to what we already have. Ubuntu. Compassion. Empathy and all these good qualities that are needed. I will speak about this context in a judicial officer. So, when a poor person, a person from a disadvantaged background appears in my Court, I know exactly where they come from. I bring that insight into my judging and ja, I don't know if I can put it any higher than that.

Commissioner Notyesi:

Ja, and your work as a clerk, you started there, it's a humble beginning as a clerk, and shortly thereafter, later, you are involved as a founding member in the, I mean, in the International ...[intervenes]

President Maya:

Association of Women Judges ...[intervenes]

Commissioner Notyesi:

... where you become President, your activities in BLA and NADEL. Like, I'm bringing this because of the remark that the BLA in the document that you would with such background, you would be part of overlooking of black candidates, or not at any stage of being the President who can abandon the agenda of transformation. I want you to reflect on that and the background of yourself with this that I've just read.

President Maya:

Ja, as I say when the question was raised earlier, Commissioner, the BLA completely misunderstands and I need not say more than what I alluded earlier, that this Commissioner is my primary witness, because you know, when we interview candidates for the SCA, what I say here, you know, and the statistics, SA statistics speak for themselves. Need I say more? I don't think so.

Commissioner Notyesi:

Now, moving away from that quickly, the GCB reflects on cases, you mentioned, you said more than they say, 640, they write about 640 and they're benevolent enough to confirm that in most of your judgments, your colleagues have agreed with you. There are many of the unanimous judgments that you have written. To me that talks to collegiality, to me that talks to your leadership, I mean, within the judiciary.

President Maya:

Thank you, Commissioner.

Commissioner Notyesi:

Ja. So, this issue of, I've been listening and I've been reading CASA comments which I agree with the comments, I mean, with the criteria they set as well as the university, I mean the democratic unity of the university, but there's this tendency of saying, we must ask you to tell us that you are an intellectual. Is it right? Is it not us in terms of the judgments that you have written, us who must say this is an intellectual, this is a jurist, this is an intellectual leader, but it can, I've not seen, accept the biggest arrogance, if one goes around and say I'm an intellectual, I'm this person, how does it come? Because your judgments, in fact I just want to summarize, your judgments, you were involved in more than 640 matters, mainly unanimous decisions, the Court you are presiding is reported here. I would like to read what they say. The Supreme Court of Appeal in the 2020/2021 year of assessment exceeded its performance target of analysing 80% of its matter timeously. It also timeously finalized 99%. So, the Court in terms of the [indistinct 3:43:14.6] that you are leading is a testimony, the judgments that you have done, support and lastly so that this is my last question. This is a matter you have alluded to. I've looked onto the Constitutional Court current Judges. I think there are only two Judges in recent years that were not at the SCA when you became the President, that is Judge Zondo and Judge Madlanga.

President Maya:

Yes.

Commissioner Notyesi:

All of them were there when you were, you were their President.

President Maya:

I was their President.

Commissioner Notyesi:

And it goes back even when you were the Deputy Judge President, Acting Judge President, way back in 2016, is it 2016?

President Maya:

It was from 2015.

Commissioner Notyesi:

2015, these judges are there, you have worked with them, they have supported, regarded you as a leader, is it not really one of those attempts by some people from corners to undermine leaders, I mean, particularly women, to say no, this person is just coming from outside. How can you be coming outside to people that you actually led over so many years? Since 2015. That was my last question for comments in general.

President Maya:

Well, those Justices, and I can say this, they can be asked, they don't consider me an outsider. And as I said earlier, and I speak this with absolute certainty, they would accept my leadership without a doubt. They support my sitting here now. So, maybe let me take a quick chance, you mentioned something about statistics that say it's an internal thing, but I know that my colleagues feel very strongly about it. That achieving, that target that we achieved a target of 80%, the SCA, we've had a fight with the OCJ, we dispute the accuracy of their measuring tool of our, of performance. The SCA's performance has to be in the high 90s, we have really, but that's something else. I just had to, because that 80% judges, my Judges, my colleagues are not happy with. Just that, Commissioner. Thank you.

Commissioner Notyesi:

I must thank you, President and I must confirm as I take my seat back, that from the document, from the leadership, in school up to now, it would be unfair for anybody to suggest that you would be considered just because you are a woman. There are many men who in 1986 would even fear to hold a stone, so it's worse to be fired at the university. What is their leadership then if you are not the person? Thank you very much.

President Maya:

Thank you, Commissioner.

Deputy President Petse (Chairperson):

Thank you, Commissioner Notyesi, for your brevity. Commissioner Tshepe?

Commissioner Tshepe:

Thank you, President. Acting President. Good afternoon again, President Maya.

President Maya:

Afternoon, Commissioner.

Commissioner Tshepe:

President Maya, there are just two issues I want to deal with with you. They are in fact a bit of follow ups. One related to the modernization project that you spoke about and I just wanted to find out from you, because I think modernization as a project for the judiciary, has been a great project and which helps with access to justice. So, the first issue on that, I wanted to find out from you, having implemented it as a pilot in the SCA, area there any challenges that you have found as the leader of the Supreme Court of Appeals, and if so, what are they and how can they be resolved? But the second issue, while you answer that one, is the issue that Justice Madlanga raised about modernization and online, particular online access to Courts, in relation to other communities who do not have access and what other ways can we introduce into this modernization, particularly online access, so that other members, vulnerable members of society, would be able to have that access, because we have seen how important it is in accessing justice, for others who are able to do so. That's my first question.

President Maya:

Thank you, Commissioner. About modernization, look, there have been challenges. We're still experience challenges, in fact, even now, for example, in the, just about connectivity, which is something that we hope will be looked into. The fourth term, I was on leave, but I understand from my colleagues that it was rough, there were struggles, but we managed, so we have to look at those niggling aspects. We asked for CaseLines to be implemented because we saw what a success Gauteng has made, has made of it, and you know, we were always envious because our Acting Judges from Gauteng, were used, they were demanding, you know, their records, while we were struggling with piles of paper, they were using CaseLines so that's another aspect that encouraged us, you know, to get on the bandwagon. But we said, alright, let's just give it a shot, just try, start with petitions, applications for leave to appeal and then, when it is established, we move on to appeals proper and we just use it completely. But we have not got there. And, look, Judges, largely elderly people, some of us still struggle with technology. I have to confess, I myself do not use CaseLines all the time, I still love the feel of paper between my fingers and flipping over, you know? And that's, I suppose it's the same for many of my colleagues, but many of us use it, I use it sometimes and we, it's something I'm going to push actually, when we go back now, that we move onto appeals, but there had been a problem about finances or something like that, but I think we can get passed it. We have Gauteng, our [indistinct 3:50:21.4] We'll use whatever means they have used to ensure that we also get on the bandwagon. So, the challenge really has been connectivity, which is something that can easily be fixed. About Online Courts, we know that a huge majority of our people do not have access to the internet. You have said that. As I said earlier, some of these things are still in the pipeline but Minister will protect me because he knows about them. I understand that there is a move to place, sorry to have big screens, where our people live in the townships and villages and I imagine that that, those facilities that they would be put in Magistrate's Courts, I imagine that where there's no Court they would use community halls, even churches or schools. So, the reality is that we can't go back now. We've been introduced to this reality and we have seen its benefits. Of course, we'll, I envisage that we'll end up, when Covid is tamed, we'll end up with a hybrid system, because there are still proceedings that need, you know, in person interaction. But for civil matters, it cuts the access to justice, a point you mentioned. The expense, it just cuts out a lot of expense and it actually benefits those very people in outlying areas to use it. So, we just have to be creative about it and we'll have to make it, we'll take this on this virtual reality to our people. it is possible. That's what I see into the future and as I say, the rules, there are moves afoot to do some of that. I don't know if I've answered everything?

Commissioner Tshepe:

You have. You have, thank you very much. My last question relates to the work you have done at the SCA that you have alluded to, and the JSC would know about recruiting of women, particularly black women, to that Court and in your articulated judicial and legal response to gender-based violence, you said something that I thought was quite profound which was that the fate of these victims and in my case I would say, women Judges should not be left to the off chance, so meaning we have to have systems in place and formalize them to ensure that the work that you have started at the SCA, continues but as a head of the judiciary, that would need to be formalized. And I just wanted to know, what's systems would those be, that you put in place, to ensure that we actually, as you rightly said, that the work of transforming the judiciary, along gender lines, has not been completed and it's a task that should happen throughout. But I just want to know, practically, how do we do that and what is your proposal in that regard, or how you would be implementing that. Thank you, President.

President Maya:

Thank you, Commissioner. Thank you. Well, first it's a, it cannot be my sole project. It's something I would have to have the buy-in of my colleagues in the Heads of Court cluster and fortunately, the Heads of Court are very sensitive to the need of diversifying, I'm getting tired now, diversifying the institution in terms of gender. And in fact, as you know, we have, we're counting now the DJPs, the women DJPs in some of the High Courts and one fervently hopes that these numbers will grow and we will make them grow. So, we have to have a formal policy as Heads of Court, because those are the people who invite people to act, who come here with their candidates and recommend who the JSC, you know, in the final analysis, should recommend, would be suitable. So, I think there needs to be an agreement that we, if you have an acting vacancy, for example, and there is a woman available, just small things, there's a woman out there, there are always women available out there, give a chance to a woman. If you have two acting vacancies, make sure that one of them, at least, is a woman. But I'm sure those are things we can agree, those are things, some, if not all of them are already doing. I mentioned this aspirant women Judges project that the SAJEI has resuscitated now, that starts in July. I mean, that's going to create a pool. I'm sorry, I forget, because I asked how many candidates it has, but it's quite a number of women. We are going, we're not going to have, we're not going to have a shortage of women candidates from which to appoint. And, once those people are already in the system, then it's a simple matter to get them, once they get enough experience here, you push them up. Fortunately, the Heads of Court cluster is a small body of very collegial Judges and we all, the heart of everybody is in the right place. So, it's, we know what we need to do, but it just needs to be pushed harder.

Some may not be pushing as hard as I am, because I'm a woman. I know my answer is all over the place, Commissioner, but ...[intervenes]

Commissioner Tshepe:

It's not, President. I think for me, the issue that you raised of formal policy speakers, it should not be about the people who are there, who's heart is in the right place, when they leave with their good hearts, someone else will come and may not have that heart that we should have these policies and processes in place to ensure that that project moves on. Thank you so much, President.

President Maya:

Thank you, Commissioner.

Commissioner Tshepe:

Thank you, Acting President.

Deputy President Petse (Chairperson):

Thank you, Commissioner Tshepe. Commissioner Mapisa-Nqakula.

Commissioner Mapisa-Nqakula:

Thank you very much, Acting President and thank you, Judge Maya. Thank you very much for the vision which you shared with us this morning, it was quite informative. I must, I should say, demonstrated the highest levels of leadership on your side and therefore it should have been easy for everyone, who was listening to your vision, to understand indeed what your vision for the judiciary is. I may have missed one or two issues when I stepped out and if they have been raised, please do not, I can always consult with my colleagues. One of the matters

you raised was the lack of synergy between what is happening at the level of the Constitutional Court and other Courts. And my question is, how will you ensure that there is that synergy? And I'm raising this fully cognizant of something which you raised earlier, which is that the last time you had a meeting, for instance as the entire community of the judiciary, was in 2019.

President Maya:

2009.

Commissioner Mapisa-Nqakula:

2009?

President Maya:

Ja.

Commissioner Mapisa-Nqakula:

2009. Not 2019?

President Maya:

No.

Commissioner Mapisa-Nqakula:

If I may raise the matter, how will you rectify this anomaly? How will you ensure that as a judiciary in the country, you move in unison that even if you are at different levels, but there's an appreciation of the different roles, but also an appreciation of what you have raised here, which is that whatever it is, it is about the country? We serve the country. That's the first question, thank you.

President Maya:

Should I answer that, then you'll carry on? Oh, thank you so much, Commissioner. What I meant about lack of synergy, first, is that the Constitutional Court has always existed in that bubble, you know, it's that Court up there to which most, even the judicial officers, don't have access and I have just one short practical, short answer, practical example of what I see in my mind. It's this conference where you would have all judicial officers, starting from the top Court to the Small Claims Court, under one room because it is only through communication and debates and sharing of ideas, by everybody, I mean, each Court has its own challenges and needs and experiences. Imagine if you bring all those into one melting pot and people brainstorm about things. The product that would come out of that. That's simple solution, just one solution that I have in mind. Bring everybody together, just break down this, the judiciary, I'm sorry to say this, it's like the army, ranking is everything. Seniority is everything. I'm embarrassed sometimes, even High Court Judges who are acting, they will not call me by my name, I mean, it's a common practise, yet we are colleagues. So, we have, these are the things that we have to just debunk these old relics when Magistrates, you know, when a Magistrate was walking down the passage, you had to quickly move aside, understand that we are all judicial officers who are working towards one goal of, you know, giving this service to South Africans and I'm sure there's a lot I can learn from a Commissioner in the Small Claims Court, for example. And with that, you know, what do they call it, what do bees do, cross-pollination of experiences in the different Courts, we can come up with something astounding for our institution, Commissioner, I think. So, look, there's a lot I could say but at a basic level, that's just what I have in mind. Just break down the barriers first between the different levels of the institution. Bring everybody together to understand that you are working towards the same goal, maybe a Justice, they may be a commissioner in a lonely Court, but we are actually doing the same thing. And we need to work together to find solutions for a global institution, not just for that Court there, that Court there, but for an institution.

Commissioner Mapisa-Nqakula:

Thank you, Judge Maya. Then my second and last question, there's a, yesterday we raised issues here which are topical. Three of those relates to the quality of judgments, the time it takes to finalize cases by the Constitutional Court, which is a matter you addressed earlier on and how you have done it in the SCA. And then the combative language sometimes which is used in the judgments. Now, I'm not trying to, but these are topical issues, these are issues

which everybody is talking about. Now, if you were to be appointed and you move into that environment, of course we've heard earlier on that you seem to have very close relationships with people who are already your colleagues in the Constitutional Court, you seem to be relating across the board with everybody. How will you then ensure that some of the things which were affected at the SCA, are done in, I don't know the term which one would use in this case, if I'm saying, if we are talking about the quality but also the combative nature of the judgments? How will you, I won't say improve, but how will you ensure that South Africans do not feel, there isn't this kind of perception about this in the Constitutional Court.

President Maya:

Thanks for that question, Commissioner. Look, my experience is that in a cohesive unified collegial environment, you will not get that. The issue of combative language, I mean, it used to be an issue in our Court. There are simple ways of dealing with these things. If a colleague writes something that is not palatable, you speak to them and you tell them, you tell them that I refuse to put my, I agree with the essence of your judgment, but I will not put my signature to something that speaks in that kind of language. I will write, I have even threatened to write a concurrence, a one sentence concurrence that says I agree with my learned friend but not the tone of their judgment. But on a serious note, Commissioner, if the Court is, if there's firm leadership, there's cohesion and that's what, those are some of the qualities I said are required in this office. Someone who is going to bring that. If you have that environment, then it's easy to solve these things. Ja.

Commissioner Mapisa-Nqakula:

Thank you very much, Judge Maya. And thank you, Acting President.

Deputy President Petse (Chairperson):

Thank you, Commissioner Mapisa-Nqakula. There's a follow up question from JP Tlaletsi.

Judge President Tlaletsi:

Thank you, Acting President and thank you President Maya. I think I need to also raise an issue regarding the Judges' Conference that we've obviously have been given a reason why we could not have one, which has been financial constraints to get all the Judges together under one roof, or the judiciary. So, I think the Chairperson of the Portfolio Committee and the Minister being here, will kindly commit themselves to assist the judiciary in having this conference because once we leave it open like this again, it's going to be something that will keep on recurring that there are queries, we do not have funds, we cannot. I mean, these are the issues also that the Judges have been raising that could we have one, but the issue has been financial constraints.

President Maya:

Yes.

Judge President Tlaetsi:

Thank you.

President Maya:

No, thank you, my ... I almost said my brother, thank you, Commissioner. Look, I fully support the plea for assistance, but look, I have to disagree with the financial constraints. Yes, financial constraints was an issue, but Judges were actually prepared to pay from their own pockets to attend that conference. But I don't want us to get into that.

Deputy President Petse (Chairperson):

Thank you, JP Tlaetsi. Commissioner Magwanishe?

Commissioner Magwanishe:

Thank you very much, Acting President. Good afternoon, President Maya.

President Maya:

Good afternoon, Commissioner.

Commissioner Malema:

Maybe before the Chair. Chair, I didn't understand what the JP was doing with that input? I didn't understand whether he's disagreeing or asking a question or what, because we are going to have our turn to make our own observation. So, I don't understand, where do you put that, because if you allow that, then we are going to have to do it with other candidates. The JP made a follow up, but I didn't understand what did he want from her? Was it a comment, was it some clarifying her factually or what, I don't know?

Deputy President Petse (Chairperson):

I will give JP Tlaletsi an opportunity to respond to your query. Just briefly, otherwise you know, we shouldn't allow ourselves to be side-tracked. Thank you, Commissioner Malema.

Judge President Tlaletsi:

Thank you, Acting President. The purpose of raising this issue was to place it on record that regarding the conference it has been an issue that has been discussed and this has been the explanation that was given and that's why the President agreed with me, but she's had an additional view, as to why it was not held. And I was also pleading to the relevant stakeholders, who have the financial muscle to assist to do so if possible. Thank you.

Deputy President Petse (Chairperson):

Thank you, JP Tlaletsi. Commissioner ...[intervenes]

Commissioner Malema:

I will take it up when we meet. Perhaps I will ask that when we adjourn, you allow us a brief moment to remain as Commissioners, because I still don't understand. I want to take up an issue with that.

Deputy President Petse (Chairperson):

I propose that we leave it at that, Commissioner Malema, if you don't mind. Commissioner Singh, do you have anything to say?

Commissioner Singh:

A very brief follow up on this conference. I just want to know why a virtual conference cannot be held?

Deputy President Petse (Chairperson):

Please, pose your question to the candidate.

Commissioner Singh:

Oh, should I pose it to her, I mean, is it not possible for a virtual conference to be held if financial resources seem to be the constraint?

President Maya:

Eminently so, Commissioner.

Deputy President Petse (Chairperson):

Thank you, Commissioner Singh. Commissioner Magwanishe, I'm sorry for the interruption.

Commissioner Magwanishe:

Thank you very much, Acting President. Good afternoon, President Maya.

President Maya:

Afternoon, Commissioner.

Commissioner Magwanishe:

It's good to see you on the other side.

President Maya:

It's painful for me, Commissioner.

Commissioner Magwanishe:

Initially I had 40 questions for you, but with your version and your answers, I've reduced them to four.

President Maya:

Still four.

Commissioner Magwanishe:

The first one, when you were interviewed for the position of President of the Supreme Court of Appeal, you spoke passionately about the role of academics as judicial officers. What is going to be your program, concretely, to ensure that that one is realized?

President Maya:

They must go through the aspirant women judges program. They qualify to be candidates then. Because, as I indicated then, you know the concern is always that they are not familiar, they have not practised the law, they are not familiar with Court processes and procedures. So, that program is exactly meant to cure such shortcomings. It will help.

Commissioner Magwanishe:

They are not only women, they are also men.

President Maya:

I'm thinking about that. Well, we may just have to expand it to include men. I'm sorry, you have to forgive my bias, Commissioner Magwanishe, I'm a woman, we've been at the bottom of the heap for, since the beginning of time, so when one thinks, they just think for the positive of women, then you are an afterthought because you own the field. You are the field, as men.

Commissioner Magwanishe:

No problem.

President Maya:

We'll have to accommodate men, that's a good point you raise.

Commissioner Magwanishe:

No problem. And then, what is your view with regard to the appointment of State Advocates and Prosecutors as acting Judges?

President Maya:

I recall that this Commission actually dealt with that issue. I'm sorry, Chair ...[intervenes]

Commissioner Magwanishe:

It was never finalized.

President Maya:

It was never finalized. Can I duck that question until the Commission has resolved the issue, Commissioner, please? Look, if you insist ...[intervenes]

Deputy President Petse (Chairperson):

Well, Commissioner Magwanishe is nodding, so I take that to mean that he's prepared to, you know, recant the question and proceed with the next one.

Commissioner Magwanishe:

No thank you very much, Chairperson. Yes. President Maya, my concern is that you have done something extraordinary and I would hate it that extraordinary thing that you have done, to be a one-day wonder. Writing a judgment in an African language. And I know for a fact that even the JSC, before this one, in the 5th administration, there were always concerns and issues raised by people like Commissioner Notyesi, Commissioner Motsega, Commissioner Nyambi, about the issue of LLB, the inclusion of African languages and you have moved a step forward. What is it that you will do to ensure that this is taken to the next level of ensuring that our languages are also used as languages of commerce? Writing a judgment in isiXhosa is a major step forward and we would love to see many of those Tswana, Sipeidi, all those

judgments, but it needs a lot of resources, it needs a lot of commitment, not only from the judiciary but from the State as a whole, but it needs a pioneer to pioneer that.

President Maya:

Ja. Thank you, Commissioner, well, you've given three-quarters of my answer that it's a project that requires resources and a lot of commitment. No shortage on commitment, but resources are troublesome. Look, in the short term, I had hoped to have seen, because my judgment came out two years ago, I think, and thereafter we happened to sit in another case which involved a Xhosa accused, and I presided in that case and I encouraged the scribe to do the same thing I'd done in Afriforum, so we actually have two judgments in isiXhosa in the SCA. And I hope that, you know, that example would encourage other people to write in their languages as well. It's not an easy thing to do though. We, I grew up in a rural setting. I like to think that I'm fluent in isiXhosa, but I have discovered that, you know, we've been, I forget the word now, with interacting with other, you know, in the cosmopolitan areas, we tend to lose the purity, its purity. So, that's where the resources and support come from, you know? We can't expect people to sit on their own and produce a fluent Setswana judgment, they would need assistance and that takes money which we currently don't have. But we need to have a policy on language, I'm trying to avoid going to this issue of language, of record, because it's implicated, I think. We should encourage all languages, all 11 South African languages, to be used in our Courts as a matter of course. That's a long terms vision. At the moment, it's only English for practical reasons which I think we can all sympathise with, understand. But we can't, with our history, you know, turn our backs on our languages, so we need to do something about that. I think at policy level, because it's not something I've discussed with my colleagues, the Heads of Court cluster. I would need their, I would need to just discuss it with them. It's something, it's another agenda item for this Judges Conference to hear what our constituency feels about the issue of language. I know, we know that Afrikaners are very passionate about their language, so we know what they will say, but as for the rest of us, we don't seem to be particularly interested. We don't know, we've not asked before, that's why I mentioned the idea of debating, discussing it. Just putting it on the table and hear how people feel about it and exchange views. I mean, it's a big, it's a big issue, Commissioner, that you raise. Just see what we can do about it. And involve other stakeholders. It's not something the judiciary can, you know, resolve on its own. It needs collaboration. That's the best I can say.

Commissioner Magwanishe:

No, thank you very much, President Maya. You would be the head of the entire judiciary if appointed and one of the concerns I have, is the mental welfare of judicial officers, especially those who preside in the criminal cases, with particular reference to those who deal with gender-based violence cases. What programs do you think, maybe it will be part of the agenda item for that conference? What type of support should judicial officers be given because it's quite a lonely job and it does have a serious impact on their mental wellness?

President Maya:

That's a, ja, I agree with you. It's critical, Commissioner. The judiciary is one-up on you. We, I'm going to, I don't know if I can ask my colleagues' assistance, but we have working on a, with the assistance of our department, the OCJ, on a Judges', on a judicial officers' wellness program. I'm not entirely sure at which stage it is though, but it is something that, it was one, you know, Covid just interrupted a whole lot of things. That is one of the issues that was top on our agenda for implementation and it's something that is one of the things that we need to follow up on urgently.

Commissioner Magwanishe:

Thank you very much. Thank you, President, Acting President, thank you President Maya.

President Maya:

Thank you, Commissioner.

Deputy President Petse (Chairperson):

Thank you, Commissioner Magwanishe. Commissioner Mmoiemang?

Commissioner Mmoiemang:

Thank you, thank you, thank you Acting President. Good afternoon, President Maya.

President Maya:

Afternoon, Commissioner. I see that you are wearing your mask today, when everybody else is not wearing it.

Commissioner Mmoiemang:

The interest that I have is in relation to the point that you made in the matter of Afriforum.

President Maya:

Yes?

Commissioner Mmoiemang:

The matter of Afriforum which is a matter of public interest and the judgment that is quite impressive, that was delivered by the President. Just two areas that I thought the President could give just a response to allay the fears of the student body of UNISA, the council and the management, the council and the management on the agenda, to transform the language policy of the university because a perception could be created that the candidate for the Chief Justice, to a larger degree, was not sympathetic to the transformation agenda in terms of language policy of the university, which was informed by the dwindling demography of students that are receiving tuition in Afrikaans, which promptly was the rationale behind the commitment by the university to transform, or to, ja, to transform the language policy that they adopted in 2016. Given the magnitude of transformation imperatives, can the President, in a succinct form just to speak to that judgment so that those that are listening and watching the interview, their fears could be allayed, to say look, we have a transformation champion who is a candidate, there are other reasons. Explain to them the rationality and the legality concepts

that you applied to the decision that ultimately made you to distinguish the case from the Stellenbosch and the Free State University, because with Stellenbosch and Free State University, the changes in the language policy succeeded. Thank you, President Maya.

President Maya:

Thank you, Commissioner. I do appreciate your question because apparently, I keep away from social media. I heard that there had been huge discontent concerning that judgment in which they say I must involve him too, in which he also said and concurred.

Commissioner Mmoiemang:

I saw that.

President Maya:

Commissioner, let me just start by saying, I marched against Afrikaans. When I started working, when I was invited to enter the SCA, I made it very clear to President, then President Howie, that I don't speak Afrikaans, which I passed with A, with a distinction in matric, by the way. I'm not prepared to work on Afrikaans because I had, from my childhood scars, so it's an unfortunate previous, it's a language that I had a very negative attitude towards, but I'm a grown woman now and that appears from my decision in this judgment. The simple answer and you touch upon what I think Commissioner Dlepu said earlier about judgments being misunderstood, the simple distinguishing issue, the simple issue that distinguishes Afriforum from Stellenbosch and UFS, is that UNISA simply did not do its homework, that Section 29 (2) of the Constitution enjoins it to do. We fully understand the need to transform, that's why Stellenbosch and UFS succeeded, but they had not done their homework to justify the implementation of the policy. You know, without going through all the procedural and substantive steps that the Constitution requires. Nothing stops them from, I'm sure, I hope that's what, the Constitutional Court agreed with us, they, I don't want to say they were just lazy, they must do, their effort was shoddy. I can't put it any better than that. It was shoddy and what I expect them to be doing now is doing their homework and you know, patching up where they had failed before and implementing their transformation policy. That's all. That's all there was to it.

Commissioner Mmoiemang:

Thank you, thank you, President Maya. Thank you, Acting President.

Deputy President Petse (Chairperson):

Thank you, Commissioner Mmoiemang. Commissioner Dodovu?

Commissioner Dodovu:

Thank you very much, Justice Petse. Good afternoon, Justice Maya.

President Maya:

Afternoon, Commissioner.

Commissioner Dodovu:

I can see you have now settled quite well and thank you very much.

President Maya:

And I sense difficult questions coming from you.

Commissioner Dodovu:

Yes. I had the possibility to read your CV and your background on several occasions as I was preparing for this session. This is very impressive.

President Maya:

Thank you, Commissioner.

Commissioner Dodovu:

I'm trying to think of any woman who has risen to these majestic heights of success like you. I'm very much impressed, I must say and I hope that young women of this country will look at you, try to cumulate your examples and virtues which is very important in the context of our country.

President Maya:

Thank you, Commissioner.

Commissioner Dodovu:

Now, my first question is that I heard you talking passionately about transformation but in that sense, you speak a lot about gender equality, women empowerment and emancipation. You have spoken little about social justice. The inequalities in our society. Opportunities not equal. People historically disadvantaged, not afforded access to Courts in a way that is appropriate and therefore, in my view, this has got an implication to the judgments. What is your view on that? What is it that can be done in precision to really address issues of social justice, if you are considered for this position?

President Maya:

I'm sorry that I did not, for the shortcoming, Commissioner. We, another [indistinct 4:30:35.5] you know, label, we bear in the world, is one being one of, if not the most, unequal societies in the world, so social justice is key. And just speaking in this narrow context of being in the judiciary, the one way we can, you know, try to address that is making sure that our people have access to justice. That actually is key, having access to justice, so that we can vindicate these rights that are promised in the Constitution and I think that is the key role of the judiciary.

That's how it can contribute meaningfully to the fight to make South Africa a better country for everybody.

Commissioner Dodovu:

As I was listening to you talking about women empowerment, will I be correct to accept that you subscribe to a philosophy of expropriation of legal knowledge without compensation?

President Maya:

Legal knowledge.

Commissioner Dodovu:

Yes, I want to test you on that.

President Maya:

I don't understand that question, Commissioner?

Commissioner Dodovu:

I mean, in terms of making sure that young people, especially, are empowered and those who are in positions of power and authority, must proliferate that knowledge to young people without expecting much, including compensation to those.

President Maya:

Of course. Yes, it's our collective obligation to do that. Hence mentorship is one of the key, you know, things that each one of us must be engaged in. Mentorship of our young people and helping them in any way that we can. We have to impart any and all the skills and

experiences that we have to the next generation. In fact, some of the current generation, because of our people are suffering.

Commissioner Dodovu:

Now, Section 174 (2) of the Constitution states that when judicial officers are appointed, we must make sure that they reflect the racial and gender composition of the judiciary. That is a fact that must be taken into account.

President Maya:

Yes.

Commissioner Dodovu:

But in terms of Section 9 of the Constitution, it speaks a lot about other factors like language, like culture, like you know, sex and all of that. Don't you think, at this stage, we need to consider amending Section 174 of the Constitution to incorporate all of this, because they speak to issues of equality, not only on race and gender? What is your view on that?

President Maya:

In what way would we incorporate them in the provisions as they stand, Commissioner? I know it's my duty to answer questions and not ask them, but just for clarity?

Commissioner Dodovu:

I'm saying, Section 174 only speaks to race ...[intervenes]

President Maya:

Its ambit is narrow, you mean?

Commissioner Dodovu:

Yes. It's narrow in my view. There could be issues of geographic orientation, of sex, of language, of culture, even of ideology, if you like.

President Maya:

I get you. The meaning of subsections (1) (2) of that provision have been a subject of debate for a long time. Who is a fit and proper person? A judiciary to reflect broadly, how do you apply that? And I have a suspicion that the legislature couched them in this fashion very deliberately, very deliberately, Commissioner and I want to believe that the Commission, throughout its history, has been able to give content, well, maybe in respect of some aspects and not so much on others, because the race issue, we've done very well there. At least I'm speaking from my institution now. All Heads of Court are black, are African. We have good statistics in that regard. It's only in respect of women and I know, we've already taken great strides in respect of the Magistracy, but elsewhere we still lagging behind. And I want to believe that when once you speak about race and gender, Section 9 is implicated. Equality is there. You can't overlook it when you apply these provisions. I don't know if I'm making sense?

Commissioner Dodovu:

It's okay. I just wanted to test your view on that. My last question, Justice Petse. As I understand, and this can be vindicated in so many ways, when, in 2017, when you were here, interviewed for the position of President of the SCA, you outlined as you did this morning, what was your vision and it is quite evident that a lot has been addressed in relation to what you set as a vision, but you have not spoken about the improvement if any, in respect of the briefing patterns. Whether, do you see improvements in that respect? Where young advocates or attorneys are taken into consideration.

President Maya:

The answer is, unequivocally no, at least if one, the only yardstick I can use is just checking who appears before us. And the answer is no.

Commissioner Dodovu:

It's no?

President Maya:

Ja, and I do speak to a lot of young people, I know, especially young women, who do articles, who go to the Bar, but then they don't get work and they end up being sucked back, I mean, it's a problem that we're talking about for a long time. They end up going to the job market because they just don't get work.

Commissioner Dodovu:

Alright.

President Maya:

So, there's been, and I had said then that the Government, being the biggest litigator, must make sure that our children, our young people are given work. And it does not appear. In fact, one of the scary things that the Minister knows about and I don't want to talk about here, about what happens in the State Attorney's work, to be able to get work. So, we have problems, we have problems.

Commissioner Dodovu:

Thank you very much. Thank you, Justice Petse.

Deputy President Petse (Chairperson):

Thank you, Commissioner Dodovu. There is a follow up question from Commissioner Mapisa-Nqakula.

Commissioner Mapisa-Nqakula:

Thank you very much, Acting President and thank you, Judge. Judge, this, you raised this issue quite early in your vision, about our inability to brief young black women to represent us, particularly Government, the State, Government entities being the ones who are the highest litigants. The question I have to you, the problems with executives generally, is that we're advised by the State Law Advisors and the State Law Advisors will say, 'mam for the particular case, you need experienced lawyer, you need experienced that, experienced this', and which at the end you find that it takes you back to people you would have wanted to avoid, not to avoid out of malice, but more because you want to empower a black woman in a corner, who you know, in fact, has a practice and just needs to be propped up by us, those of us who are either in Government or in Parliament, as I'm in Parliament now.

President Maya:

Yes.

Commissioner Mapisa-Nqakula:

So, what, how, what would you advise the State Law Advisors to do? And the reason this is deliberated because the Minister is here, Skosana is here, of course the DG of the Department is not here, but what really would you advise should be done, because indeed, generally, it is very easy to dismiss companies, practices, which belong to younger people, in fact, both men and women, not necessarily women companies only. And I think, how would you use your own experience and your own position, if you were to be appointed here, in ensuring that this word is spread that you need, people need to come out and brief the younger ones so that they prepare them to be eligible to be appointed into these positions to which you have found yourselves in.

President Maya:

Thank you, Commissioner. I don't know if there's any more effective way of disseminating this message than doing it from this platform, and I can promise you, you know it, since the JSC started sitting, the issue of briefing patterns has been on the table. We've always had a Cabinet Minister here and members of Parliament and they would hear what the candidate said about briefing patterns and the members of the professions who actually feel the pinch, because they are actually there, would have a lot to say about it. But it does not seem, the message does not seem to permeate. I hear what you're saying about, you know, litigants wanting experienced lawyers. Of course, we need experienced people who make sure that we get the relief, the orders you want. But it is done by some. Get your experienced lawyer but issue an instruction that if it's a senior counsel, they must be accompanied by, you know, black and women juniors. It's your brief, it's your instruction. It's very simple and we are not entirely sure why it is difficult for our State organs to do that. Because we don't really see it in practice.

Commissioner Mapisa-Nqakula:

Thank you, Commissioner.

Commissioner Malema:

Can I make a follow up? Maybe that will be only question.

Deputy President Petse (Chairperson):

Is it a follow up question, Commissioner Malema? Yes, you may proceed.

Commissioner Malema:

President, I also have a follow up, Acting President. I just want to understand, President Maya, does the appointment of women into positions of power, guarantee that women lawyers will get a brief? I'll tell you why, because there are a lot of women who get appointed, the Speaker of Parliament has been a female without fail. Parliament is represented by men. My colleague

here from the beautiful province of Eastern Cape, Notyesi, said here yesterday that banks hate black people but not only that, they hate women. Maria Ramos is the most celebrated woman. She was the CEO of ABSA. Were women being briefed at ABSA. Maria Ramos was the CEO of Transnet. Were women being briefed at Transnet. So, does the empowerment or appointment of senior women into strategic positions translate into automatically women getting briefed or, I don't know how to put it because, it looks like there is generally also the struggle that women have to fight amongst women themselves. Where women just have a problem of empowering other women. Parliament is a typical example where we sit. I litigate with Parliament all the time, I'm likely to do that in the next few days, so, you are guaranteed, it's going to be a man and Parliament is headed by a female, before that it was a female, and Parliament sometimes even goes to the extreme. It doesn't just brief men, it briefs white men and headed by females. So, where lies the problem and what can be done, because we are fighting at this level, let's empower women, empower women, but the next thing it doesn't translate into any practical intervention in changing the status quo of women. Thanks, President.

President Maya:

Thank you, Commissioner. Ja, it's a tough one and I would say, just like this Commissioner, does not appoint candidates simply because they are black and female to fill, sorry, to fulfil their injunction in Section 174 (2). They also have to subscribe to the values of the Constitution. I think it's the same phenomenon. Not all women will be passionate about the empowerment of women, as well as men, not all of them believe in some of those noble, you know, endeavours. But by enlarge, Commissioner Malema, women will make sure, I'm trying, the English escapes me now, by enlarge women care about their communities, that's why there's a general, you know, that old saying that if you educate a man, you educate a man but if you educate a woman, you educate a community. So, generally speaking, women have that nurturing quality that wants to ensure that actually, not just other women as well, but society, you know, is improved, for lack of a better word. But it's not always the case. You're quite right. Hence, we gained notoriety for the 'pull her down' syndrome, I mean, we are always teased that we are in the majority of the world, so if we had it in us to support one another, we should be leading the world in all spheres, but we don't. So, ja, it's a human problem.

Commissioner Malema:

No, thank you, President. This is just a frustration I want to raise with you, and you are free not to comment on it, because you know, I thought I will never get to engage in a struggle to give young, poor, struggling women free sanitary towels at the UCT for instance, at UNISA for instance. The latest being Walter Sisulu University where Vice-Chancellors are women who should be appreciating the meaning of such, you know, a requirement. But now you have to go into fight with such women about making such facilities available for poor, struggling, young women. So, and when they came in, there were jubilations and celebrations everywhere, that now a woman is coming in, the burden is going to be lessened on the poor and women in particular and all of that, but it looks like things continue as they were. Thanks, Chair.

Deputy President Petse (Chairperson):

Thank you, Commissioner Malema. Honourable Minister?

Minister Lamola:

Thank you, Acting President. I just want to come on this issue for the comment of the Judge President. In the last JSC I think we did report that there was a legal sector code that was being drafted. And as we speak now, it is on the table of the Minister of DTCI which we have done through the advice of the Legal Practice Council. But I'm bring the legal sector code because I think it has a very good initiative, that it is going to be able to measure the issue of the briefing pattern in that it proposes that we must establish a council, a council that will monitor all the briefing patterns. It does state the quotas and the quotes, but it also says the council must have powers to monitor, to summon departments, to summon whoever within the State to provide the information in terms of the briefing patterns, and I believe that the profession will be able to, for the first time know, who is Transnet briefing, for how much and how much went to black practitioners, like we do with the State Attorney, where it is published how much and so forth. And I think that could be a good start for a solution, particularly when there is a monitoring or implementable kind of a measure, because the current situation is that while we do policies, but there is no monitoring mechanism. So, I'm not sure what will be your view for us to ensure that indeed it does happen, whether that monitoring mechanism will be enough, or you may think we may need further instruments to ensure that what Commissioners are saying, what is in the policy, it does happen.

President Maya:

Look, first that's a brilliant, excuse, initiative, Minister and I'm happy to hear that there's been progress in its processing. But you know, just like we have so many good laws, beautiful Constitution but implementation, achieving the result is usually a problem. I'm just trying to think now, that this monitoring body comes up with these statistics, it summons ... what other powers would it have, other than, what you mentioned is all that it would have? What teeth would it have to ensure that the recalcitrant, you know, stakeholders live up the expectation? Has it been given any powers to punish, to ... what is the ...[intervenes]

Minister Lamola:

Ja, I think this, with the indulgence of the Acting President, to allow that this could be the first time where an interviewer can ask a question to ...[intervenes]

President Maya:

I'm sorry.

Minister Lamola:

With your indulgence.

Deputy President Petse (Chairperson):

Is this not now degenerating into a dialogue between you, Honourable Minister and the candidate?

Minister Lamola:

I don't know, I just want your guidance, because she has asked a question and ...

Deputy President Petse (Chairperson):

I'll give you a minute, Honourable Minister to wrap up.

Minister Lamola:

Ja, no, no, I don't want to waste your time, I just wanted to check whether I can answer the question and I think, even Mam'Dlepu could be helpful to that. But it does have some kind of powers in terms of the BE scoring and all that which then, whichever may not be briefing, those scoring could be affected, including the issues in terms of the budget and all that. That will be what then the monitoring body ... But the fact that that information is also public, anyone can use it to also litigate against that institution, to say you have committed to do this, you did not do it.

President Maya:

Well, the issues you mentioned then sound like good incentive. If someone is going to feel the pinch, then they will comply, so as, if it is, if that council is empowered, is given as much power as possible, to make sure that the recalcitrant, the offenders, you know, are punished somehow, then that should take care of the problem and if we see that down the line those measures are not quite effective, then we go back to the drawing board and see how else we can enforce compliance.

Commissioner Mpofo:

Follow up.

Deputy President Petse (Chairperson):

Yes, Commissioner Mpofo.

Minister Lamola:

I'm done here, Acting President.

Commissioner Mpofu:

Thank you, it's just a follow up. Do you think that a black-led Government, progressive Government, with men and women, will know the plight of black professionals, should be proud that the only achievement they've made is to be monitored? Why do they need to be monitored to do the right thing? Why do they need to be monitored in order to empower people like them, whom they know have been side-lined in this profession to the extent that you have explained, where you, yourself, have not had access to commercial work which is the exclusive preserve of white practitioners? Secondly, is there, the examples that have been given including, I've been litigating, now, currently, against the Speaker of Parliament, who is a woman, the previous one and the current one, against the NPA, which is headed by a woman, two days before I came here, that two or three white male senior counsel. Why do they need to be monitored in order to do the right thing? Don't they know that they must empower and black people?

President Maya:

Well, it's nothing to be proud of, Mr Mpofu. All I can say is, it is what it is. People are not doing the right thing and then they must just be monitored.

Commissioner Mpofu:

Thank you.

Commissioner Malema:

It's lunch time.

Deputy President Petse (Chairperson):

Mindful of the fact that I early on indicated that we are expecting load shedding at two o'clock, and that we would adjourn for lunch at ten to two, according to my watch, we are 12 minutes to two. I don't think that there would be any virtue in calling upon Commissioner Xaba to commence with his questions at this stage. So, this will be the convenient stage to take the lunch adjournment and, I guess we could resume at quarter to three or ten to three or three o'clock? One hour would take us to ten to three. Thank you. So, that's it, we'll resume at ten to three. Thank you.

Deputy President Petse (Chairperson):

Fellow Commissioners, will you please settle down. Do you have your ducks on the row, President Maya?

President Maya:

Yes, I do, DP, thank you.

Deputy President Petse (Chairperson):

Over to you, Commissioner Xaba.

Commissioner Xaba:

Yes, thank you very much, acting President. Good afternoon once again, President Maya.

President Maya:

Afternoon, Commissioner.

Commissioner Xaba:

Good. This morning you presented your vision and I must say I can't find fault with it. But I just want to take you on the point of transformation we raised earlier on. In 2017 when you were interviewed for the position of President, you made gender parity as one of your key focus areas. And I must say you've delivered on it.

President Maya:

Thank you.

Commissioner Xaba:

And the record speaks for itself, 11 women judges to 12 male judges. I just want to contrast us to the heads of court. In 2017 there were four female heads of court four years later. Let me not say how many there are now, in your view, has that situation improved? Then, there were about 14 heads of court four of whom were women. The question is, has that situation improved.

President Maya:

Thank you, Commissioner. No, and actually it's slightly to regress, shortly the first woman JP in the country, JP Leeuw is retiring soon and we have one candidate to interview to fill that position who's a male. So we'll be one short actually.

Commissioner Xaba:

So what is the position currently?

President Maya:

It has not changed – well the only change is what happened in October when we appointed three women DJPs which is a big improvement. It is again, one has to acknowledge that. So there has been but in the – we're looking for JPs, the actual heads who will sit at the top of the table.

Commissioner Xaba:

So you are actually confirming that the situation has regressed?

President Maya:

Ja.

Commissioner Xaba:

And that's four years later? Now from your own observation as a member of this body, since 2017 what could have been the reason and what can be done to overcome this problem? Tapping on your experience having improved the demographics in your own court?

President Maya:

I said in one of my long-winded responses earlier that when woman are absorbed, well are appointed into the bench, they must be given the same opportunities as their male counterparts who are no better endowed in any way than they are. Women must just be trusted to take up leadership positions, Commissioner, Xaba, that's all I can say. Give women an opportunity to act as DJPs, as JPs, that's where it starts. Give women a chance because there are women in all divisions of our courts.

Commissioner Xaba:

You are right, you did opine on that. Let me just raise the issue of the ConCourt releases judges from active service, relatively young. And on a full salary for life. Don't we think that that is actually escalating the problem of brain drainage within the system? And that at some point, this thing will catch up with us because we seem to be releasing at a much higher rate, skilled judges, as I said, relatively young. What is your opinion and what can be done about it? Thank you.

President Maya:

It has its pros and cons. The pro being that I'm sure none of us want to see what happens in the US where people die in their 90s on the bench. I don't think that's a good thing. But then as you point out, we lose relatively young judges who still have many years to give and they go, they leave that institutional memory and experience. And ironically, most of our retired judges are working in Namibia in the neighboring countries and there's so much to be done here, you know. We don't even engage them meaningfully.

Commissioner Xaba:

Don't you think that my last question as a follow up, President, we discussed this with one of the Commissioners that would it not be an ideal thing to do that when you get discharged from the ConCourt, we appoint you on a reserved appointment to specialist court for such people. So that we retain this institutional memory and we retain the skills that have actually been acquired over time. I'm reading this in the context of the vision that you painted here this morning. Has that not been discussed? If it has not, what is your take on this? Reserving positions, senior positions in the specialist court for people who get discharged in the manner that we have just explained?

President Maya:

I'm not aware that it has been discussed, Commissioner. That's a fine idea. And in fact, DP Petse and I are contemplating, you know, a number of retired judges from the Constitutional Court, I can mention Chief Justice Moseneke, Justice Jacob working after her retirement to go and act at the CSA. I suppose for the experience and just to – because it's a different court, and to impart skills. But for some reason or the other, that never came to pass. Now, DP Petse and I have been talking because we actually have one of such retired judges who's keen to go and act at the CSA and assist in – because we've been appointing younger judges, not as experienced as we used to have back in the day. And that kind of skill would be precious. I don't have a clear answer for you now, but what I know and it's something that has exercised my mind, that has worried me for a long time, is that we need to use those judges. We need to retain them somehow and use them. I think, well I guess, we have to just decide precisely, think about it, debate it and see how we can best do that. But it's a skill that is lost to us that we should be using.

Commissioner Xaba:

No, thank you very much, Judge President, maybe it's a question left for the Minister to look into. Because we have invested so much in those people as a country. And even when they've been discharged, we continue to pay them a full salary. All right, that's not an issue.

President Maya:

Thank you, Commissioner.

Commissioner Xaba:

Thank you so much. Thank you so much acting President.

Deputy President Petse (Chairperson):

Thank you, Commissioner Xaba. Commissioner Lucas?

Commissioner Lucas:

Thank you very much, acting President. Good afternoon, President Maya?

President Maya:

Afternoon, Commissioner.

Commissioner Lucas:

Yes, today you are on the other side of the table. But thank you and welcome. Let me begin my saying there was a lot said about women's empowerment and gender equity and things like that. They are normally in what has been said already, is the fact that we are going to interview for candidates but you are the only woman. Not even there was the principle of

50/50 possibly, I don't know, but that shows. And particularly also when we see how you have been supported in your nomination internationally. You have become more or less the hope and the pallbearer for women's aspirations when you are sitting here. So just for the mere fact that you broke the glass ceiling to be able to sit here, to do the interview for Chief Justice, we want to commend you. We really want to commend you and say that you have made us proud as women of South Africa. I've said it before, if a woman can even just be nominated as a President it means that we have broken the glass ceiling and that is what you have achieved. I will allow you to get to ...

President Maya:

I'm sorry, Commissioner.

Commissioner Lucas:

It's fine, you don't have to be sorry, we are emotional beings as women.

JP Maya:

Ja, that's what you are accused of.

Commissioner Lucas:

Ons het nie die pres nie. As ons moet huil, ons huil.

Deputy President Petse (Chairperson):

And men as well.

Commissioner Lucas:

So it's fine, I think no one will even think less of you if you become emotional. I'm sure if your mother is still alive today, she's very proud of you, that's how I feel.

President Maya:

Thank you.

Commissioner Lucas:

So, I just have two issues that I don't think it is questions, but it's issues that I think I should raise. If you are appointed, it will be one major achievement for me if we can really achieve the inclusivity of the judiciary by making sure particularly at lower levels, we address the issues. Sometimes we speak about our ...[intervenes]

President Maya:

...for a second, Commissioner.

Commissioner Lucas:

It's fine. Today and yesterday, we heard how efficient and effective the Supreme Court of Appeal is and the Constitutional Court and so on. And I fear that people at that level become very complacent. And they don't know at the level of true service delivery. It is not the experience of our people. That is why the issue of inclusivity that you spoke about and also one single judiciary where things could be coordinated at a better level. It's commendable, it's notable. Because I think people at your level can become very complacent and in a comfort zone, because of having the kind of support that they can get and not necessarily having the kind of volumes of contact with people at a grass roots level that you see in the Magistrature. So, there is one or two issues that I've experienced that is an issue. You mentioned the issue of incorporating the traditional courts, but even if we have the traditional courts, I don't know how effective they are. Because one of the issues that came out in our consultation with women across the country, particularly in the rural provinces, is the issue of how customary law is not working for our rural women. It's one of the issues. Secondly, the other issue, is how courts at that level, rural as well as urban, is just not working for the vulnerable people.

And I just in a very short few sentences, if you can indicate how, you think this single judiciary of this single-minded judiciary can address that kind of issue. I don't have to speak about women, I don't have to speak about gender, it has been properly addressed. And even if you don't get this position, which I sincerely hope you got on behalf of us as women, God be with you. Thank you.

President Maya:

Thank you so much, Commissioner, you've got me crying and I don't usually do that. Short answer, the idea of bringing traditional courts into the fold, into the mainstream, is to monitor and guide and be of assistance to those courts to ensure that they deliver justice to those communities they serve. That's all I will say on the subject, Commissioner. Keeping them close to the other rungs of the judiciary I believe will benefit them greatly and will give us a chance to observe exactly what goes on there and what does not go on there that needs to be done.

Commissioner Lucas:

Thank you, the commitment is enough. Thank you very much. Thank you.

Deputy President Petse (Chairperson):

Thank you, Commissioner Lucas. Commissioner Singh?

Commissioner Singh:

Thank you very much, acting President, good afternoon, President Maya. Good to see you again.

President Maya:

Afternoon, Mr Singh.

Commissioner Singh:

I want to start off by saying that we've spoken a lot about gender transformation this morning. And many of us as Commissioners have sat around this very table or other tables interviewing prospective candidates for appointment. Both men and women. And we realise that our responsibility is to create a public platform for the candidates to express themselves and secondly, to recommend to the President, you know, who should be appointed. But the final call on who is appointed lies with the President himself. Now I just want to share my disappointment that after the last interviews on the Constitutional Court appointees, that of the four very capable people that we recommended as a commission to the President, he chose to ignore the two very capable women and appoint two men to those positions. Do you have any view on that or do you want to express a view? Because I certainly was disappointed that that had happened.

President Maya:

Utter disappointment. A feeling of utter disappointment, Commissioner. And I speak for a whole lot of South Africans, especially women.

Commissioner Singh:

Thank you, I'm glad I was not the only one that felt disappointed when I read this announcement by the President of the two people, not that they are not capable of being ConCourt judges, they're extremely capable, but I would have thought that given the times that we face, and given the imperatives that we have as a country for gender equality etcetera, he could have considered at least one of those women. But anyway, I hope the Minister will take that up with the President when he meets him. It's not for us here. My next question is related to the issue of restoration of trust in the judiciary. Now we know the judiciary is a critical key to our democracy. And earlier you spoke about the Afro barometer survey which was quite disappointing because just to quote it held that respondents with "greater experience of lived poverty and less education are less trusting of the courts than our more secure and educated respondents." That's what it found. Now what in your opinion could be potential reasons for this decline in trust in the judiciary by ordinary people? And how do you hope if you're appointed as the Chief Justice to reverse this declining trust in the judiciary.

President Maya:

Self-introspection is a very difficult exercise you know, people don't like to be criticized. It's even more difficult to look at yourself critically. But look I'll venture – I'm speculating now, it must be that because they're not delivering what they expect them to deliver. What else could it be?

Commissioner Singh:

So do you believe that these people have a legitimate, they have legitimate grounds to distrust the judiciary at this moment in time, given the turbulence and the political pressures that we are facing in the country? And some of the judgments and the delayed judgments etcetera?

President Maya:

Look, as I said at the outset, Commissioner Singh, while the institution does you know, execute its constitutional mandate it's not perfect. So, there are definitely things we are not doing right which all of us around this table know, so we just, we need to get, as my children would say, just get our acts together as a judiciary. Pull up our socks and clean up.

Commissioner Singh:

Absolutely and I hope that the new Chief Justice, whoever that is, together with the Ministry and the Department of Justice, can get our act together to deliver justice to the people of South Africa. Because I was looking at another survey as well, which was included in the OCJs strategic plan based on 2018 victims of crimes survey, where 50.85% of households are and I quote "not satisfied with the way in which the courts deal with the perpetrators of crime". Now that's one in two. That's really an indictment on us and our judicial system if one in two people that were surveyed can have that kind of opinion. So, it's a tall ask for the new Chief Justice and I do hope and pray that you have the strength and the character if appointed, to change things around. The next question will relate to the objections. Now we've gone through the ...[intervenes]

Deputy President Petse (Chairperson):

Commissioner Singh, sorry to interrupt you. Before you pose your next question, I just want to ask President Maya to pull the microphone close to her.

President Maya:

Thanks for the reminder DP.

Deputy President Petse (Chairperson):

You are most welcome. You may proceed, Commissioner.

Commissioner Singh:

Thank you, Acting President. I think honorable Lucas, Commissioner Lucas, has spoken about your nominations and you spoke it, international nominations and people who've supported you, but we also have to look at objections that are, you know, submitted to us. And I think you've responded adequately to the Theunissen objection in writing. But perhaps you want to tell us about it. And there was another Simon Monge, the second – sorry?

President Maya:

I don't know about another one, I was only served with the ...[intervenes]

Commissioner Singh:

Ja, the other objections is in our documents here. Simon Monge.

President Maya:

No. I'm not aware of that one.

Commissioner Singh:

That came through as objection number three in our documents. Theunissen was objection number one.

President Maya:

Ja, I know all about Theunissen, maybe I can quickly deal with that one then we'll get to this other one.

Commissioner Singh:

Okay, thanks.

President Maya:

I think Mr Theunissen is simply, just to get dislike to me. He started in some Magistrates Court in the Western Cape, an eviction case. An elderly gentleman who lost the case having created a whole lot of havoc there. I mean he was asking Magistrates to recuse themselves, that kind of thing. Went to the High Court, the State Attorney, because the Minister of Justice was one – I believe there's still – well he contemplates furthering this litigation of his so Minister is one of the litigants represented by the State Attorney of course. The State Attorney ultimately, after an avalanche of interlocutory applications brought the [indistinct 01:07:30] proceedings against him. So he was barred by the High Court from launching litigation in the High Court or in any court without permission, leave of the court. He lost, naturally. Case found its way at the Supreme Court of Appeal, two judges there – he went through I think about five Judges in the Cape High Court who are also respondents in this litigation that he brought against us, suing us for millions. I don't know where I'm going to get that money. So SCA two judges dismissed his application for leave to appeal came to me on Section 17(2F) of the Supreme Court Act for reconsideration. I found no merit, I dismissed it. It went to the Concourt headed by D J C Zondo, Justice Mhlanga was there and a whole bunch of other judges. They dismissed it. Now he sues us. I even forget what he says, what he accuses me of. But now, he says he intends launching a – what's this rule 42 – a recission application. I don't know in

which court, and that application has not yet been launched. So that's the long and short of it. My order was confirmed by the Constitutional Court and that's the end of my story in so far as that is concerned. Now what is this other one about, Commissioner, if you can assist. Oh, I found it.

Commissioner Singh:

Simon Monge.

President Maya:

I'm sorry, I missed this.

Commissioner Singh:

The other one I just ignored because I don't think it has any merit.

President Maya:

Oh, I see that you object to my candidature, my ACJ Zondo and JP Mlambo. He challenges the whole nomination process. His gripe is against the procedure, the process followed by the President, I don't know what to say to that.

Commissioner Singh:

And then he refers in 9.3 SCA President Maya, JAC96521.

President Maya:

I know nothing about the – that has not been brought to my attention. I don't know, I know nothing about that complaint, Commissioner. I'm sorry, I can't help you.

Commissioner Singh:

All right, I think we can't take – the last question Acting President is, I think you would recall President Maya, that in a previous interview when there was an outburst or real mayhem created when a certain recording was played to us. And I think some Commissioners are laughing about it. And there were certain questions that came from the Chair at that time. In hindsight, I'm very glad that you've applied for this position by the way.

President Maya:

I didn't apply, I was nominated.

Commissioner Singh:

Were you nominated by so many people? But in hindsight, what do you think now if you have to look back at what happened then, is there any comment you'd like to make now about what happened then?

President Maya:

All I can say is that had absolutely nothing to do with me. A group of Magistrates thought I would make a good Chief Justice and they did their thing, held their meetings without even consulting me. And then I heard that a voice note singing about me had gone viral, nothing at all to do with me. And now this thing is sprung upon me here. I was most embarrassed. Those who know me, Mr Singh, would know that is not how I live my life.

Commissioner Singh:

Thank you very much. Thank you very much Acting President.

President Maya:

Thank you.

Deputy President Petse (Chairperson):

Thank you, Commissioner, Singh. Honourable Minister?

Minister Lamola:

Thank you, I just have one follow up, Judge President on the question with regards to the last appointments. And that the President in 2019 appointed two ConCourt Judges, Zukisa Tshiqi and Majiedt and last year as an honourable Singh has said, as an appointing authority, is the President not bound by Section 174(2) to look into the whole broader issues?

President Maya:

Of course, Minister.

Minister Lamola:

Okay, thank you.

President Maya:

But we still have our hopes and aspirations and we get disappointed if we don't get our way as humans.

Deputy President Petse (Chairperson):

Thank you, Honourable Minister. Commissioner Mpofu?

Commissioner Mpofu:

Thank you, Acting President. Well let's just start with a follow up on the Minister. 174(2) reads like this: "The need for the judiciary to reflect broadly the racial and gender composition of South Africa must be considered when judicial officers are appointed." Can that section be used to exclude women from being considered appointed to the Constitutional Court?

Deputy President Petse (Chairperson):

Never. Not on the current facts when ja, not to be long-winded.

Commissioner Mpofu:

Thank you very much. Okay. All right. Okay, let me come to my questions, well before I do that I think I must also start with a declaration. I don't know if Mr Ntsebeza SC is still here, because I wanted to make a declaration for him first. That one of your mentors and the people you say brought you here, was actually sitting here in the room. I'm sure him and Judge President Hlope are very proud of you right now, whatever happens. Well, now my declaration is that Acting President, President Maya and I did pupillage together. And we spent our nights together.

President Maya:

Please explain that, Commissioner Mpofu.

Commissioner Mpofu:

No, I'm not going to explain it, President. No, Acting President what happened is we, President Maya and I and a late gentleman called Mr Mgijima, had a study group as pupils and the three of us one day sat before an exam of civil procedures, sat in the inner chambers library studying for the following day's exam. And it was the first time in my life I did this thing called cross night, we didn't do it deliberately, I'm just attesting to her industry. Because of her, we worked there until when we realised it was actually the time to write the exam. That's how we managed to spend the night together. And the only witness, is unfortunately departed, so it's just me and her now. Thank you. President Maya, no, I was telling that story really to attest, I think the very first sentence you uttered this morning, when you were giving your vision, was

about that word industry. And I see some of the people who nominated you also use that word. And the serious part of that story is the fact that I'm a first-hand witness to how hard you work and how you could make, as I say, make me have to work the whole night through. Now, I want to ask you about transformation. As you know I sit here, occupy this seat as representing advocates for transformation which is part of the JCB. But before I do the questions on transformation because one of them was covered by Commissioner Singh, partly, I see that you wrote in 2007 a paper called or delivered, a paper called 'The Structure and Function of the South African Courts' which was delivered at an SCA opening day on the 30th of May 2007. Now, the reason I'm raising that is because I really would like, I'm very excited right now because I've had this idea and I've been threatening to write about it, of collapsing the SCA and beefing up the Constitutional Court. And when Justice Mathopo and you have raised it formally, then I'm quite excited. And I want your comment, because my view on this is that it must be done, obviously not haphazardly, we need a lot of thought and writing about it. But would you agree that one of the quid pro cos for that would have to be strengthening and I don't know exactly how, but strengthening considerably the appellate capacity of the divisions. Of the law divisions. And in fact in my rough model, half of the people in the SCA would go to the ConCourt maybe and the others would go towards strengthening that appellate capacity of the divisions. Now, so I'd like you to comment on that one, but secondly to comment on if our model, I'll call it our model for now, ever works out, what that would do for access to justice in South Africa. Because right now an ordinary person like me if I have a case here then I must go to the full court, then I must go to the SCA, then maybe I must go to the ConCourt. It's completely impossible. So that's the second aspect, is the access to justice issue. And thirdly, the fact that this whole AD as I prefer to call it, in this context is an anachronism anyway which maybe was part of the 99 to 4 compromises to keep it. 30 years on, shouldn't we have a serious look at the model that you and Justice Mathopo seemed to favour. And what should we do to develop the idea?

President Maya:

Thank you, for the questions, Commissioner Mpofu. About collapsing the two courts, that would contribute immensely to outsourced justice because it would take out – in fact it's not just one level of the appellant process, remember when you lose at the High Court you have to apply to appeal then the judges may refuse, then you seek leave from the SCA. It grants you, you go through there and the two judges say no. It comes to me, so by taking out the SCA from the equation, you know, you'd be cutting off a huge component of the litigation costs involved in an appeal that will ultimately end up at the Constitutional Court. So that would be

a big advantage, a big plus of that model, of your model. As you said, it requires careful thought, I mean it can't be done haphazardly. It would require resources, I mean, how do you beef up the appellant, which is not really so much of a problem. In fact the appellant process in the High Court, we already have three panel full court benches, maybe you tinker with the numbers, increase them, you know, things like that. But it does require careful thought, you know, you don't want to throw out the baby with the bath water. But no question about it, in terms of litigation costs it would work, you know, like magic. And no, let me not say more on that.

Commissioner Mpfu:

Okay, now the same question, but now looking at it, assume you get appointed as a Chief Justice, how would the increased compliment in the Constitutional Court assume we do away with the on bank requirement of the judges having to sit all together? How would that then assist us, let's assume you would then have 20 Judges of the Constitutional Court and on your model of seven or nine, minimum sitting?

President Maya:

As I said earlier, the immediate advantage would be that you'd be able to have more than one panel of Judges sitting. There's only one Court but they sit only twice or once a week, so you'd be able, I mean we can't avoid the fact that litigation has grown tremendously. So there's lots of work and I think that could help. I mean with the general [indistinct 01:22:55] it would be a [indistinct 01:22:57] so you'd find work for those Judges and as I said, is it Section 172, I mean, it contemplates that you'd still have your Constitutional matters and then the matters that raise an arguable point of law of general public importance which ought to be considered by the Court, then those would be your two panel – your seven panel matters. But if you still need there's a matter of great Constitutional importance. You'll still have your eleven numbers sitting.

Commissioner Mpfu:

Thank you.

President Maya:

So no one would go – no one would sit idle at their tables with no work.

Commissioner Mpofu:

Thank you. Then there's an issue which I'd like you to help us with. To do with, not just this process, again you'd be chairing the JSC obviously, if you are appointed. And it seems to me that there is an issue that we have overlooked or we might have short changed ourselves as the JSC. And it goes even to this process. Whether there's a room for us to recommend, let's say recommend more than or less than the number of candidates, if you know what I mean. Let's say here to recommend two, three or one. Now the point I make is that the 1743 of the Constitution says: "The President as head of the National Executive after consulting with JSC and leaders of the parties represented in the National Assembly appoints the Chief Justice and Deputy Chief Justice after consulting the JSC and appoints the President and the Deputy President of the Supreme Court of Appeal." And then that's duplicated obviously with the Chief Justice: "The other charges of the Constitutional Court are appointed by the President as head of the National Executive after consulting with the Chief Justice and so on..." And when the JSC does the list. Now would there have been anything to circumvent the situation that Commissioner Singh was talking about? Would there have been anything against this constitution if in October, for example, we had said to the President, here are your five names according to the constitution, but we as the JSC would in that list we are going to rank the people. In other words, we say number one is Justice – I won't mention them by name. Let say one of the woman Judges, number is so and so and number three and so and so. Of course the President can still over rule us. But is there anything preventing the JSC from saying, these are the people, this is the list, but this list goes like this?

President Maya:

Not from my reading of the provisions, Commissioner Mpofu. And one has to ask the question, I mean for these particular sittings, what would be the point of the President sending four names to the JSC and the JSC throwing back four names to the President? Why did we go through all of this? Surely the JSC must have the power to rank or I don't what else you can say, but you have certain powers.

Commissioner Mpofu:

Yes, thank you. Then if we may then go to the issues of transformation, Acting President, please bear with me. The first issue has to do with women empowerment, a subject that I feel very strongly about. And I know you feel a hundred times stronger about. There's a terrain that we all skirt around. Particularly when it comes to gender empowerment. A lot has to do with what in the feminist movement is called relative disadvantage. The position of black women, African women in particular, versus white women. And in South Africa it's a contradiction and I'd like you to comment on it. Or for those who don't do dialectics, we'll call it a paradox. And it's something like this, that in the struggle against racial oppression, black males are your friends and white women are your enemy, quote, unquote. But in the struggle against gender oppression white women are your friends and black men are the enemy. How is that from a black woman's point of view, I'm now talking about the professional in the judiciary, how should we address that relative disadvantage in making appointments, in briefing patterns and all the things that we've spoken about? Sorry, the second part of that question is what is the role of the office of the Chief Justice in particular in ensuring that what you see from the bench which is that the Government is mainly represented by white male advocates? Many other leaders of the bench have told us that that's what they see at least, at face value. Is there any role that the Chief Justice or the bench as such can play in merging the state, the reluctance state away from that? But I'd like to start with the gender question.

President Maya:

In relation to the first part of your question, all I will say, Commissioner Mpofu, is that black women have always been at the bottom, the very bottom of the heap wherever you go. Read what you will in that statement. Regarding the role, our role in changing the situation, I'm not entirely sure how much more the judiciary can do to nudge, as you call it, the organs of State to do right thing. Other than to shame them on public platforms as we do. I really don't know, I mean, we can't force them not to bring their white suits. We can't tell them not to do that but we can make the point as what we know that what you're doing is wrong on public platforms so that all South Africans know, hear about what's going on. That yes, no one is saying don't use [indistinct 01:30:22] they are, you know, wealth of experience but you can't just let them eat the cake alone. Make sure that you empower the needy ones as well there's enough to go around for everyone.

Commissioner Mpofu:

Yes, thank you. And for that we can't blame the white lawyers, because what must – if somebody brings a brief I would take it too.

President Maya:

Exactly.

Commissioner Mpofu:

Okay, now that's fine, I think we've covered – the last question then is just to piggy back on Commissioner Singh's question. Because I was going to ask you about the disappointment that you must have felt when you were this side of the table in October ...[intervenes]

President Maya:

I'm sorry, Mr Mpofu, I just [speaking simultaneously]

Commissioner Mpofu:

No, don't worry, I was just simply saying that I'm piggy backing on Commissioner Singh's question which you have already answered about the disappointment you felt when in October you with us, sitting this side, made the recommendation and it was ignored of two capable women. But I wanted to link that to you and you don't have to answer this, I'm putting you on the spot. For you this was not the first experience, in 2012 you came here and you were interviewed for a position in the Constitutional Court. And you and a man, Justice Zondo were recommended and the President then, President Zuma, overlooked, that's my word, not yours, overlooked you and appointed Justice Zondo to the Constitutional Court. Now, how did that make you feel, obviously at a personal level you were disappointed, we don't have to go there. But in terms of whether the State was serious about the imperative, let's assume, well I'm told that you interviewed very well and greatly and better, but I can't say because I didn't watch those interviews.

President Maya:

You were not there.

Commissioner Mpofu:

Yes, unlike these ones of last year. But let's assume for argument sake you aren't interviewed equally, you were equally good. What message did those actions of former President Zuma, how did you interpret that outside of the personal?

President Maya:

Well it was, here we go again. That's the lot of women not taken seriously. All right, I don't know what his – it was his prerogative, I don't know what his motives were. But I believe that I was – and many people, those who were here and others, were satisfied that I was a worthy candidate. I'm not saying I was a better candidate than my colleague, but having regard to the demographics and the injunctions of Section 174, I think it was an opportune moment to appoint a woman but it wasn't done.

Commissioner Mpofu:

Thank you, let's hope history will not repeat itself. Thank you, Acting President.

Deputy President Petse (Chairperson):

Thank you, Commissioner, Mpofu. Professor Schlemmer?

Commissioner Schlemmer:

Thank you, Acting President. President Maya, when you spoke during your presentation of your vision, you indicated that you would like to see that the judiciary be combined as one. What is your vision specifically, how do you see the interaction? Perhaps I should put the

question straight. Do you think it's time or is it something that you would consider to have a career path for Judges? Could you elaborate on that please?

President Maya:

The first advantage is that if you – it's what the Magistrates are saying now, that if we were linked to the Judges, we'd be under the OCJ and we would not be. Just at a practical level, we'll not be experiencing the problems that, you know, the Department of Justice, sorry Minister, is just not taking good care of us. Just from that point they would be better resourced because we – I'm not saying the senior judiciary has, you know, enough resources but we would be able to find creative ways of making sure that everybody, you know, gets the necessary tools of trade with the legal that you are given, so that at least the Courts can function. What you say about a career path is something I've chatted about with colleagues, that if you – we are this disparate institution, I don't even know much about the small claims court, I need to go and check online exactly what's going on there. I didn't even know because I don't usually pay attention to what the jurisdiction was and I was surprised to see that, oh, it's R20 000 now. So the lower rungs of the judiciary are neglected and if we keep them close to us, then we have a chance of infusing some of the experience. There will be engagement because they are here with us. Sharing our experiences and skills with them, it requires more thought, it requires thought, Commissioner, but just the basic idea. And there's absolutely no reason why – it's something that we are doing now that the Magistrate does not rise through to the High Court, through to the SCA which we've achieved by the way of two women Magistrates at the SCA who are doing well. And all the way to the Constitutional Court. So that is something I have in mind. I know my responses is vague but just the general idea that we get there, but it needs thought and debate of course. I would not be making these decisions alone and I don't have all the answers on my own. I would need the input of other interested people, including my colleagues. But that is the idea, the general idea.

Commissioner Schlemmer:

And do you think that the type of training that the Universities are currently doing is satisfactory to provide the lawyers of the future?

President Maya:

Unfortunately, no.

Commissioner Schlemmer:

Could you elaborate? Where would you see different changes taking place? What type of things would you change?

President Maya:

It's something we've – I mean that's been in the debating circles for a while that this LLB, I mean, for a long time now, this LLB is not producing the calibre of – it's just not enough the calibre of lawyers that we deserve. And even those holders of those degrees, you know, deserve. And I just [indistinct 01:38:18] I don't see anything wrong with how we used to do things. So maybe we don't have to reinvent the wheel here.

Commissioner Schlemmer:

Thank you, President.

President Maya:

Thank you.

Commissioner Schlemmer:

Thank you, Chair.

Deputy President Petse (Chairperson):

Thank you, Professor ...[intervenes]

Commissioner Notyesi:

Can I make a follow up on this one?

Deputy President Petse (Chairperson):

Please do, Commissioner ...[intervenes]

Commissioner Notyesi:

Ja, no, it's only on this issue of the LLB. If you recall we agreed on this integrated LLB single book course, we had fewer numbers of black practitioner's way then at the time. You say one of the things you integrate the six year LLB programme, B.Proc into congested foyers and then it lacks with the practical and all that. So I'm asking, I want to find out, if one can introduce an element of practical within the LLB training as a course, don't you think that the situation we're in?

President Maya:

Ja, that could help, Commissioner. That could help a lot actually. But you know the irony of the situation is that we sit with an influx, I mean, a whole lot of LLB graduates who can't even find articles. So that idea, it has not yielded the result that was hoped it would.

Commissioner Notyesi:

No, I agree with you it was not a good one, we just need to revisit it. Prof here and us at the Law Society. No, thank you, thank you, President.

Deputy President Petse (Chairperson):

Thank you, Commissioner, Notyesi. Commissioner Breytenbach will be joining us virtually.

Commissioner Breytenbach:

Thank you, Deputy President and [indistinct 01:40:19].

President Maya:

Good afternoon, Commissioner.

Commissioner Breytenbach:

How you?

President Maya:

I'm fine thanks, how are you?

Commissioner Breytenbach:

Fine thanks, you must be quite tired.

President Maya:

I am indeed, so I hope you'll go easy on me.

Commissioner Breytenbach:

No, probably. A couple of questions ago you said in reply to a – I think the follow question, about why women in general, but probably Judges weren't being given, you know, plum cases, difficult work, niche work and you said people needed to trust them, trust women. Just trust them and then, you know, they can do the job. And I absolutely agree with you, of course they can do the job. There can be no doubt that they can do the job and you are a living embodiment thereof. So, who is it, who are these people who don't trust women?

President Maya:

It's the men. Remember I said they are the field, they control, in fact they don't just control the field, they are the field. So they're the ones who hold the power strings.

Commissioner Breytenbach:

And men, you keep on saying empower women and treat women well, but they continue to have this patriarchal approach. Men who don't trust the women, so how do we address that?

President Maya:

I'm afraid I don't have an answer for you, Commissioner. I mean we can only do our best, do the work, which we do. And if that's not enough to convince people that these people are capable, what more can you do? Well I suppose you can toyi toyi and ...

Commissioner Breytenbach:

You know, men constantly suggest and on this panel as well of the JSC, suggest to men and you've sat on a panel when they've done it as have I, it really does I suppose, irk me. I suggest to men, why don't you withdraw from this race so that, you know, a black woman may have a chance at this job. I find that particularly patronising to suggest that in order for a black woman to be able to compete, she shouldn't have to compete with men. How about that.

President Maya:

Look, I don't think there's any – actually it's intended to, I think they believe it's to assist us. You have to be at the receiving end of these things to understand just how they impact you and your group. So I don't, look, I don't hold it against our male colleagues. They think their intentions are good, but the impact is not at all. At least on us women because when we come here, we come here as candidates for that job, candidates who happen to be women, which

of course is something to be taken into account, but that's not our card that I'm a woman so give me this job, no.

Commissioner Breytenbach:

You don't need any favours, you're capable of competing on your own?

President Maya:

Exactly.

Commissioner Breytenbach:

My second question, President Maya, is if you are appointed and you will head the judiciary and you have a really good ideas about combining the lower court to the superior courts. The problem remains that the courts are not functioning well. Your court excluded of course, and the Constitutional Court is doing better, but generally speaking the courts are not doing well. Court hours are low, finalisation rates are bad, and there are many reasons for that, none of them good. And we're being – we now have got the second Zondo report and again there are many prosecutions recommended therein and it doesn't only depend on the Police to investigate and the NPA to prosecute, they need courts to do it in. How do you see the courts dealing with this deluge of cases that are going to be coming our way? Do you have any suggestions about how those should be dealt with?

President Maya:

Well, I'll start with – I believe in working with what you have and our situation right now as you know better than I do, is not a particularly good one financially. You'll recall I said when I spoke on my vision that there are actually a number of High Courts, Commissioner Breytenbach, that do well. And what one sees is that they do well because there's firm leadership there. If you have a good person at the top who is not afraid to, you know, to chase colleagues to do what they signed up to do, then you're not likely to have problems. We have case flow management systems, we have norms and standards. Now if people, if leaders understand their responsibility to ensure, I mean as set out in the Superior Courts Act and

elsewhere for the Magistrates, and they do their job, and show their colleagues, it starts with the Chief Justice I suppose who has the oversight of the entire judiciary. The Chief Justice would worry when they hear that the Magistrate in Palm Ridge, the Chief Magistrate, maybe Commissioner Magwanishe went to visit the court and found that at 11:00 am no one was sitting, but people were milling around in their offices and in the corridors. Something, someone has to crack the whip, that's what it takes. So in short, we know that because there are High Courts that are already performing well now, and the distinguishing factors between them and the ones that are not producing the required results, is firm leadership and following, you know, the procedures that are there for judicial officers on how they should execute their functions. And we need to follow up on that. But you make a point that there's likely going to be a deluge of these cases and I don't think even with the best intention and, you know, best work output, the present courts can cope. I'm speculating, one doesn't really know how many cases will arise. But if things should come to a point that the existing courts are not coping, then money – a broke country or no broke country Minister, something has to be done to establish courts that can deal with those cases because it's important to act on the report. Thank you, Commissioner.

Commissioner Breytenbach:

Thank you very much, President Maya.

Deputy President Petse (Chairperson):

Thank you, Commissioner Breytenbach. Follow up, Commissioner ...[intervenes]

Commissioner Malema:

Thank you very much, President for the response on the question of withdrawal. But is it entirely correct that this body tells a man to withdraw in favour of women because as a member of this board you will know, President, that there are men who are told to withdraw they are just coming across as being extremely incompetent and embarrassing this board. And one such man is Judge, was it a Judge Wishelo from North West, I think he's late now, may his soul rest in peace. But he was asked here to withdraw and it was not in favour of a woman, but it was on the basis that their performance or issues that get to be raised are such that they

should have used their conscience to stay out of this process. And secondly, this body has actually told women who came across limited to withdraw.

President Maya:

Oh, yes.

Commissioner Malema:

Yes, so to create an impression that men are being told to withdraw in favour of women is not entirely correct?

President Maya:

I agree with what you've said Commissioner [indistinct 01:49:17] Commissioner Breytenbach is here and she I've no doubt that she can defend herself but I'll say what I understood her to mean. I thought, because I have had it here over the years being suggested, being asked of males why they have applied when there's a woman and the demographics. I don't, I can't remember the particular facts off hand now, but it has happened. And the suggestion was that why you're here? Why did you not pave way for this woman? And the point we were making is that we understand that actually that's meant in very good spirit. It's meant to promote the cause of women. But women don't appreciate it, we don't want to appear like we're asking for handouts. We have our own pride, you know. That's what I thought she meant, that's how that question makes me feel, at least speaking for myself.

Deputy President Petse (Chairperson):

Thank you, Commissioner Malema. Commissioner Barnard.

Commissioner Barnard:

Thank you, Acting President. Good afternoon, President Maya once again. I'd like to start focusing on the role of induction as Chair of the JSC. So we can just maybe to start with to

make the statement that you already to an extent give some leadership in the JSC, where for example, you Chair a committee or committees. Perhaps you can give your own account of your experience in that regard to the Commission. And how things are going there and how that would be able to assist you if you were to be appointed as Chief Justice, what would you be able to draw on?

President Maya:

I'm sorry, Mr Barnard, I missed a huge chunk of the question, can you just repeat it for me.

Commissioner Barnard:

Sorry, your role as Chair of committees in the JSC, that has already been taking place for some time, so it's just what experience do you draw from that? Just to maybe inform the Commission on that and how you will draw on that or how that might be able to assist you if appointed in the role of Chief Justice?

President Maya:

Oh, thank you so much, Commissioner. Oh well, I have chaired – remember there was a gender subcommittee that was elected to draw a response to the City, the Commission for Gender Equality Report, I wonder what happened to that by the way. And I was appointed, I was elected to Chair that subcommittee and got an opportunity to work closely with a few of the Commissioners. And then there's this screaming committee of course...[no sound – 01:52:45]

Commissioner Barnard:

Sorry Chair, there seems to be a loss of sound on you.

President Maya:

It is back?

Deputy President Petse (Chairperson):

Ja, you can continue I'm sorry.

President Maya:

I don't see Commissioner Barnard, I don't know if he can hear me?

Deputy President Petse (Chairperson):

Commissioner Barnard, can you follow the [indistinct 01:53:18]

Commissioner Barnard:

I can hear now, there was a slight break of sound but it's all back on now again.

Deputy President Petse (Chairperson):

Yes, it's because there was load shedding earlier on.

President Maya:

Can you hear me, Commissioner Barnard?

Commissioner Barnard:

I can hear you, but [indistinct 00:01:53:37] please.

President Maya:

Oh, thank you. So, I was explaining the roles I played in the internal structures of the Commission. The experience I got there really was just to get it in [indistinct 01:53:53] sights into the responsibilities of the Commission. Let me just hasten to point out, Commissioner Barnard that I Chair lots of bodies, so chairing one committee is pretty much the same as Chairing another, it's bringing organisation, and you're just bringing order and organisation to the proceedings. There's nothing extraordinary about that. I don't think I've gained more from sitting there, it's just more work for me than the experience I get from sitting in the big JSC.

Commissioner Barnard:

But if it helps you with the internal workings of the JSC to a certain extent, except that you're obviously sit there as the President of the SCA as well?

President Maya:

Ja, I agree.

Commissioner Barnard:

Now, on transformation and modernisation of the JSC itself, it sits with for example procuring for aspiring Judges that have been determined and published some years ago, there's been some press about that. And this is despite the fact that one owes overtime, things have changed in the judiciary and so on. And so there might be need for changes regarding that. That's since those [indistinct 01:55:20] will work out and then the way meetings is held has notably changed over the last couple of years, partly due to the Covid pandemic and the online type of meetings. And then we also know that the JSC mandate is wider than just appointing Judges for example, I'm thinking specifically of the advisory role that's set out in the constitution. So what is your vision for the JSC in general and more specifically with regard to these aspects that I've highlighted?

President Maya:

Well, in addition to those aspects you've highlighted are there proposals that have come from interested parties, you know, about the manner in which we conduct our business. Just to

coin it crisply. My short answer, Commissioner with that I hope that the meeting the body had undertaken to have shortly, we just review everything and then ideas can flow from there. I don't really want to venture any opinions on that at this stage and here. It's just safe to say that the JSC intends to have and to do an introspection and look at its processes for the benefit of interested parties, we wonder if we are even listening to them.

Commissioner Barnard:

And then if one, just moving onto a different aspect now and that's the office of the Chief Justice if appointed, thinking about yourself, what would the weaknesses or perhaps blind spots be and how would you counter those weaknesses or challenges that you might face if there are weaknesses?

President Maya:

You mean in that department?

Commissioner Barnard:

No, I mean in respect of yourself to deal with that department.

President Maya:

Oh, well the most obvious thing is that I've only ever led the Supreme Court of Appeal which is a small court with 25 Judges and 68 support staff and that's a huge institution. I mean the entire – now you're scaring me because you forcing me to think about the enormity of this job. Because it's not just the OCJs, all the other things that the CJ, the Chief Justice is responsible for. It's a big job. But as I said when I outlined my vision, there's a lot of support around the Chief Justice. We've seen it, I've seen it at play, at least in my time in the heads of court cluster. The OCJ, they truly play their part. They offer the support. I've no doubt that they would put me through the – ja, sorry, English is my second language and when I get tired it just escapes me. I've no doubt that I would have the necessary support. I'm a quick learner I must say and I'm a strong, I have a very strong character so I'd be able to manage whatever

challenges came my way, but with that kind of support, I'm sure I'd quickly come to grips with everything that comes with the job. I'm ready for that.

Commissioner Barnard:

Thank you. And then if one thinks of your role as leader of the judiciary and what speaks about Section 165 which gives the Chief Justice responsibility over the judicial functions of all courts. Much of what has been said today deals with higher and Magistrates Courts and let's call it the more commonly known court system. But then Section 166(E) defines the judicial system to also include any other court. So in the context of other than the higher and the Magistrates Court, so could you just discuss your vision as Chief Justice regarding these other Courts? One example mentioned already was the – earlier by you, the small claims court and so on. But in general what would your vision be for these other courts?

President Maya:

Well I don't have a defined vision at this stage, Mr Barnard. I mean as I said, these courts by and large wallow out there, they are the forgotten stepchildren. But one thing that rings in my mind is that we need to bring them into the fold and then we'll take things from there. I've read up on them on the internet and I don't think that is enough. One needs to actually engage with those institutions physically to have a real experience of exactly what goes on there. I can't draw a vision on what I've read from the internet. And anecdotal accounts from people I've asked about the operations there. But the best, my key thing right now is to bring them into the fold and then get to know exactly what's going on. And with the assistance of my colleagues we'll make the necessary plans to do whatever is necessary to give them support or whatever is needed.

Commissioner Barnard:

Thank you, President Maya. Thank you, Acting President.

Deputy President Petse (Chairperson):

Thank you, Commissioner Barnard.

Commissioner Mpfu:

Quick follow up, please Acting President?

Deputy President Petse (Chairperson):

Yes, you may proceed, Commissioner Mpfu.

Commissioner Mpfu:

Thank you very much. A very quick one, President Maya. I was just reminded by one of Commissioner Barnard's questions. As you know that in October the JSC of which you are a part, agreed to have a workshop of the JSC, particularly because there are new Commissioners and so on but also to try and streamline how we work. The view which I shared or at least expressed was that that should be rather done when there's a new Chief Justice with that person because that person will be chairing the JSC going forward. And that seems to be what has happened. Now, if you were appointed, would you be keen or able to convene such a workshop as soon as possible, if possible even before the April sitting so that, you know, going forward with the new Chief Justice we would basically be moving from the same page, so to speak.

President Maya:

The sooner, the better, Commissioner. That's absolutely, that's I mean, whoever gets the job must be prevailed upon to do that. We can't afford to wait. Thank you. Thank you, Acting President.

Deputy President Petse (Chairperson):

Thank you, Commissioner Mpfu. Commissioner

Commissioner Matolo-Dlepu:

[indistinct 02:02:49]

Commissioner Matolo-Dlepu:

Thank you, Acting President. Justice Maya, I vetted you earlier on.

President Maya:

Yes, good afternoon again, Commissioner.

Commissioner Matolo-Dlepu:

Yes, and I've been waiting so much for this opportunity and I thought I'm too far below to ask you some of the questions. But what I must say that I really appreciate you having availed yourself. It's actually affirming the role of women in our society. One of the things you, in your vision, you had a lot of issues that you raised about your vision, and what I just wanted maybe if you could add on your vision is the interaction with the professional and stakeholders. I'll tell you why I'm saying that in the sense that we have this – whether it's six months meeting with the heads of Court, where we meet with public works, everybody is there. And for me they haven't served the purposes they're supposed to serve. Because I always feel it's a talk shop. There's no monitoring of what the issues that are being raised. For instance the profession will raise issues the operations of the Court, their frustrations, but come next six months it's still the same. So I think those are the things that you should really put – they are called PEEC meetings on any CC meetings. But they always happen but there's nothing that monitors. I mean Public Works will be defending themselves, so and so and so – but nothing comes out of it. Can you just prioritise that so that at least move together with the profession because the Courts cannot work without the profession. And those are some of the challenges that the profession is experiencing. And the lift is not working, the air conditioners and it will even assist you as Judges, you know if those things are implemented. The second issue is just a follow up on the issues of – I mean the briefing patterns. I know that a lot people raise that issue and I want to assure you that whatever profession we have done our best. We have come up with a leader [indistinct 02:05:17] code, we had the support of the Department of Justice of the Ministry but it's sitting somewhere. You know when executives, he's sitting

somewhere in the DTI and it doesn't move. For me the bottle necks I think they are here, they're listening. The bottle necks that happen in between the executives themselves, it becomes a problem, because we thought by now the monitoring council will be in place so that we see that whether it works or not. So I think I just wanted to, you know, I'm behind you, that's my passion. But the executives must assist us to make sure it happens. The third one, I mean that was a follow up. The third one, the second one, I wanted to – not in defence of the BLA but I'm just saying the issue of Acting Judges, there's a perception out there from the profession because the Acting, the Acting appointments comes from the JPs, you know, you get invited. And some of the JPs when you submit names they said, wait for me, you shouldn't come to us. And this is where the perception of saying favouritism and all that comes from, you know. But I remember we had suggested to the Minister a policy on the Acting appointments so that we participate as a profession also, submit names so that at least people shouldn't be seen as being overlooked, you know. So I just wanted you to, to at least to be assured that if we suggested a way forward for Acting appointments, even I mean, we shouldn't be calling Justice JP Dlaetsi, hey can you assist our members, you know. At least there must be a policy, so I think that's what I wanted just to – we understand the perception, the perception is all there, so we need to deal with it. I think the third one for me ...[intervenes]

President Maya:

Fourth point.

Commissioner Matolo-Dlepu:

Oh, the first one it was clarity nè? The third one is for me, I understand that for instance, Commissioner Mpofo and Justice Mathopo the head, there're mooted this idea of merging the two courts. And for me, I'm not sure, I just want to know your take on this. I understood the Constitutional Court to be there to develop our law. Deal with constitutional issues, but more and more I see it being packed with appeals and appeals and appeals, you know. And I still feel that, I may be wrong, we haven't developed the South African Law in terms of our constitution to suit South Africa. We've still referred to Roman Dutch Law, to the Common Law. If we merge the two aren't we eroding that part of us developing our own South African Law? That's what I just wanted to hear from you?

President Maya:

To the five points and my response to points one to four is all noted, Commissioner Dlepu, and if I'm appointed you can be sure that I'll do something about them. Now about the last, just remind me, what was the last one? Just a cue word? Oh collapsing of the two courts? I don't know if fusing the two courts would dilute anything, I mean the two courts apply the same Law, Commissioner. And I think the real issue is the increasing of the jurisdiction of the Constitutional Court. And we'll see, you know, in fact that's why I was even suggesting getting more Judges so that you could have two panels. Because you have a stream, sort of two different streams of cases. The more general list cases that still end up there, and the truly constitutional matters, so I think the two-panel solution might deal with that. But as for your concern that doing away with the – the SCA does not apply so Law is bound to apply like the High Courts, the constitution. And the Law. So they do the same thing. It's just that there are certain powers that the High Court and the SCA don't have declaration of constitutional invalidity for example, only the Constitutional Court can confirm, you know, small things or not small things like that. I still find merit in the idea of fusing the two courts. But it does not have to happen now. It could be medium to long-term. Or even short-term go, ja.

Commissioner Matolo-Dlepu:

Okay, thank you, Acting President.

Deputy President Petse (Chairperson):

Thank you, Commissioner Matolo-Dlepu. Commissioner Malema, I seem to recall that you said you no longer have any questions.

Commissioner Malema:

I didn't say anything.

Deputy President Petse (Chairperson):

Do you want to say something now?

Commissioner Malema:

Yes.

Deputy President Petse (Chairperson):

Please do.

Commissioner Malema:

No, I'll be very brief, I just have two questions, President Maya. Earlier on you spoke about perception being the most important thing in the judiciary. This thing of Judges going to houses of Politicians and when asked about that they said, no they want to discuss matters of National importance with Politicians which they can't take the country into confidence, meaning, a Judge and a Politician have got some secret that they can't tell us about. Does it help to enhance the good image of the judiciary or is contributing to what Commissioner Singh was talking about of lack of confidence which is growing amongst the population because of those types of characters that we find amongst ourselves.

President Maya:

That's a tough one, Commissioner Malema. Let me first say this, in Bloemfontein I was neighbours with the Premier, the former Premier, just 10 minutes apart our houses for about 5 – I mean for the length of his tenure. If I saw, if I was driving out of my house and I saw his entourage, you know, leaving I would turn back. I literally ran away because I was scared of – I didn't want to meet him. The one time I met him was during – we were interviewing, I think about four years back, interviewing for a vacancy in the Bloemfontein High Court. I met him at the tea, I did not even introduce myself that you know we are actually neighbours, so I'm afraid of things. That's a literal translation from isiXhosa, "*ndiyazoyika mna izinto*". But to answer you more directly, look, I can imagine a few instances where a head of the Judiciary would have private business with, well not private, sorry, sorry, official business with the Head of State, I imagine that, if for example, about recommendations of the JSC it's not the President who would – if the President commanded the Chief Justice – well not commanded, asked the

Chief Justice to report at this home to discuss those recommendations, there would be nothing untoward with that kind of meeting at the President's official residence. I don't know about the privacy of the – I mean why it would not be disclosed, I can't really say anything about that. If it were me, if I went to attend that business, because that information belongs to the public anyway because we serve the public. I would disclose it that I actually went to see President Ramaphosa to discuss the recommendations of the JSC, he had asked me to visit him. But I don't know, I can't really comment intelligently when I don't have all the facts. I don't what that was about.

Commissioner Malema:

In 2010 we had, during the World Cup, we had special Courts that were dealing with those matters of [indistinct 02:14:55] sorry, sorry, President. And before I move there I just want to agree with you that from time to time as Head of Court, you'll meet or as a Judge whatever, you'll meet with the leadership of the country. But when you are asked you'll be to say, I went there to discuss the recommendations of the JSC. But once a Judge comes across as saying, we want to discuss a matter of National Importance and then you don't want to disclose to the country, what is that matter. It means a Judge can have a secret with a President or a Politician, it's a worrying factor. But moving to the next one, 2010 there were special courts. Why are we not creating special courts to speed up matters of corruption? For instance, we had a Commission here that was investigating corruption and in the two reports that came out, nothing came out except to recommend a further investigation after spending 1 billion, we are still furthering another – 2 billion, another investigation. If there was an alarm like those matters were referred to that Commission, there's corruption in Transnet, these are the people who are responsible. The same recommendation – you don't need a recommendation of a Commission to investigate a crime. Now we are told after 2 billion we must still investigate further the possibility of a crime, so instead of Commission, shouldn't we have special courts dedicated to corruption. So that once an investigation is done, then the decision is taken to prosecute. You have a court that is dedicated to this corrupt matter, I will tell you why. This matter of corruption is a big problem in this country. And it must be attended specially and urgently, the same way we did in 2010. Shouldn't we if you're appointed, are you amenable to consider some special court to attend to corruption cases so that people begin to see we are serious dealing with corruption and finalising the corruption cases as soon as possible, in order to then send a message to society that if you engage in these things, you're going to be caught and you'll be sent to jail for a very long time. That is one reason. But the second reason I'm raising this matter is, which you may not have to respond to. Corruption cases are now used

by those in power to settle political scores. So they just tend people, pretend to be taking them to court and they leave them there hanging for so many years with a dark cloud. So that these people are not a threat to their office occupation. So I think that perhaps, I don't know, you'll guide me there, President if – have we not reached a point where we need special courts to deal with matters of corruption as speedily as possible so that the country and the world can see that South Africa is serious in dealing with these matters of corruption.

President Maya:

I think every right being South Africa would agree, but that's a fine idea. But I don't know if we'd be able to create such courts within the resources we have now. I mean, the courts are currently struggling with their workload. We are short staffed, I mean, I don't even know, we all know what's going on. I guess it would depend on whether the Minister if the idea was positive to him, the proposal was positive to him, did not come back with the usual answer that Treasury says, there's no money. The country was not working in 2010, Mr Malema.

Deputy President Petse (Chairperson):

Thank you, Commissioner Malema.

Minister Lamola:

Follow up on that one there, Acting President?

Deputy President Petse (Chairperson):

Yes, you can proceed, Honourable Minister.

Minister Lamola:

Thank you. Maybe on that same question, President, just to expand on it. Shouldn't the speciality start with the investigation and also with the NPA? And also to say, the crimes we have now that – some of them you might have seen on appeal. Can we still really say there is no convergency between investigation and the prosecutorial role, the complexity of the

matters. The way we have them today. And I think what comes to mind to me, which at least at a time which was foresight was something like DSO thing that some powers of investigating and cushioning and also in terms of – now what we have, is a situation where the Hawks or the Police investigate. It takes time, they give the NPA, the NPA tells them to go back to look at this and that. it takes another time. By the time the matter goes to court it's three or four years and sometimes there's no indictment after six or seven appearances. So that is the kind of question I'm asking, that shouldn't that be the kind of thing we are looking into so that we are able to have matters being investigated quickly, being prosecuted quickly and also, if for example, with the Special Commercial Crimes Court, if it is then overwhelmed, there's a basis to say we may create a special role or may create a special court as per the suggestion of Commissioner Malema. But if we do it now, there's no case that the special corruption court will do. So that is the kind of question I'm having. What will be your view? I mean, the Glen Vista case states a requirement of a kind of corruption busting institution, what are the powers and all that kind of thing? Thank you, Acting President.

President Maya:

You are making sense, Minister. You are making sense. I don't see any contradiction between what he proposes and what you're saying. You are just beefing up the process from, you know, inception now from investigation. But his ideal remains that – I mean, specialist courts will be needed for a few reasons. A few good reasons. But what you say also is they should be combined and with that composite mechanism I'm sure we'd make, you know, great inroads into this cancer that has brought our country to its knees.

Commissioner Notyesi:

President Maya, may I just follow up on this as well. The side reasons, just quickly. Can I follow up on this quickly?

Deputy President Petse (Chairperson):

Yes, please do, Commissioner Notyesi.

Commissioner Notyesi:

President Maya, the point is [indistinct 02:22:45] I think the idea of the NEEC introduced by the Chief Justice is something that one would keep those institutions. Strengthen up because what Commissioner Malema is saying here, to me is one of the issues that makes people, the public to lose confidence. Particularly with these cases of the ANC step aside. They are putting it – all of them in jail every day. With cases to stay there eight years. I have a case in the Eastern Cape, it is eight years, the Mandela case. It is nothing, I mean we can raise it to you but if we took them to that NEEC, we track on the cases what is the reason why it is remaining there, at least there would be – other than the institution which needs to be polished up, but from the Court's point of view [indistinct 02:23:47] because we owe it to those who are accused, a duty that these matters are finalised. Also to the country, corruption that it is dealt with. There's a balanced approach.

President Maya:

I hear you, Commissioner.

Commissioner Singh:

Follow up. Ja, thank you very much, Acting President. President Maya we all know of the saying "in for a penny, in for a pound" now we've spent so many pennies that's gone to over R2 billion as Commissioner Malema has said. But surely as a country we can find resources somewhere to ensure that we follow through logically on prosecuting the people that have been involved in this corruption. Because at the end of the day, it's going to benefit the country as a whole if these people are put behind bars and in orange overalls, and we'll have more money and there'll be more confidence. Not only in the judiciary but confidence in the country itself for foreign investors, etcetera. There was a time when I read, and correct me if I'm wrong, about funding being made available from outside sources, you know, for these kinds of prosecutions or to beef up the judiciary. I don't know if you're aware of that, but I think I did read somewhere. And I don't know what your view is on that kind of thing. Because I mean, we've got funds that we get from higher up, from World Bank, for everywhere else. What would your view be on that?

President Maya:

Look, I agree with the principle as a tax payer, a South African, but the other logistics I would leave to Minister Lamola and Treasury. I don't know if – I don't know how those work getting funding elsewhere and then even if maybe we can't find resources from our broke bank account, but I agree with the principle as an ordinary South African.

Commissioner Malema:

Acting President, that's me.

Deputy President Petse (Chairperson):

Commissioner Malema.

Commissioner Malema:

The reason why we're raising this issue is because if you are head of the judiciary, you are going to inherit this – I don't want to say, bad image or lack of confidence by our people on the judiciary because of how long we take to resolve some of these issues which are a big problem for our country. So in as much as we don't have a budget, but an idea that is put in a very structural manner so that even tomorrow we get money somewhere, we are able to say, okay this is how we are going to move towards making sure that we restore the image of the judiciary. Many of women don't report rape because it takes forever to just resolve it. And the humiliation of going through and coming back and going, I want to deal with this pain and deal with it and finish it, so that I can reclaim my life. But there are no specialised courts that deals with these fundamental issues that are confronting our people and I think that it's a point that perhaps you need to consider when appointed.

Deputy President Petse (Chairperson):

Thank you, Commissioner Malema. President Maya, I've got a few propositions that I want to put to you for your comment. The first one is, if you were to be appointed the next Chief Justice, do you think that the environment would be conducive for you to replicate the many positives that you achieved at the SCA at all levels within the judiciary?

President Maya:

Yes, Chair, I've no doubt that that's eminently possible with the support of my colleagues of course, who I know also have the best interest of our institution at heart.

Deputy President Petse (Chairperson):

Thank you. Earlier you did mention that you are firm and I think your firmness was put to good use at the SCA several times, because whenever problems arose you would encourage us enough to nip them in the bud.

President Maya:

It is a characteristic of my clan, especially the women of that clan, oRhadebe, intombi zakwa Rhadebe ziyaziwa DP.

Deputy President Petse (Chairperson):

Then the other issue that I want to raise with you, you know when I read the comment from the BLA, especially the second last open ultimate paragraph are numbered, of their comments, page 3, where they say, you know, during 2017, 18,19,20 the acting appointments at the SCA favoured white males. And this caused me to check my records. And I observed that during your stewardship from April 2018 to April 2021, 13 Judges were appointed to the SCA, two white males, one white female and 10 black Judges, six of whom were women. And the point that I want to put to you is that the concern raised by the BLA seems, in my view, to quibble about acting appointments and overlooking an important consideration relating to permanent appointments over the same period at the SCA.

President Maya:

Exactly.

Deputy President Petse (Chairperson):

South African Judges come from various backgrounds. And you did earlier on, when Commissioner Notyesi put some questions to you, gave us an insight of some of them. But what I want to put to you is that, regardless of their past affiliations, be they political or otherwise, Judges are always expected to be scrupulously faithful to the oath of office and to decide cases that come before them with integrity, courage by applying the law to the facts of the case.

President Maya:

Yes.

Deputy President Petse (Chairperson):

Thank you. And the other issue I want to put to you is that, in my view it is an illusion to think that this Chief Justice is a supernatural person with monopoly of wisdom will have answers to every challenge that might confront the judiciary. And that an astute Chief Justice will recognise the fact that within the judiciary there will always be Judges with special skills, talents and indeed leadership qualities. And the Chief Justice would then be well advised to tap on those talents in taking the judiciary forward.

President Maya:

I couldn't have said it better.

Deputy President Petse (Chairperson):

We are almost at the tail end of the interview. Do you have anything that you'd wish to say that may in your view be of assistance to us during our deliberations before we adjourn for the day?

President Maya:

No, DP, I'm going to disappoint you, I don't have a closing statement. I think I've said enough here. All I want to do is to ask for an opportunity to thank all the people who nominated me and supported my candidacy. Especially the women. Women are notorious, one of the Commissioners mentioned this. Women are very – I think it was Commissioner Malema, women are notorious for not being able to support one another but in this case – well, and in other cases too, but we here now in this particular case, they moved heaven and earth to ensure that my name becomes a – well not my name, I'm the Guinea pig if I put it that way. A woman gets an opportunity, you know, to be considered for this – such an important job and it's such an honour for me to be that woman. And whichever way the decision goes, I will remain forever grateful for this opportunity to all those who made it possible. I think women have – Commissioner Lucas said it, we've broken, we've just caused yet another crack in this glass ceiling just having a woman come in and sit here for these kinds of proceedings, this is a huge victory for women, just being able to sit here and address you. So I'm thankful for that opportunity and ja, those people almost crashed my phone with all the messages of support. Thanks to them all. That is all DP, thank you and Commissioners.

Deputy President Petse (Chairperson):

Well it remains for me to thank you for availing yourself and for your candid answers to the questions that were put to you by the Commissioners which will no doubt be borne in mind during our deliberations. You are at this stage, excused.

President Maya:

I never thought the moment would come.

Deputy President Petse (Chairperson):

Thank you.

President Maya:

Thank you so much and good luck with the rest of the proceedings, Commissioners.

Deputy President Petse (Chairperson):

Thank you.

END OF AUDIO