



Judicial Service Commission Interviews

4 February 2022

Chief Justice Interviews

5 Interview of Acting Chief Justice Raymond Mnyamezeli Mlungisi Zondo

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Deputy President Petse (Chairperson):

15 Fellow Commissioners, will you please settle down now so that we commence with the business of the, today's session. Thank you. I have been informed that there will be no loadshedding during the course of the day today and that it will only kick in at 10:00 pm. So, we must endeavor to conclude the interviews before 10:00 at the latest. Good morning, Acting Chief Justice.

20 **Acting Chief Justice Zondo:**

Is it on?

Deputy President Petse (Chairperson):

Yes, it's on already, Acting Chief Justice.

5 **Acting Chief Justice Zondo:**

Good morning, Chairperson. Good morning, Honorable Commissioners.

Various Speakers:

Good morning. Morning. Morning. Morning.

10

Acting Chief Justice R Zondo:

Thank you.

Deputy President Petse (Chairperson):

15 Are you well this morning?

Acting Chief Justice Zondo:

I am well this morning, Chairperson. I hope you are well too.

20 **Deputy President Petse (Chairperson):**

Yes, we are all well as you can see.

Acting Chief Justice Zondo:

Yes.

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Deputy President Petse (Chairperson):

Thank you.

Acting Chief Justice Zondo:

5 Thank you.

Deputy President Petse (Chairperson):

10 I'll give you just a few seconds for you to settle down and once you are ready will you please give me a signal then we will commence with the business of the day. Thank you, Acting Chief Justice.

Acting Chief Justice Zondo:

Thank you, Chairperson. Thank you, Chairperson, I'm ready.

15 **Deputy President Petse (Chairperson):**

Thank you, Acting Chief Justice. Just for the record, I ask you to look around and confirm if you know each and every one of the Commissioners sitting around this table.

20 **Acting Chief Justice Zondo:**

I think I know each and every one, Chairperson. Thank you very much.

Deputy President Petse (Chairperson):

25 Thank you, Acting Chief Justice. And for the record I just want to confirm that you are one of the four candidates nominated by the President of the Republic of South Africa for the position of the chief justice of the Republic of South Africa. So, I take [intervenes]...

Acting Chief Justice Zondo:

Yes.

5 **Deputy President Petse (Chairperso):**

I take this opportunity to welcome you to this session of the Judicial Service Commission this morning. And it is, if I might add, now our unenviable task to interview you with a view to advise the President as to who, amongst the four candidates we consider to be the most suitable person for the vacant position of the chief justice. Acting Chief Justice, you were born in 1960 and you are 61 years old and will be 62 in a month's time.

Acting Chief Justice Zondo:

In May.

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Deputy President Petse (Chairperson):

In May.

Acting Chief Justice Zondo:

20 Mm.

Deputy President Petse (Chairperson):

Thank you. And given the current position that you hold, would you confirm that you are a South African citizen by birth?

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Acting Chief Justice Zondo:

Yes.

Deputy President Petse (Chairperson):

You are married with eight children?

Acting Chief Justice Zondo:

5 Yes, I'm married and have eight children.

Deputy President Petse (Chairperson):

10 You are currently the Acting Chief Justice of the Republic of South Africa, but your substantive position in the hierarchy of the judiciary is that of the deputy chief justice?

Acting Chief Justice Zondo:

Yes.

15 **Deputy President Petse (Chairperson):**

You hold five degrees acquired between 1983 and 2020 and the three Masters of Laws degree that you have were obtained through Unisa, University of South Africa?

Acting Chief Justice Zondo:

20 Subject to one qualification, that is correct, and the qualification is they were acquired between 1983 and 2012, not 2020.

Deputy President Petse (Chairperson):

2012, yes.

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Acting Chief Justice Zondo:

Ja.

Deputy President Petse (Chairperson):

I beg your pardon because I have 2012 on my notes.

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Acting Chief Justice Zondo:

Mm.

Deputy President Petse (Chairperson):

10 Thank you. And like the three other candidates we've already interviewed, you were appointed as a judge at a youthful age of 37.

Acting Chief Justice Zondo:

Yes.

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Deputy President Petse (Chairperson):

So, you have been in acting service as a judge for 24 years, I think.

Acting Chief Justice Zondo:

20 Well, a few days ago I completed 25 years on the bench.

Deputy President Petse (Chairperson):

Thank you.

25 **Acting Chief Justice Zondo:**

Mm.

Deputy President Petse (Chairperson):

And you were appointed as a justice of the Constitutional Court in 2012.

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Acting Chief Justice Zondo:

Yes.

Deputy President Petse (Chairperson):

10 And as Deputy Chief Justice in 2017.

Acting Chief Justice Zondo:

Yes.

15 **Deputy President Petse (Chairperson):**

So, you have about two years left in acting service, active service in terms of Section 176(1) of the Constitution.

Acting Chief Justice Zondo:

20 Two and a half years, just a little over two and a half years.

Deputy President Petse (Chairperson):

Thank you. So, we can just say it's, you are left with some two and a half years before [intervenes]...

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Acting Chief Justice Zondo:

Before the end of my term of office as Justice of the Constitutional Court.

Deputy President Petse (Chairperson):

Justice of the Constitutional Court. Thank you.

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Acting Chief Justice Zondo:

Ja.

Deputy President Petse (Chairperson):

10 According to the bundle of your documents, you have a few publications in the field of law, is that correct?

Acting Chief Justice Zondo:

I have some articles that I have published and some chapters in some books. Ja.

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Deputy President Petse (Chairperson):

Thank you. And have you received any awards from lawyers' organizations or other bodies, both here and abroad?

20 **Acting Chief Justice Zondo:**

No, I [intervenes]...

Deputy President Petse (Chairperson):

If at all.

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Acting Chief Justice Zondo:

I've not received any awards from any organization abroad. I have received an award from an organization of legal lawyers in Kwazulu Natal a few years ago. They awarded that award to me on the basis that they thought I have made a significant contribution in human rights.

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Deputy President Petse (Chairperson):

Thank you, Acting Chief Justice. I just want to take you to page 6 of book 1, book 1 of 1 where you list in paragraph 16 judgments that you regard as being the most significant.

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Acting Chief Justice Zondo:

Mmhmm.

Deputy President Petse (Chairperson):

15 And some of them were judgments that you wrote quite early in your judicial career.

Acting Chief Justice Zondo:

20 Yes. Actually, that first one there, Chairperson and Commissioners, Afrox Limited was the first judgment ever that I wrote. I wrote it as an acting judge. It was the first judgment that I ever wrote.

Deputy President Petse (Chairperson):

And before then you enjoyed the privilege of criticizing the judgments of those who were members of the bench in the course of your representation of your clients.

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Acting Chief Justice Zondo:

Yes, well when you represent clients you have to deal with certain judgments and sometimes you have got to make submissions that they were wrongly decided. So, it's part of one's job as a lawyer.

5 **Deputy President Petse (Chairperson):**

Yes, indeed.

Acting Chief Justice Zondo:

Mm.

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Deputy President Petse (Chairperson):

Have the principles that you propounded in the many judgments that you wrote stood the test of time as it were, as far as you know?

15 **Acting Chief Justice Zondo:**

Well to a very large extent I think they have. Talking about that first one, Afrox, that you see there, it was handed down in '97. I was an acting judge of the labor court. As I said it was my first judgment, but a few years later it was upheld by the labor appeal court. Many of the judgments that I have written have stood the test of time, well others of course were not taken on appeal and therefore we don't know whether if they were taken on appeal, they would have been able to withstand the scrutiny of an appellate court. But you have Ndima there at page 7. Well, it's typed page 7, but paginated page 8.

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25 **Deputy President Petse (Chairperson):**

Yes.

Acting Chief Justice Zondo:

That is a case where, which I also wrote as a judge of the labor court which had a very meaningful impact on the lives of workers in this country, because in dealing with the matter that I dealt with there, I came to recognize that there was a problem in the Insolvency Act in that when a company got liquidated, when a provisional liquidation order was granted, the law was that the contracts of employment of all workers would automatically come to an end just like that.

Deputy President Petse (Chairperson):

Ja.

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Acting Chief Justice Zondo:

But the problem was that that would be a provisional order of liquidation and if later on the final order of liquidation was not granted, and the company was, the company survived, those workers would no longer be there, and the company would be able to take whoever else they wanted. And I made a recommendation in that judgment that Parliament should consider amending the law to make sure that when a provisional liquidation order is granted, the contracts of employment of workers do not come to an end, do not terminate, but they are provisionally suspended pending the outcome of the liquidation proceedings and if the company survived, then they would continue. And subsequently a few years later an amendment was made in the law and that recommendation was accepted and as far as I know that is still the position now that when workers, when a provisional liquidation order is granted, the contracts of workers do not immediately come to an end as it used to be before this judgment of Ndima or before the amendment of the legislation that I have read in books was inspired by this judgment. So, there is that protection which now exists. And then you, we also have the next judgment. There is Modise and Others versus Steve's Spar, Blackheath. That was also a very important judgment which I wrote as, I think I was acting judge president of the labor appeal court at the time in either 1999 or 2000. I think it was 1999 and there had been a lot of uncertainty in the law about whether workers who go on illegal strikes are entitled to be heard before they can be dismissed by their employer. There had been different judgments in the old industrial court and in the old labor appeal court and I think, ja, in the old Appellate Division and I took the opportunity to investigate this issue quite extensively. I considered judgments that stretched over, I think over ten years in the different

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courts to see what they had said as well as academic articles on the subject. And I came to the conclusion that the correct position was that the fact that the workers may have been involved in an illegal strike is not something that disentitled them to the basic right to be heard before they could be dismissed. When after I had handed
5 down that judgment, there was quite some noise in the media from employers, but that judgment has stood the test of time as far as I remember. I may be mistaken, but I think the supreme court of appeal subsequently approved it. That's my recollection, but as I understand it, that remains the law that workers are entitled to be heard even if the employer may think that their strike is illegal. I [intervenes]...

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Deputy President Petse (Chairperson):

Acting Chief Justice, I do not expect you to run through all of [intervenes]...

Acting Chief Justice Zondo:

15 Yes.

Deputy President Petse (Chairperson):

...your judgments.

20 **Acting Chief Justice Zondo:**

Yes.

Deputy President Petse (Chairperson):

25 You could wait and see whether any of the members of the commission would have anything to say in regard to those judgments.

Acting Chief Justice Zondo:

Yes.

Deputy President Petse (Chairperson):

But I want to take you back to Ndimma and Others just for a moment.

5 **Acting Chief Justice Zondo:**

Yes.

Deputy President Petse (Chairperson):

Because there is a critical observation that I want to make.

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Acting Chief Justice Zondo:

Yes.

Deputy President Petse (Chairperson):

15 And I would like you to, you know, comment [intervenes]...

Acting Chief Justice Zondo:

Yes.

20 **Deputy President Petse (Chairperson):**

...on it if you will.

Acting Chief Justice Zondo:

Mm.

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Deputy President Petse (Chairperson):

5 And the point which I want to make is that sometimes justice and equity on the one hand and the letter of the law on the other may collide instead of being aligned and on occasions, as you did in Ndima, the judges are constrained to call on the legislative arm of the government to consider legislative amendments in order to cure the defect. And the proposition that I want to put to you [intervenes]...

Acting Chief Justice Zondo:

Mm.

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Deputy President Petse (Chairperson):

...and hear you on is whether you considered that when courts make those calls, the legislative and the executive arm of the government bear a duty to give those calls serious consideration given that courts do not make those calls lightly.

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Acting Chief Justice Zondo:

20 Well, Chairperson and Honorable Commissioners, whether or not Parliament for example, would give a particular recommendation serious consideration I guess would depend on what view the, or Parliament took of the recommendation. If the recommendation seems to be weighty, I would imagine that they would give it serious consideration, but if they maybe didn't think it was weighty, maybe they would look at it and make whatever decision. But what is clear of course is that they, Parliament is not obliged to go along with such recommendations or suggestions from the judiciary. It is up to them if they think that the suggestion is a helpful one
25 that can solve a particular problem, they could along. If they think there is another solution, they are free to look at another solution. If they think this solution just shows that this judge doesn't know how these things work, they would reject it.

Deputy President Peste (Chairperson):

30 Of course, I accept that, Acting Chief Justice. The proposition I was putting to you is that at least they must consider [intervenes]...

Acting Chief Justice Zondo:

Yes.

5 **Deputy President Petse (Chairperson):**

...they couldn't just [intervenes]...

Acting Chief Justice Zondo:

Yes.

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Deputy President Petse (Chairperson):

...you know, brush it aside.

Acting Chief Justice Zondo:

15 Ja, no, no, I think it was the seriously part that I was attempting, I'm dealing with, but I would imagine that they should consider and what they make of it is their judgment call.

Deputy President Petse (Chairperson):

20 Yes. Indeed.

Acting Chief Justice Zondo:

Yes, ja.

25 **Deputy President Petse (Chairperson):**

Indeed, no one can quarrel with that proposition.

Acting Chief Justice Zondo:

Mm. Mm.

5 **Deputy President Petse (Chairperson):**

Then I want to take you to [intervenes]...

Acting Chief Justice Zondo:

10 Well maybe, Chairperson, if you would allow me, I know you said we are not going to go through all of them, but may I with your permission just refer to the NEHAWU judgment which is next in the list? Would you permit to do that?

Deputy President Petse:

That would be on what page?

15

Acting Chief Justice Zondo:

On page 9, typed 9.

Deputy President Petse (Chairperson):

20 Of?

Acting Chief Justice Zondo:

Typed 9 and [intervenes]...

25 **Deputy President Petse (Chairperson):**

10 paginated [intervenes]...

Acting Chief Justice Zondo:

...paginated, ja, 10 paginated.

5 **Deputy President Petse (Chairperson):**

Yes. Yes, I'm there, Chief, Acting Chief Justice.

Acting Chief Justice Zondo:

Okay, all right. That case is also important, NEHAWU versus University of Cape Town.
10 That is a case which, in which I sat while I was acting, I think I was still acting judge
president. I had not been appointed as judge president as yet of the labor appeal
court, or no, I must have been judge president because this is 2002. That is a matter
in which I sat with two very senior judges who were acting judges of appeal in the
15 labor appeal court. I am sure that some of the Commissioners are familiar with the
workings of the labor appeal court, but for the benefit of those who might not be
familiar, may I just indicate that the labor appeal court panel that hears cases or
whatever case will consist of a judge of the labor court and every judge of the labor
court is required to be a judge of the high court, including the judge president of the
20 labor appeal court. So sometimes you would get high court judges who come and act
in the labor appeal court. So, on this occasion I was sitting with two very senior high
court judges. Actually, I think one of them was already a judge when I was still a
student at university. Very senior judges. We had this appeal. It was, it concerned
a legal question whether when an employer transfers its business to another one
25 when there is a sale of business or when there is, ja, there is a sale of business,
whether the contracts of employment of the workers go over to the next employer
to the transferee without there being a need for an agreement between the first
employer and the employees, and whether the first employer and the transferee
employer can agree to say your workers won't come to me; I will have my own
30 workers. So, your workers are your problem. So, we were faced with that legal
question in the context of Section 197 of the Labor Relations Act which deals with
this situation and in that case my two colleagues, senior colleagues, came to the
conclusion that that was permissible and that an employer, the two employers could
exclude workers from the first employer from going over to the next, to the

transferee employer. I took a different view in the matter, notwithstanding the fact that these were very senior judges. As I say, one of them had been a judge while I was at university. I took a very firm view that I did not agree with them. I wrote my judgment and came to the conclusion that in such a case the workers of the first
5 employer are entitled to be transferred to the transferee employer. So, but my judgment was a minority judgment because they agreed with each other. That matter went on appeal to the constitutional court and the constitutional court upheld my judgment as the judgment that was correct. That protection remains today for the workers arising out of that judgment. I thought I wanted to mention
10 that, Chairperson. Thank you very much.

Deputy President Petse (Chairperson):

Thank you, Acting Chief Justice. And of course, you played a pivotal role in the groundwork that gave birth to the Labor Relations Act.

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Acting Chief Justice Zondo:

Yes, Chairperson. I had had the privilege of being invited by the then Minister of Labor, Mr. Tito Mboweni 1994, to be part of a ministerial task team that was given the responsibility of drafting the first post-apartheid Labor Relations Act. It was
20 chaired by Professor Halton Cheadle. So, I made a contribution as part of that task team.

Deputy President Petse (Chairperson):

Thank you. Might I take you to page 25 typed, and paginated page 26 of your first
25 bundle [intervenes]...

Acting Chief Justice Zondo:

Yes.

Deputy President Petse (Chairperson):

...where you deal with the subject of delay in handing down of some judgments by the labor appeal court.

5 **Acting Chief Justice Zondo:**

Yes.

Deputy President Petse (Chairperson):

10 That's paragraph 6 and you say, reading from line 3 "this was due largely to the fact that for the best part of my term of office, the labor appeal court did not have fulltime judges of appeal". That's just one aspect that I want you to clear [intervenes]...

Acting Chief Justice Zondo:

Mm.

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Deputy President Petse (Chairperson):

...in my mind, because as I see it if judges are invited from the high court to act in the labor court, they hear cases. They hear cases, are tasked to reserve judgments, then there's an obligation on those judges to produce judgments.

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Acting Chief Justice Zondo:

Mm. Yes. Yes, obviously there are, there is such an obligation because once you have heard a matter you are under an obligation to do everything you can to deliver a judgment as soon as possible without undue delay.

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Deputy President Petse (Chairperson):

And the fact that they were at the labor appeal court as acting judges of appeal is neither here nor there.

Acting Chief Justice Zondo:

Yes, no, it's not [intervenes]...

5 **Deputy President Petse (Chairperson):**

The point of the matter is that they heard cases, attached judgments and as you put it, were under an obligation to produce those judgments without undue delay.

Acting Chief Justice Zondo:

10 Yes, no, that is true, but I do want to make it quite clear that overall, the judgment,
the judges which came from the high court did the best they could. I had my own
delays in my own judgments too. They did the best they could. Sometimes there
were delays, sometimes there weren't. There were many matters where judgments
15 were handed down within an acceptable time, but of course the labor appeal court
was really in a difficult position at the time, and the labor court. Just to give you a
background, when I was brought in as acting judge president in, at the beginning of
august 1999, what had happened was that the labor appeal court had almost
collapsed because at the beginning of that year the judge president of the labor
20 appeal court and labor court of the time, Judge President Myburgh, resigned, and his
deputy was Justice Froneman. Justice Froneman was deputy judge president and
there were, there was also a Judge, I think, Kroon, Judge Nicholson, I'm not sure if
I'm forgetting one, but Judge...There was also a Judge Ngcobo. Judge Ngcobo was
appointed acting judge president, Justice Froneman went on long leave and the
25 understanding was that he was not going to come back to the labor appeal court, he
would go back to the high court. So, and so you had the judge president gone, you
had the Deputy judge president gone. I think one day after I had started as acting
judge president, I received a call from Judge Kroon who told me that, who asked me
whether I had received his letter of resignation from the labor appeal court. I had
30 not received it, but in due course I think I got it. So, you had a number of judges who
left and then Judge Ngcobo himself was appointed to the constitutional court in I
think June of that year. So, the only permanent judge that was remaining, if I recall
correctly was Judge Nicholson and that meant you could not have a quorum because
a quorum had to be three judges. You had to have acting judges. So, if he said he

would need to have acting judges, the acting judges would have been the majority, but as it turned out, Judge Mogweng was going to act during the first term that I became acting judge president. And I think that in the first term or two of my service as acting judge president I sat with, Judge Conradie also was around. He did not
5 leave. So, I sat with Judge Nicholson and Judge Conradie and Judge Mogweng. So, the court was almost collapsing, and it had to be rebuilt and that took some time. There were some challenges in the labor court as well. But of course, this is a subject that has been placed before this commission in previous years as well, but that is what happened.

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Deputy President Petse (Chairperson):

Thank you, Acting Chief Justice. And I take you next to Annexure RZ1 to your questionnaire, which amongst other things contains a long list of judgments that you wrote, both in the labor court, labor appeal court and the constitutional court.

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Acting Chief Justice Zondo:

Maybe I could just make one correction, if I may, Chairperson? Some of the cases that list contains are not my judgments but are judgments which resulted from cases in which I appeared as a legal practitioner. The first 48 or 47 cases are reported cases
20 in which I was involved mostly that I argued or where I conducted trials or some of them are where I was the instructing attorney. But most of them are cases which I argued, and I think what they represent, Chairperson, if I may say this, I think they represent something important that maybe we judges don't always acknowledge and maybe the public doesn't appreciate because we don't tell them. Namely that when
25 we talk about jurisprudence arising from judgments of courts, sometimes we are so full of praise of the judges who wrote those judgments, that we don't appreciate the role played by the lawyers. And very often lawyers play a very important role, because sometimes I write a judgment and maybe I don't even indicate that this point came from Mr. Mpofo's argument, Mr. Madonsela's argument, I just write and
30 say there are these points, there are these points and then people read. They think it's my points or my brilliance, you know, but as a lawyer, when a client comes to you, you may be the first one who picks the point, and you have to make a judgment call whether this point is good enough. And sometimes you have doubts, and you talk to your colleagues, you say what do you think, and ultimately you put it in the papers

or in your written submissions and ultimately that's the point on which you win the case. So, I think that the role played by lawyers in our *jurisprudence* does need to be acknowledged, because very often they do the spade work and they come up with points which ultimately judges accept. So, when I put them here, I'm not saying that
5 all the points on which those cases won were from me, but I'm saying that those cases do represent part of the contribution that I believe I made even before I became a judge in the development of our law and in our *jurisprudence*. I say it reflects in part my contribution.

10 **Deputy President Petse (Chairperson):**

Yes. No, I was quite aware of that, Acting Chief Justice.

Acting Chief Justice Zondo:

Mm.

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Deputy President Petse (Chairperson):

That's why I said that list contains amongst other things.

Acting Chief Justice Zondo:

20 Mm. No, thank you.

Deputy President Petse (Chairperson):

And I take your point that, you know, sometimes legal representatives can make the task of a judge very easy.

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Acting Chief Justice Zondo:

Mm.

Deputy President Petse (Chairperson):

And perhaps nowadays we are not as charitable to counsel as used to be the case where judges would say, counsel for this party in [Indistinct 00:52:36] argument contended this and this and that, but that's all by the way.

5

Acting Chief Justice Zondo:

Mm.

Deputy President Petse (Chairperson):

10 Some of the judgments that you penned, especially in the con court, I read and cited them in the course of writing my own judgments.

Acting Chief Justice Zondo:

Mm.

15

Deputy President Petse (Chairperson):

And I do not propose to take you through those judgements.

Acting Chief Justice Zondo:

20 Mm. Yes.

Deputy President Petse (Chairperson):

Because, but the point I just want to make that having read them, they all bear the hallmarks of industry, scholarship, intellectual reader and clarity of thought.

25

Acting Chief Justice Zondo:

Thank you, Chairperson.

Deputy President Petse (Chairperson):

5 The only judgment of the judgments that you wrote in the constitutional court is the last one, 208.

Acting Chief Justice Zondo:

Yes.

10 **Deputy President Petse (Chairperson):**

The judgment of the Minister of Justice and Constitutional Development and Others versus Springs.

Acting Chief Justice Zondo:

15 Mm.

Deputy President Petse (Chairperson):

Paragraph 9 of the order in that judgment allowed the use of possession of cannabis in private by an adult person or cultivation of cannabis in a private place.

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Acting Chief Justice Zondo:

Mm.

Deputy President Petse (Chairperson):

25 And the observation that I want to make to you is that that judgment liberated a significant section of the South African population from all walks of life.

Acting Chief Justice Zondo:

Well, if I may [intervenes]...

5 **Deputy President Petse (Chairperson):**

And you might recall that when it was handed down there was whistling, jubilation, shouting, you know, that greeted this judgment as you read out the order in court.

Acting Chief Justice Zondo:

10 Mm. Mm.

Deputy President Petse (Chairperson):

And as we adjourned, you know, the precincts of the court was engulfed in grey smoke, you know, by those who were pleased with this judgment.

15

Acting Chief Justice Zondo:

Mm, mm.

Deputy President Petse (Chairperson):

20 And completely oblivious to the fact that the judgment said that you can use cannabis in a private place.

Acting Chief Justice Zondo:

25 Mm, mm. Well, Chairperson, I just want to say there were others who were not so happy about it, who thought that this judgment was allowing something that should not be allowed, and so there were two sides, but [intervenes]...

Deputy President Petse (Chairperson):

Yes.

Acting Chief Justice Zondo:

5 ...I just mentioned, ja.

Deputy President Petse (Chairperson):

Perhaps, whilst you are on that because I heard some of the commentary relating to that judgment.

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Acting Chief Justice Zondo:

Mm.

Deputy President Petse (Chairperson):

15 You know, people criticizing it. Some of them, not having taken the trouble to read the judgment. Do you want to say something about people criticizing judgments of the court without having read them and applied their minds? Because some interpreted that judgment to mean that I can walk down the road here with a zol of cannabis.

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Acting Chief Justice Zondo:

Ja. Thank you, Chairperson. I would simply say that it's a good policy to read a judgment before you can criticize so that your criticism is informed criticism. But sometimes people do criticize without reading it and we accept; we leave it at that.

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Deputy President Petse (Chairperson):

Thank you, Acting Chief Justice.

Acting Chief Justice Zondo:

Mm.

5 **Deputy President Petse (Chairperson):**

Whilst heading the labor court and the labor appeal court, you were on a crusade to transform those courts in terms of race and gender which is highly commendable.

Acting Chief Justice Zondo:

10 Thank you.

Deputy President Petse (Chairperson):

I want to take you to a different topic altogether now which is Section 174(2) of the Constitution.

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Acting Chief Justice Zondo:

Yes.

Deputy President Petse (Chairperson):

20 Which reads that "the need for the judiciary to reflect broadly the racial and gender composition of South Africa must be considered when judicial officers are appointed". I'm raising this with you in the context of the fact that presently there is no white justice in the constitutional court.

25 **Acting Chief Justice Zondo:**

Mm.

Deputy President Petse (Chairperson):

Do you perhaps wish to comment on that?

Acting Chief Justice Zondo:

5 Yes, Chairperson.

Deputy President Petse (Chairperson):

10 In spite of the fact that from, I think 2012 or thereabouts, there have been seven vacancies in the constitutional court and the fact that the last person who was white appointed to that court was, that was in 2009.

Acting Chief Justice Zondo:

15 Thank you, Chairperson and Commissioners. It is true that at the moment there is no white judge appointed to the constitutional court. As these, as the members of this commission would know, there are two vacancies that have been advertised in respect of which interviews will be held in April. They, for a very long time there were only two white colleagues in the constitutional court, well, no, I'm sorry, I think that's not really correct. For a long time, there were three, I think. It was, they were Justice Johan van der Westhuizen, Justice Froneman and Justice Cameron. They all
20 left, they left at different times, and I think Justice Cameron and Justice Froneman followed each other. I think one left in one year and the other left in the following year if I'm not mistaken. There certainly was for the past two terms a white acting colleague in the constitutional court and at the current moment there is one acting judge in the constitutional court. So, when this body considers the interviews or
25 interviews the candidates for con court in April, this body will have an opportunity to decide whether it places before the president for his decision some white candidates to enable him to appoint one or both or fill one or both vacancies with white judges. So, but that is a constitutional imperative that this body is enjoined to consider each time it considers these matters and I have no doubt that it will consider it and make
30 its judgment call.

Deputy President Petse (Chairperson):

You mentioned those three former justices of the constitutional court and over the years they steadily became endangered species until they were finally extinct.

5 **Acting Chief Justice Zondo:**

Well I don't know whether extinct is the correct word, Chairperson, but you will be aware, Chairperson and members of this commission will also be aware that it has taken some time to fill the positions in the constitutional court that were filled recently, the two positions that were filled recently and in part that was due to the
10 lockdown that happened in 2020 which resulted in this body not being able to sit and interview candidates. And then of course this body interviewed candidates in April and gave the President a list of candidates to choose from, but there was a legal challenge and that is why they were only filled, those positions were only filled with effect from January. And in the meantime, two further vacancies had arisen and,
15 actually three, that is now if you count the one for chief justice. But the two arose also in October like the chief justice's one and those are the ones for whom there will be interviews, for which there will be interviews in April. So, this body will take all of those considerations into account.

20 **Deputy President Petse (Chairperson):**

Thank you, Acting Chief Justice. Then shall we go to paragraph 14, page 51 of your bundle of documents?

Acting Chief Justice Zondo:

25 Page 14?

Deputy President Petse (Chairperson):

No, paragraph 14, page 51. Of paginated page 51.

30 **Acting Chief Justice Zondo:**

Okay. Yes.

Deputy President Petse (Chairperson):

5 Where you make mention of the fact that you served as a member of the committee that organized the first South African Judges Conference. What happened to those conferences? Because as I recall a resolution was adopted in one of them that there should be a judges' conference every five years if I recall correctly.

Acting Chief Justice Zondo:

10 Thank you, Chairperson. You may be right that there was such a resolution, but I have no recollection myself. But there is, there can be no doubt that there must be certain intervals within which judges could have conferences and discuss matters that they need to discuss. There was a few years ago a suggestion that there should be another judges' conferences, but it did not happen and the reason why it did not
15 happen, as far as I recall, is that we were told that there were budgetary constraints that made it difficult for us to have a conference. And I think the question arose as to why if there were budgetary constraints to have a conference, why we could not use what I would call plan B. Namely that we look at issues that judges would have considered and discussed at conference and ask the heads of court, each head of
20 court to convene meetings in their own courts of judges where they would discuss the same issues. And then the heads of courts would come together, and each head of court would then bring the views of the judges from his or her court to the heads of court's meeting where then those issues would be discussed and obviously the heads of court would go back to their courts and report back to judges in their courts.
25 So, there was a view that we could look at discussing the matters in that way in the light of the budgetary constraints. But if recall also at some stage, and I can't remember at what stage, but there was an, also an issue which I think the chief justice raised to say let us see what the issues are that must be discussed, because we should not just say it's time to have a conference, let's have a conference. We should first
30 know what are the issues that really warrant a conference and that warrant the kinds of costs that are associated with a conference. I seem to remember that there was some difficulty in the articulation of the issues. My memory might not be very good, but I seem to remember that there was some difficulty in reaching agreement that those issues were issues that really warranted a conference. And it may well be that

the issue of budgetary constraints was raised to say well if there are issues that warrant a conference and that warrant the type of costs that go with such a conference, there would still be the problem of budget. But if we can't get over the issue of what are the issues that really would warrant a conference at the particular
5 time, there might be a problem. I think that is what happened as far as I can recall, but I do know that there were judges who were very keen on having a conference. Ja. But I think that is what happened.

Deputy President Petse (Chairperson):

10 Thank you, Acting Chief Justice, but I want to put it to you bluntly, Chief Justice, that one has to accept that after a period of five years, there would be something that judges would need to talk about, and we know that there are many challenges confronting the judiciary. Judge President Mlambo alluded to some of them. Judges' remuneration, tools of trade, conditions of service, and all those issues which can be
15 better addressed when you have, at least a substantial majority of judges under one roof.

Acting Chief Justice Zondo:

Well, Chairperson, I would not agree that the mere passage of five years would
20 automatically justify having a conference. My view would be, particularly when there had been previous conferences, conferences, my view would be each five years should be decided on its merits, because let us make, let me make one example. If we met five years ago and discussed certain issues and from our side, we were clear what should happen, but we have made progress on those, sufficient progress on
25 those issues over the five years, there might not be a warrant for another conference because we have made a lot of progress. Of course, there may be some issues that might have cropped up after that conference, but whether or not they would warrant a conference would depend on a number of things. But you may have a situation where you have not made progress since the last conference. And then in that event,
30 I think you would have to reflect on why you have not made progress, because in the context of the judiciary for example, we know that we don't have the resources ourselves. We have to depend on the executive. It may well be that on certain issues we know that the executive will not move, no matter how many conferences we hold, because of the discussions that have been held. So, I would simply say in certain

cases yes, it would be warranted to have a conference at the end of five years, but my view would be that it would depend upon a consideration of what issues had been discussed before, what progress has been made during the five years and what remains to be done.

5

Deputy President Petse (Chairperson):

Thank you, Acting Chief Justice. Perhaps it will be best to leave it at that and deal with it on another day.

10 **Acting Chief Justice Zondo:**

Mm.

Deputy President Petse (Chairperson):

15 In another forum. Acting Chief Justice, we have now reached a stage where I must afford you half an hour to tell the commission and the nation at large how you see the role of the chief justice in a constitutional democracy and also share with the members of the commission your vision of a functional, efficient, accountable and independent judiciary in our country.

20 **Acting Chief Justice Zondo:**

Thank you very much, Chairperson and Commissioners, for affording me this opportunity. I consider it an honor and a privilege to appear before you as a nominee for the position the chief justice. I consider it an honor and a privilege that the President considered, decided to include me in the, among the names of people that
25 he nominated for consideration for this position. I do not come here thinking that I am entitled to any position. I am not entitled to any position. The President has the prerogative to appoint who he decides to appoint. It is not my attitude that because I'm deputy chief justice, I'm acting chief justice, I'm automatically entitled to be appointed as chief justice. It is not my attitude either that because I'm acting chief
30 justice, I'm deputy chief justice, I am better than the other candidates. I see myself in the same way as the other candidates for whom I have a lot of respect, each and

every one of them. And I have a personal relationship with all of them, they are very good judges. I have a lot of respect for them. I come here, Chairperson and members of the Commissioner, because the head of state considered that I should be considered for this position. I make myself available because it is, it seems that he would like to have a choice when he decides who to appoint as a chief justice and I am here to allow you to ask me questions and I will answer them to the best of my ability. Let me start, Chairperson, if I may with making this point. If I am appointed as chief justice, I would consider it a very high honor and privilege, but I would not see myself as some super judge. I would see myself as I do now, as simply a servant to the people of South Africa. I remain grateful that this body in 2017 interviewed me and came to the conclusion that I was suitable for appointment as deputy chief justice of the country. I'm privileged that I was given that opportunity. I have tried to discharge my obligations and my duties as deputy chief justice to the best of my ability, that doesn't mean that I might not have made mistakes. I am human. I may have made some mistakes, but I certainly have tried my best to discharge those obligations as deputy chief justice, arising out of a determination that was made by this body that I was suitable for such high office, the high office of deputy chief justice. But high as the office is, I've always seen myself simply as a judge, a servant to the people of South Africa. I think that a chief justice in a country such as ours should be somebody of integrity, should be somebody who can provide intellectual leadership in the constitutional court, in the judiciary. I think it must be somebody who has demonstrable track record as a judge and I think that it should be somebody who works, who is able to work with people and who is able to appreciate the contribution of other leaders within the judiciary, such as other heads of court. I believe that such a, or that a chief justice must make a contribution to the development of *jurisprudence* of our country. Of course, a chief justice would also be like an ambassador of the judiciary in other countries. He attends or she attends meetings of other legal and judicial bodies in Africa and in the world representing South Africa. I believe that a chief justice must be somebody who is humble, it must be somebody who appreciates that he's not chief justice because he's necessarily the most brilliant of the judges. But it must be somebody who appreciates everyone's contribution and tries to work with everybody. And in the context of South Africa, that is very important because the forum of the heads of court is a very important forum and as you know, it consists of judges' president of the various divisions of the high court, judge's president of specialist courts and the president of the supreme court of appeal. They provide collective leadership of the judiciary in South Africa and the chief justice has to make sure that he views and takes their advices, and their

views very, very seriously. I think that the chief justice should also be concerned about what is happening in all the courts in our country, are they functioning properly, are they not functioning properly. If they're not functioning properly, what are the problems that need to be solved. If the President were to confer upon me the honor of appointing me as chief justice, one of the issues that I would wish to deal with quite early in my term is to try and complete the institutional model for, the institutional model for the administration of the courts that has been dealt with in a proposal that was made a number of years ago to the executive. We will, you will all recall that when we talk about the independence of the judiciary, we talk about the personal independence, and we talk about the institutional independence. Many years ago, the question arose what kind of model of institutional independence do we want as the judiciary of south Africa. And in 2010 I think it was the then Chief Justice, Chief Justice Ngcobo appointed a team or committee that conducted research which was completed in 2011 and that research, in that research the proposal that was made was for the establishment of the office of the chief justice and the proposal was that there would be three phases that would lead to the institutional independence that we, the judiciary of South Africa want. Phase 1 was to appoint or establish the office of the chief justice as a national department. Phase 2 was to establish the office of the chief justice as an entity similar to the office of the Auditor General in our country. And the third phase was to establish a judicial council which would require legislation and the judicial council would be supported by an advisory body that would work with it. The judicial council, it was envisaged would consist of effectively heads of court. And in this, in regard to these three phases, phase 1 was achieved. That is the establishment of the office of the chief justice as a national department and in this regard, I think President Zuma needs to be applauded because he was the one who gave the judiciary in this country that phase 1 that had not been there before. We then had the office of the chief justice. What remained was to move from phase 1 to phase 2 and to phase 3. Now the proposals that were made by the judiciary to the executives, to the executive was made around 2012/2013, but the executive has never come back to the judiciary to say where it stands on this proposal. My understanding is that at some stage the executive said they were going to initiate their own research in regard to what model would be appropriate for South Africa, but they have never come back to say we reject your proposal, or we accept your proposal, or we would like you to make some changes to this proposal. So that's a very important issue because it would lead, if the executive were to agree, it would lead to phase 2 of that proposal and hopefully ultimately to phase 3. And once we reach phase 3, that would give us as the judiciary

of South Africa I think as complete an institutional independence as possible. Now that is very, very important and I hope that the current President and the Minister of Justice would be amenable to going back to the proposal that was made by the judiciary and at least come back and say where they stand. So, one of my priorities

5 would be to initiate discussions with the executive on this issue so that, if at all possible, it could be taken forward. One of the issues that I would be looking at is the resolution of a lot of problems that exist in various courts. I have been in touch with judge's president in the various provinces as well as some people within the magistracy or those who have been in the magistracy to try and understand the

10 challenges that are faced by many lower courts. So, the regional courts and the district courts. And I have a lot of documentation that has been given to me where these problems have been articulated and they, a lot of the problems relate to the conditions of the buildings, the buildings that are not maintained properly, air conditioners that are not working, sometimes lifts that are not working, recording

15 machines that are not working for months. Throughout a number of provinces, the problems seem to be very much the same, but there are very many regional courts and district courts which have got those problems and there are of course some high courts which have got a lot of those problems. The high court Ntoyanto, I understand is not really in a good condition. The judge president of the Limpopo division of the

20 high court shared with me a letter that he wrote to the office of the chief justice with a view to it being passed on to the portfolio committee of the Department of Justice and Correctional Services, because the portfolio committee had planned to pay a visit to Limpopo and see for itself what was happening. But apparently, they had to change their arrangements and he was lamenting the fact that they did not, they

25 were not able to get there because he wanted them to see for themselves the conditions of the courts that they, Limpopo has. I have been told of some magistrate's courts, and I've been told there are many, where there is no parking within the court and magistrates have to park in the streets. And so, the example was made tome of magistrates who comes out of court after sitting in a case,

30 involving an accused and they go and to the street where they are parked, and the magistrate has to compete for a parking space with an accused. So, I've been told that's, that those are problems that have been raised before, a lot, but they have not received attention. So, there are many of those problems. I'm aware of them and if I was appointed as chief justice, together with the judge's president, I would like, I

35 would want to see how, why those problems long to resolve. I've been told that in some cases the problem is with the Department of Public Works, but some of the things would not fall under the Department of Public Works. Those things would

need to be looked at because they also affect access to justice, particularly when we start talking about recording machines that are not working and cases can't continue because the machines are not working. But I want also to say, Chairperson and Honorable members of the commission, if I'm appointed as chief justice, I would not
5 be wanting to start everything all over. Firstly, because I have been part of the leadership of the judiciary. There are measures that have been put in place which I know enjoy the support of the heads of court and enjoy my support. The former Chief Justice, Justice Mogoeng Mogoeng, introduced structures that are aimed at enhancing the efficient operations of the courts. The heads of court embraced these
10 ideas, and the result was that we have in every province committees that are called PEECs, Provincial Efficiency Enhancement Committees whose main task is to identify anything that impacts negatively on the efficient working of the courts and address them. The stakeholders who form part of the PEECs will be the judiciary, will be SAPS, will be Correctional Services, will be NPA and so on. So that because of all these
15 stakeholders have something to do with justice, the administration of justice, they will come together and see where the problems are that might impact negatively on the operation of the courts, whether we're talking about the lower courts or the high courts. I am told by the judge's president of the various divisions that these PEECs are working very well, generally speaking. There may be some challenges here and
20 there, but overall, they say they are working very well and therefore I would retain those structures. I would want to make a contribution for them to work even better, but those structures I would retain and the...I was just concerned when I learned that the Department of Public Works, certainly in the Free State, doesn't come to those meetings. Maybe they came once or twice from what I've been told, but they don't
25 seem to be taking the PEEC in the Free State seriously. But it may be that in the other provinces they are taking part, but a lot of the problems would require the Department of Public Works and therefore it is important that the Public Works should take part. So, I would also refer to the NEEC, that is the National Efficiency Enhancement Committee. It is also a structure that was introduced by the former
30 Chief Justice. It meets at national level, and it looks at any issues that are escalated to it by the PEECs, but the real bodies that are close to the ground, close to the courts are the PEECs. The NEEC has not met in a long time. I'm told partly because of lockdown, but I understand that part of the delay might have been that the PEECs had not escalated any serious issues. But I know that the National Director of Public
35 Prosecutions has asked me to convene the NEEC, an NEEC meeting which I think will be convened in due course. So, I would go along with those structures because they are working.

But let me talk about, if I may, Chairperson and Commissioners, about the constitutional court, because the chief justice is the head of the judiciary and head of the constitutional court. Excuse me. The, there have been problems which have been articulated publicly about the delays in the handing down of judgments in the constitutional court and delays in disposing of new applications in the constitutional court. When I chaired this body in October when we interviewed candidates that issue was raised sharply with candidates and members will recall that at the end of that session, I did say that I thought it was legitimate for people to raise those concerns and I said that I would be looking into the matter so that we can deal with the issues. There have been delays. I think that one reason, the main reason I think for delays must be the expansion of the jurisdiction of the con court. As you will recall, in 2013 the constitution's 17th amendment expanded the jurisdiction of the constitutional court and I think that that has played a very important role in that regard. It may well be that another reason is that when one looks at our judgments in the constitutional court with regard to our jurisdiction, maybe they sent different messages to the public as to what issues or what kinds of cases we have jurisdiction to entertain and what types of cases we don't take in. That has been a problem for quite some time. At some stages we think we have solved it and then, but it continues. There have also been delays in disposing of new applications and new applications are basically that when you want your case in the constitutional, to be decided, to be heard by the constitutional court you have to apply. You apply for leave to appeal or you apply for direct access and those are the applications I'm talking about. We discussed as colleagues these issues and in regard to new applications we agreed upon a new way of dealing with new applications. In the past the arrangement would be that two colleagues would be on duty every, a week. So, two colleagues would be on duty per week and then the following week it's another set of two and they would deal with all new applications that came in during that week. So sometimes you would find that there are too many new applications that came during your week and sometimes there are too few that came during somebody else's week. So, the result would be that sometimes some colleagues would be overburdened with new applications where they must prepare memos and others might not be so overburdened. What we have agreed upon is a system in terms of which new applications would effectively rotate. So as each application comes in, it goes to one judge and he or she must deal with it. The next application will go to the next judge, it won't go to the same judge, even if those applications came the same day or same week, so that at any one time one judge doesn't have too many applications to deal with and they can deal with them in a day or two or if

there is a delay because they must wait for a response from the respondent, that that is that. But that's the system that we have come up with. At this stage, it might be early days, but it seems that it's going to make a difference. With regard to reserved judgments and what I'm going to say about reserved judgements also affects some applications. You know, the constitutional court does not operate like the high court. It does not operate like the supreme court of appeal in this sense. Let me talk about the high court. The high court, very often a judge is sitting alone in a matter. He or she can decide having heard argument this morning, I'm going to give judgment this afternoon, I'm ready. He or she doesn't have to discuss it with any judge. He or she doesn't need anybody's agreement and it can be an *ex tempore* judgment. As counsel completes argument, he or she can say I'm ready to give an *ex tempore* judgement. But, and then of course sometimes the high court would be dealing with full bench appeals, so there would be two or three judges. supreme court of appeal deals with appeals on the basis of sometimes three judges, sometimes five judges, but the constitutional court deals with matters in bulk. If there are 11 judges, they all have to take part in decision making in each and every matter and there will be different views. One will see a matter in a certain way, another one will see it another way, there will be different motivations to try and reach agreement, because two things are expected of the constitutional court. One is that it should not delay, just like any other court, it should not delay unduly in giving its judgments. Two, nevertheless being the highest court and the final court, it must give guidance to the rest of the courts on important legal issues. So, you have to try and strike a balance. You can't say if I see this matter in a certain way and my colleague sees it differently, I don't care, they must go and write. I'll write my own judgment because you are going to end up with five judgments with seven judgments in one matter and that is also undesirable. People will complain. So, you have to talk to one another to try and see if you can reach agreement and sometimes those discussions take long. The important thing is to strike a balance between not taking too long, trying to reach agreement, but at the same time not being dismissive of other colleagues' views just because you are in a rush that the judgment must be out. So, it's the striking of that balance that I think sometimes we don't achieve. But with regard to the reserved judgments, I have asked colleagues to consider, and we have not discussed, we will discuss in due course, with regard to judgments that get reserved for too long. To consider whether we should not work on the basis that because the quorum is eight judges in a matter, whether we should not consider an arrangement in terms of which colleagues who might be having certain judgments that have gone beyond a certain time should not volunteer or ask the head of court

if they could be given time to try and finish those judgments without sitting in more matters. Because if while they are having these reserved judgements, they're sitting more matters, some of those matters are matters where they are supposed to write judgment. So, you have more judgments piling up, being reserved. Of course, we will, you will all know that there is the idea that the constitutional court should, judges of the constitutional court should sit in all matters all together, unless somebody is not available. But we may have to consider that, whether we shouldn't do that in order to deal with the backlog and to avoid having more backlogs. But in the long run, it may be that we should consider, and all concerned should consider whether the Constitution should not be amended to allow the judges of the constitutional court to have few panels in regard to certain matters. So, we would say in regard to certain matters, three judges can deal with that matter and dispose of it. We don't need to have all 11 dealing with that matter. If we do that, a lot of matters could be disposed of much more quicker in the same way as in the supreme court of appeal, because in the supreme court of appeal you have applications that can be disposed of by two judges without other judges being involved and you have a reconsideration provision where the president of the supreme court of appeal can deal with those applications all by herself. So, that may have to be considered to say let's look at doing that. I think there are jurisdictions that do that. So that, those are things that we may have to do to try and resolve some of these matters. Of course, the issue of transformation is still important, although we have made great strides in terms of race, we still need to make a lot of strides in regard to gender or the representation of women in the judiciary. So, I would continue to be, to work hard to do that. In this regard I am grateful for what my sister, Justice Maya said about me when she was interviewed, about transformation. I do say in one of the documents before you that when my term of office as judge president of the labor appeal court was going to be coming to an end, I did identify a colleague who was a woman that I thought should be considered for the position of judge president. I actually recommended that she be appointed as acting deputy judge president and she was. That was Justice Khampepe, in the labor appeal court, she was appointed acting deputy judge president at my instance. And we had had discussions that she should consider making herself available, but what changed plans was that she was nominated for constitutional court, and she was appointed and that is how that plan failed at that time. I, so I would still, you know, want to make my contribution in that regard, but I also want to make my contribution in terms of transformation. In terms of black judges and women judges, getting involved in branches of law that for a long time were the exclusive reserve of either male judges and male lawyers or white male

judges and white male lawyers. As you will, you may have seen, Chairperson and members of the Commission, one of my Masters degrees is in patent law and part of the reason why I did it was that I hoped to inspire younger lawyers to study those branches of law that have seemed to be the reserve of only certain races. Because
5 patent law is one of those branches of law that is dominated white males. I didn't get a chance to practice patent law, but I did get, do a Masters degree in it and I hope that that would inspire younger lawyers to consider those branches of law. Lastly, Chairperson, one of the things that I would like the heads of court to consider and the profession with regard to how we deal with matters in our courts is to reconsider
10 the need to have, to initiate proceedings by actions. All those who are lawyers and who practice they will know that if you are dealing with applications, applications tend to be dealt with quite expeditiously, but if you are talking about trials, they take a long time. I know that as lawyers, sometimes you might like trials because they give you a chance not to disclose everything and not to disclose your full evidence,
15 but it may be that the time has come for us to say in order to ensure that there is expedition in the disposal of cases, we must take the attitude that if you want to initiate proceedings, collect all your evidence, do all your investigation. Put it on affidavit. Let it be known what your case really is. Let the other side know and let them do the same and let the court decide whether it's necessary to have some
20 or limited oral evidence or not. I remember in the high court and in the labor court that when one was doing motion matters, there would be matters where you could hear argument to then give judgment today. There would be matters where you just need to sleep over the matter overnight, the following day you can give judgment. Of course, it happens sometimes with trials, but I think there's no doubt that trials take longer and maybe this could assist. Chairperson, I thank you for this
25 opportunity, and members of the commission.

Deputy President Petse (Chairperson):

Thank you very much, Acting Chief Justice. At this juncture, I shall take a pause and
30 allow members of the commission to put such question as to you, Acting Chief Justice, as they might have. What I am going to do now, I will request the members of the commission in keeping with the traditions of the commission to indicate to me if they wish to speak. I'll record their names in the order in which indication is given and once that process has been finalized, we will take the mid-morning adjournment
35 for 30 minutes. Thank you. [Indistinct 02:00:44] thank you. I've noted you, Commissioner Breytenbach.

Commissioner Breytenbach:

Thank you, Acting President.

5 **Deputy President Petse (Chairperson):**

I've got you, Commissioner Tshepe. You have been noted, Commissioner Barnard.

Commissioner Barnard:

Thank you, Acting President.

10

Deputy President Petse (Chairperson):

I've noted you, Commissioner Shabangu-Mndawe. Very well, then I have about 20 names. So, there you have it, Acting Chief Justice.

15 **Acting Chief Justice Zondo:**

It's intimidating, Chairperson. I think it's better to sit where you are sitting, so October was better for me. Not this time. You see, I can see Commissioner Mpfu is ready for me.

20 **Deputy President Petse (Chairperson):**

Unfortunately, I'm not keen on swapping positions with you. I would rather remain where I'm seated, Acting Chief Justice. Thank you. I make it, it's 10:58, shall we take the mid-morning adjournment at this stage and then resume at 11:30? Thank you.

25 **Acting Chief Justice Zondo:**

Thank you.

TEA ADJOURNMENT

Deputy President Petse (Chairperson):

5 Fellow Commissioners, will you now settle down. The Acting Chief Justice is on his way back. Members of the Commission, shall we please pay attention to the business of the day. Thank you. Welcome back, Acting Chief Justice.

Acting Chief Justice Zondo:

Thank you, Chairperson.

10

Deputy President Petse (Chairperson):

Honorable Minister Lamola.

Minister Lamola:

15 Thank you very much, Acting President and good morning, Acting Chief Justice.

Acting Chief Justice Zondo:

Good morning, Minister.

20 **Minister Lamola:**

Thank you. Firstly, is to thank you for the role you have played in the, and accepting the responsibility of the chairperson of the, what is commonly known as the Zondo Commission. I don't want to go to a lot of details.

25 **Acting Chief Justice Zondo:**

Thank you.

Minister Lamola:

You will have seen that South Africans appreciate the role that you've played with the memes that are going around. Some of them have given you very nice names.

5

Acting Chief Justice Zondo:

Well, I don't see some of them because I tend to stay away from, because sometimes I'm told they can say all kinds of nasty things about people.

10 **Minister Lamola:**

Ja, no, they also say those nasty things.

Acting Chief Justice Zondo:

No, thank you.

15

Minister Lamola:

Thank you. Acting Chief Justice, my question firstly relates to the issues you have presented on, on the model that you have engaged with the executive on. Firstly, is that I can confirm that it's true that the executive has to still respond to the issues.

20 There have been engagements but have not yet been concluded on the matter and the matter is now in the process of published for consultation within the executive to formally respond to the issues that you have raised and as you are aware during the consultation the view of the executive was that it should be a holistic approach. And I think as [intervenes]...

25

Acting Chief Justice Zondo:

Ja.

Minister Lamola:

...you get the response you will be able to engage with the [intervenes]...

Acting Chief Justice Zondo:

5 Yes.

Minister Lamola:

...with the matters.

10 **Acting Chief Justice Zondo:**

Ja.

Minister Lamola:

15 And there will be...my question relates to the current model as it stands, the phase 1.

Acting Chief Justice Zondo:

Mm.

20 **Minister Lamola:**

Under Section 54(1), I'm not sure if the Deputy Chief Justice is aware of it, but it relates to the fact that the "minister must consider and address the request for funds needed for the administration and functioning of the superior courts as determined by the chief justice after consultation with the other heads of courts in the manner prescribed for the budgetary processes of the departments of the state".

25

Acting Chief Justice Zondo:

Mm.

Minister Lamola:

- 5 What will be your view of this section? Is this enough for now while these engagements are ongoing?

Acting Chief Justice Zondo:

10 Well, I think a minister...well firstly, thank you for informing me that there is some movement that has started to happen from the side of the executive about our proposal. Of course, we would have liked that it didn't take more than seven years, but I understand like, that like a lot of things in government things take long, but hopefully once you are ready, we, they can speed up the whole process so that it doesn't, we don't wait another seven years. Certainly, Minister, the current
15 arrangement in regard to that issue is better than what was there before, you know. So, it's better, but we would have preferred that by now we were, we would have gone beyond that, you know. We would have gone to phase 3 as I indicated so that it's a matter that's really within the judiciary. But it is an improvement. It is an improvement.

20

Minister Lamola:

On the second one, what is your view on the operationalization of Section 29 of the Superior Courts Act? I'm not sure if I should rephrase it just to remind you what it is about.

25

Acting Chief Justice Zondo:

Yes, because I don't have the Act in front of me.

Minister Lamola:

Okay.

Acting Chief Justice Zondo:

5 Ja.

Minister Lamola:

10 It is the one that deals with the rules of the constitutional court, the making of the rules of the constitutional court. "The Chief Justice, after consultation with the minister, makes rules relating to the manner in which the constitutional court may be engaged, in a manner, including the matters referred to in Section 172 of the constitution, all matters relating to the proceedings and before the court". Ja, it's about that and I think you will remember that there have been issues raised from the heads of courts and a former CJ, why it should not be operationalized and so forth.

15

Acting Chief Justice Zondo:

20 Yes. Yes. No, Sir, certainly the position is that we, the rules of courts should actually be dealt with by the judiciary and there is, in my view, no reason why the executive should really be involved, but we know our history in terms of rulemaking in South Africa. But certainly, the rules of courts, all courts should be made by the judiciary.

Minister Lamola:

Ja, maybe on that regard, Acting Chief Justice, as you are aware that most of the rules have to go through Parliament and so forth. And there is a role for the public to play.

25

Acting Chief Justice Zondo:

Ja.

Minister Lamola:

5 So, and Parliament has the mechanisms of involving the public. If it's only the judiciary, how are we going to also ensure that the public plays a role and the role participation in the rulemaking process and also the mandate of the executive which is to ensure that there's access to justice which is not really interference record, but we do have a mandate with regard to access to justice.

Acting Chief Justice Zondo:

10 Well, I don't see why, if as a principle, it is accepted that the judiciary is the proper arm of government to make rules about its own operations which is the courts. Why there should be an impediment in the judiciary being able to invite the public to comment on, for example, rules that it wishes to make. You will remember that the, if I recall correctly, when they, for a number of years the rules of the constitutional court were simply the power to make them lay with the president of the
15 constitutional court. We, if you look at the Commissioner, for example you referred to the commission, when the commission started, we had to, I had to make rules. They didn't need to go to Parliament. I consulted those that I needed to consult, and we made rules, they got published. So, if we wanted, well we didn't invite comments, but if we wanted comments they could have been published and we wait for
20 comments from the public and then make final rules after that. So, I see no reason why for purposes of receiving comments from the public, they would necessarily need to go via Parliament.

Minister Lamola:

25 Ja. The other arm of ensuring access to justice which is vested with the executive on the process of rulemaking, how will that be managed through when it's only the judiciary dealing with the rulemaking process?

Acting Chief Justice Zondo:

30 Well, I would not, it's a question of what they do. I would not say they don't need to make an input, but if they make an input when everyone is allowed to make an input or they're consulted as a stakeholder, they could get consulted. I don't think that

there would be a problem. Then the judiciary would make the rules after being fully informed of whatever concerns may come from the executive or Parliament, because they could say for example, no, these rules impede access to justice. So, we suggest that they should be dealt with differently which is what happens and has happened
5 before when even legislation that affects the judiciary gets made. Because obviously legislation will be made in Parliament, only Parliament can make legislation, even when it affects the judiciary. The judiciary makes representations to say in our view this is what this legislation should say, this is what it should not say and obviously the
10 minister responsible for that legislation or Parliament, they might take a view that is different from the judiciary. So, it happens in relation to legislation that even though we are the ones who are affected by the legislation, but we make representations and sometimes Parliament and executive agree with us, sometimes they don't agree with us and when they don't agree with us, we accept that they don't agree, and it doesn't happen. So, I think a lot depends on all the arms of government trying to
15 cooperate and work together to achieve these common goals of access to justice.

Minister Lamola:

Ja. On the issue of digitization and modernization, Acting Chief Justice, you are aware you have launched the former Chief Justice, you have piloted a program in the, in
20 Gauteng through CaseLines and you are moving to...what has been your role with modernization and what is your view if you are appointed as a chief justice to carry this vision forward? I can state that I have seen the good work you have done in the commission. We, you are leaving us now with a legacy of a data center which I think it will go a long way to help the country in the fight against corruption, but also to
25 digitalize and modernize the entire criminal justice system.

Acting Chief Justice Zondo:

Thank you very much, Minister. I might not myself be very good with IT, but I embrace it wholeheartedly. I embrace it wholeheartedly, it's very important. It's the
30 way to go and that's why in the commission we have the system that you are talking about. So, I'm aware of what has happened and I'm aware of the pilot project. If I am appointed, I mean the judiciary, it's a heads of court project. If I'm appointed, I will continue with the arrangement that the former Chief Justice had and the heads of court had, namely they have a committee that has been specifically dealing with

that, that reports back to the heads of court and reports back to the chief justice. I would give that committee whatever support they have. I would not want to change things because it has done a good job. It is led by Judge President Mlambo. It has done a good job and I would want it to continue.

5

Minister Lamola:

Ja. In terms of rolling out throughout the country, including magistracy and so forth, that is what I wanted also to get going forward, if you are appointed.

10 **Acting Chief Justice Zondo:**

Yes, no, I would like that to happen and short of challenges of budget and so on, if there are no challenges, I would want that to happen as soon as possible.

Minister Lamola:

15 Ja. Lastly, it's, now as an Acting Chief Justice and also in case you are appointed, you will also chair what is called a small JSC.

Acting Chief Justice Zondo:

Ja.

20

Minister Lamola:

I could hear from Acting President that you have knowledge of that for many years. It looks like there's colleagues and there's judges.

25 **Acting Chief Justice Zondo:**

Ja.

Minister Lamola:

You are family that knows each other. But how are you going to deal with matters when a colleague that you know very well, you have been together at school, university and maybe in practice, how do you deal with such issues and you ensure that you lead from the front, you are not always recusing yourself from those proceedings? I do understand that there could be times where you might have to, but how would deal with these difficult issues of helping to discipline or dealing with issues of misconduct of your colleagues that you know very well?

10 Acting Chief Justice Zondo:

Thank you, Minister. That's a very important question. Well, the starting point, Minister, is this. The handling of complaints against judges by the judiciary is a very important principle. In other words, that we judges are the ones who must discipline our own colleagues is a very important principle. We certainly, I certainly would not like a situation where we get disciplined by other people. Of course, I accept as I have to, Minister, that when all processes relating to the discipline of judges have been exhausted, if we are dealing with a case of impeachment, it ultimately happens in Parliament. But the prior process happens within firstly the judiciary. So, if that, for that principle to be maintained judges have to accept that to a very large extent they are called upon to adjudicate matters of discipline involving people that they know. Of course, there will be cases where you are too close to somebody, but otherwise you are dealing with matters of people that we know. After all, the community of judges is not a big community. So 1, that would be my stance, but I must also say, Minister, I would not be new to that because after I had been appointed as deputy chief justice, the former chief justice told me that as chief justice he would not chair the Judicial Conduct Committee because he chairs the JSC. He said he didn't want a situation where he would not be able to chair the JSC because he chaired the JCC when he dealt with a certain disciplinary matter relating to a particular judge. So, it is better that the DCJ should for all intents and purposes be the chair of the JCC, you now, but he basically becomes acting chair because in terms of the Act the chief justice is the chairperson. So, I have been involved there. Maybe I can take this opportunity to say this, Minister. When I came to the position of DCJ, there was a huge backlog in matters relating to complaints against judges and I looked into why there was this backlog and I looked into how the system worked. But to cut a long story short, I ended up sitting down and trying to understand the

Act properly and preparing a document that would guide judges, heads of court, because one, I realized that the Act had a role for heads of court to be involved in these matters, but up to that point, they were not so involved. So, and I said, well first of all, those matters that we can give to heads of court to deal with, we should
5 give to them so that we can deal with the backlog. And I spoke to the heads of court, and they embraced the idea. I gave them the document that would guide them how to handle this and since then the backlog has been sorted out. Well, I haven't spoken to the secretariat recently, but the last time I knew the backlog was sorted out and the heads of court were playing, play a very important role. But to go back to your
10 question, I have sat in a matter in the Judicial Conduct Committee. It was an appeal with two other colleagues involving one of the heads of court. And of course, heads of courts we meet, we know each other, all of us. Where I, we came to the conclusion that he was guilty of certain unacceptable conduct, and we decided that the appropriate sanction would be a reprimand and we asked him to present himself to the JCC for purposes of us administering the reprimand to him. He accepted the
15 outcome of the JCC. He came, of course he might not have been happy with some aspects or whatever, but he accepted the outcome. He came to us, availed himself. I took, it fell upon me as the most senior of the panel to administer the reprimand to him and he accepted. So, I think that judges have embraced the system and they
20 accept that we have to make these decisions against people that we know. So, I think it will still work, Minister.

Minister Lamola:

Thank you, Acting President.

25

Deputy President Petse (Chairperson):

Thank you, Honorable Minister. JP Tlaletsi.

Judge President Tlaletsi:

30 Thank you, Acting President and good day, Acting Chief Justice.

Acting Chief Justice Zondo:

Good morning, Judge President Tlaletsi.

Judge President Tlaletsi:

Thank you. I take it the reprimand was not six strokes with a light cane.

5

Acting Chief Justice Zondo:

No, no, the reprimand was verbal.

Judge President Tlaletsi:

10 I see. Incidentally one of those, 2004 you called to the labor court and took me through the ranks and until today there is this history. But then from what you've discussed with the Minister just now, it's my turn to grill you, nevertheless.

Acting Chief Justice Zondo:

15 I accept, Judge President Tlaletsi, that today I'm subject to being grilled by everybody here.

Judge President Tlaletsi:

Wonderful. Wonderful.

20

Acting Chief Justice Zondo:

And I think there are some who are just saying, when am I getting the chance.

Judge President Tlaletsi:

25 Thank you. Thank you. I won't be long, Acting Chief Justice, just two issues that I want to raise with you. I'll put them, the two of them to you and then I will give you the opportunity to respond. Well, the first one it is linked to the second one. I think

a chunk of your time was taken by the commission in the past few years and it would explain how could you, did you manage to juggle between the commission and the court and your functions as the deputy chief justice.

5 **Acting Chief Justice Zondo:**

Mm.

Judge President Tlaletsi:

10 And the second one which I said is linked to the first one is structurally the deputy chief justice is not necessarily a member of the heads of court. It comes on invitation or as an alternative to the chief justice. In your view, would you not consider if you're appointed to have the deputy chief justice to be part of that structure in whatever role? So that...because you'll be, the deputy chief justice is for the whole country and not for that particular court and we might cause the deputy chief justice to limber if
15 he's not part of the day-to-day functioning and meetings of the heads of court.

Acting Chief Justice Zondo:

Mm.

20 **Judge President Tlaletsi:**

And then the second issue.

Acting Chief Justice Zondo:

Yes.

25

Judge President Tlaletsi:

Ja, I would want you to share your views on the language policy. We know that you have the official language policy of the courts and [intervenes]...

Acting Chief Justice Zondo:

Mm.

5 **Judge President Tlaetsi:**

...if you've got any views if you are the chief justice.

Acting Chief Justice Zondo:

Mm.

10

Judge President Tlaetsi:

Whether we need to revisit that, what needs to be done, we need to improve it.

Acting Chief Justice Zondo:

15 Mm.

Judge President Tlaetsi:

Thank you.

20 **Acting Chief Justice Zondo:**

Thank you, Judge President Tlaetsi. Let me start with the question relating to whether the DCJ should not be part of the heads of court. Now you may be right that the DCJ comes to the heads of court by the invitation of the chief justice or in the place of the chief justice when the chief justice is not available to attend. But for
25 some reason I was not thinking about it in that way. In my mind it was as if it has become established practice, but I may be wrong. It arises from my knowledge of how it came about. As you know I was part of the heads of court for close to 11 years

when I was heading the labor appeal court and labor court. So, some of the things I have, that institutional memory of how they came about. For example, Justice Chaskalson originally didn't come to the heads of court meeting with Justice Langa who was his deputy. At that stage the President and deputy president of the constitutional court, the, I think the position the chief justice had not moved from the SCA to the constitutional court. And when Justice Chaskalson's term was about to end, he spoke to us as heads of court and asked whether it would not be a good idea for him to start bringing in Justice Langa to the heads of courts and not wait until his term had ended so that he could get to be involved, there could be, he could get to know how heads of court operate. And we agreed, that's how Justice Langa then came in. But when Chief Justice Langa became chief justice, I think the then deputy chief justice, Justice Moseneke, may or may not have come a lot of times to the meetings. So, you may be right in how you put it, but I do know that at some stage the chief justice Langa had asked the heads of court about bringing him and the heads of court had said it's fine, but I don't know what happened. And when it was Chief Justice Ngcobo, I don't remember that Deputy Chief Justice Moseneke was brought in. So, I think probably you are right. My recollection was wrong, I don't think that there's a practice, probably it's just an invitation. But my view would certainly be that the deputy chief justice should be part of the heads of court. So, if I'm appointed as chief justice, I would invite the deputy chief justice to be part of the heads of court. And if there's anything to be done to make sure that it's not by invitation, maybe I would consider, but obviously it is a matter that would need to be placed before the heads of court for them to give their views. That was the one question. The second question or the first question related to the fact that I, for some time was in the commission, but being deputy chief justice at the same time and how did I handle that. One, after I had been appointed as the chairperson of the commission in January, February 2018, while we were putting the infrastructure of the commission in place and while I was assembling the investigation team and the legal team and looking for premises from which the commission would operate, I was able to sit in matters in the court, until I think about a month or two before the commencement of hearings which commenced in August. Once we were two months or one month before, I then stopped sitting in matters by arrangement with the chief justice obviously. So, I did not sit in matters since the hearing started until the hearings, public hearings had been completed and I went back. But what happened was that the chief justice involved me in other leadership matters and not sitting in court. You will be aware that I would call colleagues from other courts that we were inviting to come and act in the constitutional court. So, he allowed me largely to play that role,

but he consulted me a lot on leadership matters and other matters during that time. That is what happened. With regard to the language policy of the court, you probably remember that I chaired a committee many, many years ago when I was judge president of the labor appeal court. I think it was under the leadership of Chief Justice Langa, if I'm not mistaken, I'm not sure, when I chaired a committee of the heads of court that consisted of myself, Judge President Hlophe and Judge President Kgomo. We had been asked by the heads of court to look into the issue of the language of record and we had a split. There was the minority view that said it must be English, English, English all the way and there was another view that was Judge President Hlophe, and I took a different view and wanted to have more bigger role for African language, indigenous languages while still having English. But the matter was discussed by the heads of court and no agreement could be reached. I think there was, we couldn't reach agreement. But what happened was that after Chief Justice Mogoeng Mogoeng came in, he then sought to make sure there was finality on that issue which had been pending for a long time and it was then agreed that English would be the language. And I've accepted that decision, I have no intention if I get appointed as chief justice to try and want to change it. I think it's a decision that must continue.

20 **Judge President Tlaetsi:**

Thank you, Acting Chief Justice. Thank you, President.

Deputy President Petse (Chairperson):

Thank you, JP Tlaetsi. Commissioner Singh.

25

Commissioner Singh:

Thank you very much, Acting President and good afternoon, Acting Chief Justice Zondo.

30 **Acting Chief Justice Zondo:**

Good afternoon, Commissioner Singh.

Commissioner Singh:

Good to see you again.

5 **Acting Chief Justice Zondo:**

Thank you.

Commissioner Singh:

10 I just want to start off with what is contained in your questionnaire when you responded to the question on residential address.

Acting Chief Justice Zondo:

Mmhmm.

15 **Commissioner Singh:**

And you said not provided for security reasons.

Acting Chief Justice Zondo:

Mm.

20

Commissioner Singh:

Now we all know that of late that the judiciary has been under attack, members of the judiciary have been under attack physically as well.

25 **Acting Chief Justice Zondo:**

Mm.

Commissioner Singh:

I recall very unfortunately that a prosecutor, senior prosecutor was assassinated in Umlazi in December. Whistleblowers have been assassinated. Have you had or are
5 you aware of any threats to members of the judiciary at all levels and what kind of intervention do you think is necessary if you're appointed as a chief justice to protect the safety of judicial officers and whistleblowers?

Acting Chief Justice Zondo:

10 Mm. Yes, the issue of security for judges and judicial officers has been quite, is quite a critical issue. Well, myself, my family and I, all kinds of threats have been made against me and against my family arising basically from my work in the commission. But the state has provided protection. During the July unrest and for some time after that, there were threats against judges in general and various concerns came from
15 judges and the matter was discussed. I convened a heads of court meeting, a virtual heads of court meeting, we discussed the matter and the security, the SAPS and other security agencies were quite concerned. Arrangements were made for some protection to be given to justices of the constitutional court and justices of the supreme court of appeal as well as judges' president if I recall correctly. But there
20 were some judges who said, and then it was arranged that if any particular judge faces a specific threat, they needed to communicate with their judge president or head of court and then arrangements could be made, but there were some judges who preferred not to have that kind of security for certain reasons. But, yes, there have been serious threats and, you know, protection is necessary from, to be given.

25

Commissioner Singh:

Do you think the state is doing enough in terms of providing the protection, not only to judicial officers but to people like whistleblowers?

30 **Acting Chief Justice Zondo:**

Well, I don't have enough facts in terms of whistleblowers, but from what one reads in the media, one is very concerned about whether protection is given. And I believe

very strongly that if we are going to have any chance of making a dent on corruption in this country, we must make sure that we protect whistleblowers, because those are the people, together with investigative journalists who really give us information, the work of this commission, of the commission that I chaired would have been much more difficult had it not been for the investigative journalists that we have in this country and the whistleblowers. We, I'm indebted to them. I think all of us as a country should be indebted to them and as a country, we should do whatever we can to provide protection to them.

10 **Commissioner Singh:**

No, thank you for that. Acting Chief Justice, there are many elephants in this room, including the one elephant from the IFP that's asking you questions. But I'll just touch on a few of them because I can't touch on all of them. One is the concern and the objection with regard to Section 176.1 of the Constitution. The term of office and the time you have left in office.

Acting Chief Justice Zondo:

Mm.

20 **Commissioner Singh:**

And I think you know what the concern is. If you are appointed as chief justice, would you be able to fulfill your aims and ambitions and interviews, innovation into the entire judiciary within the short space of time.

25 **Acting Chief Justice Zondo:**

Mm.

Commissioner Singh:

Because earlier on you would try and do this and try and do that, but I'm also saying it at the background that you've had the experience so far as acting chief justice and

one would imagine that you will hit the ground running if you are appointed as the chief justice. Would you like to comment on this objection before I [intervenes]...

Acting Chief Justice Zondo:

5 Yes.

Commissioner Singh:

...touch on any other objection?

10 **Acting Chief Justice Zondo:**

Yes, no, thank you very much. I appreciate the opportunity to deal with this. If I'm appointed, I will have about two and a half years to work as chief justice. Chief Justice Ngcobo had less than that. He had less than 2 years, but within that short space of time he made a very big contribution. One of which is getting the executive, President Zuma, to agree to establish the office of the chief justice as a national department. That is a very, that was a very important step towards complete institutional independence for the judiciary. There are other, I think there are other measures, but also, I just need to say, a colleague sent me some information some time back, unfortunately I don't have it here. He had a look at how long chief justices in this country stayed in office. I think he went up to the 1800s and he did that research and when one looks at that research one finds that it is, it's, it was not unusual to have chief justices who serve for 2 years or 3 years, less than 5 years. I looked at the list there, there were many. There were many.

Number 2, he said or that research revealed that the immediate past chief justice who served as chief justice for 10 years was the second person, chief justice to serve that long during that long period that he researched. So, there is that. So, from my point of view, I think there are a number of things that I can do and one of them is really to see whether I can't get, achieve an agreement with the executive about phase 2 and phase 3 that we talked about. And if I could achieve that, I would be very happy when I leave office as chief justice because I would know that I have been able to leave behind a judiciary that has achieved that complete institutional independence which is very critical.

But also, a number of things that I think need to be dealt with are things that don't need many years to achieve. I talked earlier on about how courts are struggling to have things, you know, dealt with like they should have dealt with easily. Courts, certain courts, the buildings are in a dilapidated state, lifts are not working and so on. So, what one needs there is to get all the people concerned and try and find a way to make sure that when these, one, these things are sorted out, two, when they recur in the future, they are dealt with differently than they have been dealt with in the past. But also, during this time, one could make a number of contributions in terms of transformation, in terms of how the court works. So, I believe that's important. But also, you know, I think there is a good reason, and you probably should agree with me, why in terms of our constitution, the term of office of members of Parliament is five years. The term of office of a president is five years. There's a reason for that. You don't want a president who's going to be there for too long, you know. You want to be able to see whether at the end of the first term he's still worthy of being given another chance and so on and so on, the voters need to see whether they should not change and elect another party as the majority party to handle government. So, we had, with regard to the immediate past, chief justice, we had a chief justice who was there for 10 years, and it worked well. And it might work well with anybody in the future who could take a long time, but you don't know. We don't know. So, it may, but one of the things that would happen is that if I were appointed as chief justice, the position of deputy chief justice would become vacant and obviously the president would exercise his prerogative as to who he nominates and so on. But if I'm appointed as chief justice, the fact that my term would be two and a half years might not really be a bad thing, you know. It might well be a good thing because it may be that at that time then maybe you could get somebody who could stay much longer. But we have had a chief justice who was there for 10 years and obviously the president will exercise his mind. So, I think that two and a half years has certainly happened, I mean less than two and a half years happened with the chief justice. In terms of the study that or research that I'm talking about there are a number of chief justices that served 2 years, 3 years and so on.

Commissioner Singh:

Right, thank you for that. ACJ, you've been part of this panel on a number of occasions like some of us commissioners and we have been appointing people who are younger, even to the constitutional court, you know, and as judges. Do you

perhaps think in your personal view that Parliament needs to relook at this 12-year clause, because Parliament can change that in terms of the constitution?

Acting Chief Justice Zondo:

5 Mm. I know that the former chief justice has a very clear view of that, and his view
is yes. It should do so. I, my approach would be there is nothing wrong in relooking
at the matter. The question is what you do after relooking. Do you change or do you
leave it, because when you relook, you reconsider the pros and cons. Now my
10 starting point would be let's go back to the beginning, what was the rationale for
limiting the term of offices of justices of the constitutional court. If that rationale no
longer holds then it's fine, I think it can be changed, but if that rationale doesn't hold
anymore, if it doesn't hold anymore, changes can be made, but if it still holds then
we shouldn't. But when we look at something like that, we need to accept that those
15 happen in a certain way. So, we must think very carefully. So, I'm not saying it should
not be changed, I'm not saying it should be retained, but I think it would depend on
a discussion of the issues saying what was the rationale initially, does that rationale
not hold anymore. But it is true that we have had situations where justices of the
20 constitutional court have retired so to speak, early when they still have a lot of years
that they could contribute. But, it may well be that when this body recommends or
puts in a list to the president, the names of judges from which the president must
appoint to fill vacancies in the constitutional court it must bear the issue of age in
mind and maybe say somebody who might be too young must collect more
25 experience in other courts before going there to the constitutional court because if
he goes there too early he or she will come out too early while they have a lot to
contribute. But it is this body that might have to consider. There might be other
counterarguments that must be looked at, but I proceed from the view that says
there was a rationale for doing it. We can look at it and ask the question whether it
still holds or not.

30

Commissioner Singh:

No, thank you. I think we certainly have our work cut out as members of the legislature in that regard.

Acting Chief Justice Zondo:

Yes.

Commissioner Singh:

5 My last question would relate to some of the other objections that have been filed.

Acting Chief Justice Zondo:

Mm.

10 **Commissioner Singh:**

Now there have been many letters supporting your nomination and you must've gone through them, but there have been those with serious, "serious" objections which I think you must be afforded the opportunity to respond to.

15 **Acting Chief Justice Zondo:**

Yes. Yes.

Commissioner Singh:

Some of the, those that have written have accused of a pro-Ramaphosa bias.

20

Acting Chief Justice Zondo:

Mm.

Commissioner Singh:

25 There are others and I saw the objection from a former director general, Arthur Fraser, that's the second one.

Acting Chief Justice Zondo:

Mm.

5 **Commissioner Singh:**

And the third one that I listed here was an objection from one Mr. Beswane[?]. It's on page, ja, it's objection number 7 I think or one of them. How would you like to respond to some of these, these three objections in particular and I know there are other objections which I think other commissioners will deal with? Thank you.

10

Acting Chief Justice Zondo:

Well, I certainly remember the one from Mr. Fraser well and I will deal with it but let me deal with those that label as accusing me of being pro-Ramaphosa. I don't think that they place anything, they place any facts to support what they say. It's just their perception as I see it. I'm not pro-anybody. I'm not anti-anybody. I made the decision as chairperson of the commission way back in 2018 for example, I think second half of the year, that President Ramaphosa would have to appear before the commission, because he was part of the executive during the time when these allegations of state capture happened. He was deputy president. He was deputy to President Zuma. He was deputy president of the ANC, and I made an appointment with him, as a matter of courtesy, to say to him that is the view that I took so he must know that I would not consider, I did not think that the commission would have completed its work properly without him coming to the commission and answering questions and giving evidence. And he did not take long when we had that meeting to say he agreed. He said DCJ I agree with you, I must come to the commission and account. He did not give me any problems and of course he did come. So, I made that decision, and I made that decision alone, that he would have to come, and he came, and he was asked questions. So, of course, Commissioner Singh, through this commission I've made a lot of enemies for myself, but it's not as if I did not know that taking this kind of job would land me in that situation. I knew. When the chief justice had been asked by President Zuma to find a job who would chair this commission in accordance with the remedial action of the public protector, he called me as his deputy and told me that there was this task, and we had a discussion. He asked me

who I thought should, we should approach, and I can't remember whether I gave him the name, some of the names immediately or said I will reflect, and we'll talk later. But we talked and I gave, I proposed some names. He had some names, and he gave me the task of phoning those judges to try and find somebody who would chair the commission. And the matter was urgent from the point of President Zuma. Some of the judges were not available, others were not comfortable with taking this job. So, as we were phoning and talking to people, when we were in the same room on this particular occasion with the chief justice and I had proposed a certain name of a retired judge, he called that retired judge and from the conversation I could tell that the retired judge was not available because of other commitments. And he said something which made me think I was going to be the next he was going to ask. So, while he was speaking, I had to think what my answer would be and when he finished, he told me that, no, that retired judge was not available. Then he said, what about you. I had no hesitation in accepting the responsibility. I said to him, Chief Justice, if you want me to do it, I will do it. I had realized how it might be difficult to find somebody who would accept this responsibility. I was number 2 in the judiciary; I was the deputy chief justice. There was no way I could run away from the responsibility. As I say, I knew that it was going to be difficult. I knew that I would make a lot of enemies if I did this job properly, but I accepted that it was a job to be done and if I made enemies for myself in trying to help the country, so be it. I knew all of this. I can't say that I didn't know. I explained to my family. I said, lots of things could happen and, but we will have to hope that everything goes well. Even now, with all of the things that have happened, if I was asked to undertake a serious task that could mean putting me in a difficult position, if it had to be done I would do it. So, I'm sorry to give you a long answer, Commissioner Singh, but [intervenes]...

Commissioner Singh:

So, you accepted the poison jealous.

30 **Acting Chief Justice Zondo:**

I did. I did.

Commissioner Schlemmer:

Chair?

Acting Chief Justice Zondo:

But let me [intervenes]...

5

Commissioner Schlemmer:

Sorry for the interruption. Could I ask a follow-up question when the time is right?

Acting Chief Justice Zondo:

10 Mm.

Acting President:

Noted, Professor Schlemmer.

15 **Acting Chief Justice Zondo:**

Thank you. Then, Commissioner Singh, kindly let me deal with the question, with the objection from Mr. Arthur Fraser. You probably would have seen the response that I gave to the panel when he had raised his objection. Members of this commission will remember that when the state capture commission started in 2018 for quite a long time, I would have media briefings where I would invite members of the public to, who have, who had information about corruption in state capture to come forward. And in particular I would emphasize current ministers and past ministers and deputy ministers and DGs and former DGs. I would particularly mention those in those media briefings and say if you have information, please come forward to assist the commission. Members of this commission will also be aware that at some stage I complained that I didn't think that all the DGs and ministers and past ministers who had information had come forward because, although some had come forward, I, my view was there must be many. There must have been who had information but for one reason or another were not coming forward. Now Mr. Arthur Fraser did not come forward in 2018 in response to that call. He did not come forward in 2019 in

response to those calls. He did not come forward during the first half of 2020. He came forward after certain witnesses from SSA, former members came forward and gave evidence. And then when he came forward, he said he would, he has information that would, that is very relevant for the commission and he would give the information, but he needed a lot of documents from the State Security Agency. I think he said the information he had would, I think his counsel announced at the hearing, would show the involvement of judges in state capture and corruption as well as, he said past and present presidents of the country. So, we said no, that's fine. So, he applied, he said he was writing to SSA for documents and at a certain stage, that is now I think last year March, he brought an application for an order that I compel SSA and the Minister of Security to make available to him a number of documents. But the State Security Agency came forward and responded to the application and said we are prepared to give you the document you want, but we are not sure what documents you are looking for. You must identify them and follow the procedures. You have been DG of SSA, you know what the procedure is. So, you must follow it and he agreed. He accepted that offer. So, I didn't have to make any ruling and subsequently, and this is contained in my ruling in regard to his application for leave to cross-examine certain witnesses, he was supposed to meet with State Security Agency to identify those documents and obtain them because he said the statement, he had given to the commission is not complete. So, he would, it would be complete once he had got that information. But the evidence is that he never went to the State Security Agency to obtain those documents despite the fact that they invited him to the State Security Agency so that he could see them. He had agreed that he would follow certain regulations that apply in this situation, but they said he didn't comply. He has never explained to the commission why he didn't follow-up, why he did not comply with those. So, I looked at his objection now and I thought this time, I thought because he wrote this objection after I had written my ruling on his application for leave to cross-examine and I had raised this issue of why did he not pursue the issue of getting these documents that he said were so crucial for his evidence. I thought that when he objects after that ruling was out, he would explain that, but he doesn't. So, it remains a mystery why somebody who said there are these documents that are so crucial which will help the commission didn't pursue them. So, the fact of the matter is one, he, therefore all that he had given the commission was an incomplete statement on his own version because he needed those documents. He has not said that he can do any other way to complete it without them. But two, he seemed not to want to play according to the rules of the commission. The commission has certainly rules. If you want to do this, this is what

you do. So, that is the position. When he, his legal team was before the commission I think in April, I said to them I'm postponing this application *sine die*, that is without fixing a date, but I don't want you, if you, when you come back from getting those documents, if you come back and find that we no longer have time, as the
5 Commissioner I don't want you to say why did you allow us to get the documents if you were not going to have time. I said to them, when you have got the documents, we will look at what is possible at that time and he never came back to say here are the documents or I'm abandoning the documents, but my statement, I can complete my statement. He didn't. I hope that has covered those that you addressed.

10

Commissioner Singh:

Ja, there's one by Beswane, Acting President. That was the third one.

Acting Chief Justice Zondo:

15 I don't know if you are able to remind me, I can't remember what it says.

Commissioner Singh:

Through you, Acting President. Beswane is a generalized objection, but I think one of the things he says three of the applicants that appeared before us are
20 constitutional delinquents, including yourself. So, I don't know if you want to respond [intervenes]...

Acting Chief Justice Zondo:

Ja.

25

Commissioner Singh:

...in any great detail to that.

Acting Chief Justice Zondo:

5 Ja, ja. Well, some of them I had dealt with, I dealt with when, at the stage of the panel. We provided answers which I assume are, have been made available to the commission, but obviously if any member of the commission wants us to go into it, I can look at it and then I can deal with it, but, we had, I had provided answers I think for all of those if I'm not mistaken.

Commissioner Singh:

Thank you, Acting President.

10 **Deputy President Petse (Chairperson):**

Thank you, Commissioner Singh. Acting Chief Justice, might I appeal to you, we are approaching 13:00 now, whilst you have the right to answer adequately to all the questions put to you, you should please endeavor to keep your answers succinct. Thank you.

15

Acting Chief Justice Zondo:

Thank you, Chairperson, I shall endeavor to do so, but of course these were three or four questions that came from Commissioner Singh, but I will endeavor to do so.

20 **Deputy President Petse (Chairperson):**

Thank you very much, Acting Chief Justice. There are follow-up questions from three of the commissioners gathered here. Professor Schlemmer?

Commissioner Schlemmer:

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

Acting Chief Justice Zondo:

Good afternoon.

Professor Schlemmer:

The question that was put to you by Commissioner Singh concerning the objection that you are in favor of President Zuma, not President Zuma, President Ramaphosa
5 links up to a question and a certain uneasiness that I feel to think about you as chairing a commission who has to decide on the credibility of the President and also whether he's guilty of certain actions that are not appropriate. The same President that you have to decide upon is the person who may be appointing you if you were to be appointed as the chief justice. The other thing that comes into play is the fact
10 that the report is not finished as yet. What can you say to this?

Acting Chief Justice Zondo:

Well, Commissioner Schlemmer, the truth is that in the work of the commission the President gave evidence and like every witness his evidence will have to be weighed
15 up, assessed. I haven't gone through that, to dealing with most of his evidence and I will have to make findings. But as I said earlier on, with this job you have got to do the job, make the findings you make, accept that you may make enemies, but also accept that you may make findings against anybody. Including the President. So, if there is enough evidence that justifies a finding against the President, that finding
20 will be made, but no finding will be made against the President if there is no evidence that justifies it. Just as with regard to former President Zuma, where I've made any finding against him, I've done so because there is evidence, but where there's no evidence, I will not make any finding against President Zuma when there is no evidence. I will not make any finding against anybody when there is no evidence, but
25 I will make a finding against anybody if the evidence justifies it.

Commissioner Schlemmer:

So, we [intervenes]...

30 **Acting Chief Justice Zondo:**

And if I must suffer any consequences for that, it's fine.

Commissioner Schlemmer:

So that should then say that we shouldn't read anything into the fact that that part of the report is not finished yet?

5

Acting Chief Justice Zondo:

Well, I don't know what you have in mind, but the report, the idea as you will recall and everybody would recall, the idea was to complete the report by end of December, the entire report. That was the plan. It was only when it transpired that it was impossible to finish the entire report by end of December that I then decided that let me rather do it in parts. And the reason for that was that I just thought, sjoie, the country would be up in arms if I said I'm not handing in anything at all by end of December. So, I said at least it's better if there is a part that we hand in. But my plan and the plan of the whole commission, we were working flat out to finish the report, the whole report by December. And I actually, when some of the members of the legal team at some stage tried to say to me, I must start entertaining or thinking about the idea of making an application for an extension beyond December, I didn't want to hear that because I wanted to finish in December. But there came a time when I had to be realistic and accept that I was not going to finish the whole report in December. And then the next thing was do we then tell the public, the nation we are not submitting anything until it's everything, but we said we have done quite some work. So, why can't we do it in parts and we agreed that let's do a part 1, part 2 and part 3. So, nothing else should be read into it.

25 **Commissioner Schlemmer:**

Thank you for that, because some people can think that the reason for the report to not be completed is kind of, you don't want to blemish the possibility of being appointed as the chief justice.

30 **Acting Chief Justice Zondo:**

They don't know me if they think like that.

Commissioner Schlemmer:

Thank you, Chair.

5 **Acting Chief Justice Zondo:**

Thank you.

Acting President:

Thank you, Professor Schlemmer. Commissioner Magwanishe, you can follow-up.

10

Commissioner Magwanishe:

Thank you very much, Acting President. Good afternoon, Acting Chief Justice.

Acting Chief Justice Zondo:

15 Good afternoon to you, Commissioner.

Commissioner Magwanishe:

20 It's just one question and I think for the benefit of the public that would not have some of the documents you are referring to, I do understand the part of the cross-examination with respect to former DG Fraser which is part of the objections. But you have allegations against a person to the tune, I think in the allegation it's about R9 billion.

Acting Chief Justice Zondo:

25 Mm.

Commissioner Magwanishe:

Didn't you think that it was prudent that he should be summoned to appear?

Acting Chief Justice R Zondo:

5 Well, I can't remember the amount, what the context of the amount you are talking
about, but in the commission, there was at some stage a figure that was mentioned
by some of the SSA witnesses which was incorrect, and it was corrected that, no,
that's not correct. So, you may be talking about that figure that was incorrect. But
10 let me say this, you have somebody who says I will tell you the whole story, but these
statements that I'm giving you are incomplete. The whole story, the other part of
the story is in documents and the documents that he listed were many. I think the
list was something like 11 pages, were many. So, when you read, when you see that,
you see that it's a, the documents constitute a bit part of the story, you know. So, the
15 question then is what's the point of hearing this evidence when it is not complete
and you bear in mind, as I've said, that this person tells you in the third year of the
commission that he has this information about state capture and corruption which
involves high people. People in high office. And he says he knows you have been
calling for them to, people who have information to come forward, but for 2 years,
two and a half years he didn't come forward. So, you say do I, at this late stage of
20 the commission, hear this evidence that's incomplete, what would be the purpose of
hearing it if it's incomplete, what will I do with it if it's incomplete and you are actually
outside or you are basically on overtime. Because in March when he came before the
commission applying for an order from me, compelling SSA and the Minister of State
Security to compel them to give him these documents, we were due to, I think we
25 were due to finish at the end of April or March, I can't remember, but we later applied
for an extension. That is why I said to his lawyers when they were before me, I don't
want you when you come back with the documents to complain if at that time, I say
we no longer have time, because you will say to me what was the point of you
allowing us to go and collect all of these documents if you are not going to hear us. I
30 said, so go and collect the documents, but when you come back, depending on when
you come back, we will look at the situation at that stage because we are already on
extra time. And as it happens, he never came back. The next time I heard from him
I think was, no, I, the commission sent him or his lawyers a notice to say please make
original representations about A, B and C which he did and then the next thing was
35 when he lodged an objection. But he has never had the courtesy of coming back to

the commission and say, Chairperson, you remember in March I came to you, I wanted you to force SSA to give me documents and you allowed me to go and get them, this is what happened. He has never done that.

5 **Commissioner Magwanishe:**

Thank you, Acting President.

Deputy President Petse (Chairperson):

10 Thank you, Commissioner Magwanishe. Yet another follow-up from Commissioner Mapisa-Nqakula.

Commissioner Mapisa-Nqakula:

Thank you very much, Acting President. Good morning [intervenes]...

15 **Acting Chief Justice Zondo:**

Good afternoon, Madam Speaker.

Commissioner Mapisa-Nqakula:

Good afternoon, Acting President Zondo.

20

Acting Chief Justice Zondo:

Sorry?

Commissioner Mapisa-Nqakula:

25 Acting Chief Justice Zondo. No, my follow-up question to you is on the very matter which has been raised by both Honorable Singh, Commissioner Singh and Commissioner Magwanishe. The issue for me is I've read the entire objection by

Arthur Fraser and I'm fully aware that there are documents which he requested from State Security which finally he himself did not make himself available to get those documents.

5 **Acting Chief Justice Zondo:**

Mm.

Commissioner Mapisa-Nqakula:

10 Now between what happened to SSA and state, and Arthur Fraser that's another matter.

Acting Chief Justice Zondo:

Mm.

15 **Commissioner Mapisa-Nqakula:**

The question I have is the allegations against Fraser were damning allegations.

Acting Chief Justice Zondo:

Mmhmm.

20

Commissioner Mapisa-Nqakula:

25 Whether it's equal to 9 billion or 1 billion or half a million, but the point is there were damning allegations and I know for sure that there are many people who were summoned or subpoenaed to appear before the commission to present their side of the story on whatever had been presented about. The question is, didn't the commission see it fit that with all the toing and froing between Arthur Fraser and State Security and Arthur having approached you and said he would want to appear in you and him wanting more information. Now at that point, would it not have been

incumbent upon you to say, look, we've given you time, you were here in March. We're moving towards the end of everything. We're wrapping up the commission. And the allegations which have been presented here to this commission against you are damning allegations and therefore we are now summoning you to appear before
5 the commission to answer for yourself or to explain or to, whatever it is, but for you to be able to raise all of the issues you would have wanted to raise directly with him. Not that it, the commission was a court of law, obviously certain things are going to happen beyond this, but with everything which had been raised about, State Security in particular, honestly don't you think it would have been proper to say the
10 accounting officer at that point whose allegations against him were really weighing very heavy on everybody, should appear before the commission, should answer for himself or present his side of the story to the commission? Thank you.

Acting Chief Justice Zondo:

15 Thank you, Madam Speaker. Let me put it this way. The rules of the commission say if somebody has given the commission an affidavit or statement which implicates somebody else, the commission must issue what we call Rule 33 notices. The Rule 33 notice tells you, the person who is implicated in that witness' statement that there is this person who has given the commission a statement that implicates you and
20 hear is that statement that implicates you or here are portions of that statement that implicates you. And then it says, the notice says to you, if you want to challenge this evidence, you must apply to the commission for leave to give evidence or to cross-examine the person. And when you apply this is what you do. Okay. Now what that does do is that it gives you the implicated person an election. You can decide that
25 you don't think that this witness implicates you or his or her statement implicates you, or, and therefore you do nothing, or you can decide that even if it implicates you, you don't want to challenge it, you don't care and then you do nothing. Or you can decide that you just want to give the commission an affidavit that sets out your side of the story without you wanting to give evidence orally or to cross-examine that
30 person. You have an election; you can do any of those things. Okay. Now some of the, there are many people, thousands if I recall correctly, maybe over 3000 people who were served with 33 notices by the commission. Of course, we did not hear 1000 witnesses. So, there are many who decided that they did not want to challenge what those witnesses were saying about them, and they did not want to cross-
35 examine them. They just left things like that. Now some of those...okay, let me first say, if you decided not to do what the rules say you must do if you want to challenge

what has said about you, if you decide not to do that, you can't complain afterwards and say I was denied the opportunity of putting my side of the story. Because the rule, the notice that the commission sent to you told you that if you want to challenge this, this evidence by this witness, this is what you must do and you decided not to do anything. So, you can't complain that you were not given that chance. Then in that event, but the fact that you have chosen not to do anything did not deprive us as the commission of the power to compel you if we think we should compel you. Okay. That is why there are people that the commission compelled to come before it and answer certain questions. But part of the problem with Mr. Fraser was that he seemed not to want to comply with the rules or processes of the commission. If he wanted to testify, all he needed to do is to apply and his application would have been decided as many other people had applied, and they were decided. He says I didn't want him to testify because his evidence would disturb the narrative that I wanted to follow, but the best way for him to test that would have been for him to apply for leave to give evidence and see whether I was going to refuse. Because if he applied and complied with the rules of the commission, the matter would come before me in open court and in an open hearing and then I would have to make the decision. He decided not to do that, but to want to be treated outside of the rules. But more than anything, the problem with Mr. Fraser was the time when that kind of decision could be made. I could not make that decision in March because in March he still wanted to get documents from SSA. So, and he never came back to me to say I didn't find the documents, or I don't want to use them anymore. So, by the time when he complains that I didn't call him, when we look at that time, we have got to look at the last part of 2021 when the oral evidence had been completed in June. So if I were to have decided to call him after I got to know that this route of getting documents from SSA was not being pursued, it would have meant that I would have had to reopen the hearing of evidence, maybe in October and he, and then another complication with him was that he could implicate a lot of people who had previously not been implicated which would then mean we must give those people opportunities and we were running out of time. But if he had approached us in 2018 when I made that call to say all DGs past and present and ministers and deputy ministers who have got information that is relevant to the commission must come forward, there would have been enough time to deal with all of this. Thank you.

35 **Commissioner Mapisa-Nqakula:**

Thank you, Acting Chief Justice.

Acting Chief Justice Zondo:

Thank you, Madam Speaker.

5 **Deputy President Petse (Chairperson):**

Thank you, Commissioner Mapisa-Nqakula. Commissioner Malema.

Commissioner Malema:

Thank you, Acting President and Deputy Chief Justice.

10

Acting Chief Justice Zondo:

Thank you, Commissioner Malema.

Commissioner Malema:

15 I think that we hear each other very well and the answer you are giving which is so
long is deliberately trying not to answer the question on Fraser. The question on
Fraser is not what he has done, or he has not done. The question on Fraser is, he's
an accounting officer of an institution that got highly implicated and figures, an
amount of money were thrown around, whether this or that amount of money. It is
20 immaterial. Why didn't the commission compel him to come and answer as a former
accounting officer? Not what he wanted to do on helping the commission, no, that
is his part which he has not done. We have no problem with that. Fraser, and the
institution he was leading, gets implicated in the commission, amounts of money gets
thrown around. Zizi Kodwa gets called for R1 million. Here is a person who was
25 leading a strategic institution of the state and that institution is implicated. Zizi
Kodwa did not lead any strategic institution of the state, didn't work for government.
He worked for the ANC. He gets called, come here, your name is here. We are told
you got 1 million, come and tell us. Here, Fraser gets implicated, monies are thrown
around from the state coffers and he's not called and compelled to come and answer
30 on those allegations made against both him and the institution that he has led. Why?

Acting Chief Justice Zondo:

Well, Commissioner Malema, the question has been answered, let me repeat. In March, Mr. Fraser said I need documents from the SSA to give you a full picture. I want to give you a full picture. Okay. So, at that stage there was no reason to think that he would not pursue that route of getting all those documents that he said were so important for him to, because he said it's for him, they will help him to respond, amongst other things, to the allegations against him. Okay. Then he goes away with my permission to say, okay, this application that you brought that I should compel the state security to give you these documents, we postponed without fixing a date and I even said if you don't come right, you can come back. I was talking to his lawyers, obviously not to him. If you don't come right, you can then come back to me and revive this application and we can take things from there, but I said I do want you to know that we are running out of time. When you do come back, we will assess the situation at that time. He never came back and if I were to decide whether to compel him, I had, I would have to have made that decision maybe in October, maybe in September and that was too late. But I had warned him or his lawyers that when you have received the documents and you come back, you must know that we will assess the situation at that time to see what is possible and what is not possible. So, we didn't call him, partly because his story was not complete because he had said he needed the documents. He had said to us he was; he needed those documents, he would go and them and we expected him to come back. He never came back. Actually, in June, and I think my ruling indicates it was 17 June if I'm not mistaken, the secretary of the commission wrote to, both to his lawyers and to the lawyers of SSA and said effectively what is happening about the documents. And his lawyers did not respond. The state attorney representing SSA is the one that responded and told and said what was happening. So, if any decision had to be made, it would have had to be made maybe in September or thereabout which was quite late.

30 Commissioner Malema:

DCJ, there are two types of people the commission deals with. There are people who got called upon, former ministers, DGs and ministers and all who must come forward to help the commission if they can and bring whatever information they want to bring, and Fraser came late with regard to that. And even when he came, he said there are these documents I need to help the commission. I understand that. Then

there are these ones who get implicated in the commission, where the commission realizes no, this one will have to come and answer this, not these things that he wants to give us.

5 **Acting Chief Justice Zondo:**

Mm.

Commissioner Malema:

These ones we can hear you, we want you to come and answer on these ones.

10

Acting Chief Justice Zondo:

Mmhmm.

Commissioner Malema:

15 And there he doesn't take an initiative.

Acting Chief Justice Zondo:

Mmhmm.

20 **Commissioner Malema:**

The commission takes the initiative.

Acting Chief Justice Zondo:

Mmhmm.

25

Commissioner Malema:

Did you do that with Arthur Fraser when he got implicated and right to him and say come here, the following things are implicating you. We want you to come and answer them?

5

Deputy President Petse (Chairperson):

Give me a moment, Acting Chief Justice. Commissioner Malema, could you please try and moderate the tone of your voice? Thank you.

10 **Commissioner Malema:**

No, no, I don't understand that. I speak like this. I must moderate what? I speak like this. This is how I speak.

Deputy President Petse (Chairperson):

15 No, Commissioner Malema. You are shouting now, not speaking.

Commissioner Malema:

20 No, but, Chair, I speak like this. I can bring all types of videos you want to see of me speaking. I speak like this. I'm not fighting. He chairs these meetings all the time, he knows I speak like this. I'm not fighting.

Deputy President Petse (Chairperson):

For the sake of progress, shall we please give the Acting Chief Justice to respond to your question?

25

Commissioner Malema:

Please.

Acting Chief Justice Zondo:

Thank you, Chairperson. You see, Commissioner Malema, there are people who were implicated, and there are many of them, whom we did not call. Even though
5 they were implicated. On their side, they decided they were not going to do anything even though they were notified that they were implicated and we, ourselves, decided not to call. Okay. There are many of such people. But there are some that we decided but we must call this one and that depended on a number of things. One of which would be when we still had a lot of time, we could call a lot of people. So,
10 what I'm saying is, first after you have served the notice, Rule 33 notice, on an implicated person, you wait for them to see whether they are going to make an election to apply for leave to testify or for leave to cross-examine witnesses or for both. After some time if they have not done that, you have to make a decision whether you must call them nevertheless, you know, even though they didn't say
15 anything. And some we called, others we didn't call. But with regard to Mr. Fraser, what I'm saying is before March there was no reason to force him to come to the commission, because in June or July 2020 he had come to the commission with his legal team and said he wants to give evidence. He has a lot of evidence, but he wants certain documents from SSA. So, he was going to come back, and we had no issues with that. But from, until March we didn't know what was happening, but we were clear that he and his counsel were very emphatic that they, they would come back, he wanted to testify, but he wanted certain documents. And then in March he applies to me to say compel SSA and the Minister of State Security to give me these documents that are so important for me to respond to these allegations and to tell
25 you about state capture and corruption in general, I think. So, I say, okay, but we are now, we are on extra time. When you get them, we will see what can be done and he never comes back. By the time I could have made any decision to say okay, he is no longer come back, it would have been about September. It would have been too late, and I would, my view would've been it's so late, his evidence might not just...well, first of all, he said those documents would help him also to respond to these allegations by these witnesses. So, he would probably implicate other people and then who would want to come, and the commission was required to complete its work. So that was the situation we were faced with.
30

Commissioner Malema:

Chair, my problem here is that he says he's implicated in a 9 billion and you said there's a different figure. Surely the commission that this investigation corruption can't miss to compel a person implicated in a 9 billion scandal from State Security
5 where there is slush fund and some of which is not even accounted for. This would've been an opportune moment for the commission to expose the road that has constituted some of the activities in that institution. So apart, I hear that, but my problem is that you still don't call him on your own to come and account for 9 billion, because I'm telling you 9 billion, that's what he says. He says in his objection, I'm
10 implicated on 9 billion and I'm shocked I'm not compelled to come and answer on this 9 billion.

Acting Chief Justice Zondo:

Well, you see, Commissioner Malema, one of the things we had to accept, certainly I
15 had to accept as chairperson of the commission as we went along, I mean there were many issues that I would have liked the commission to pursue. But I had to accept that I'm not the only one, anything that I have not investigated, it doesn't mean there's nobody else who can investigate. I must accept that there are other people who can do the job and other agencies. There was pressure that the commission
20 must finish its work and you might have seen when I applied for extensions how there would be complaints about this commission is not finishing its work and there were challenges about money. So, we needed to make a decision and certainly I would have said, look, one, we have evidence that implicates him in a certain way. He has been given an opportunity if he wants to challenge that evidence to comply with the
25 rules and apply and then that application would have been decided. He chose not to do that. So, he must have had a reason why he didn't want to do that, and he certainly had lawyers and the lawyers, he had knew the procedures of the commission. So, he might not ultimately account to the commission, but the evidence that has been led before the commission will be available to law
30 enforcement agencies and to other people. He might end up accounting anyway. So, I mustn't prolong this commission as if I'm the only one who can investigate everything.

Commissioner Malema:

Then on a separate matter. The courtesy to President Ramaphosa to come and account, let me understand how did that come about and in terms of the rules of the commission, which rule is that one?

5

Acting Chief Justice Zondo:

Well, it wasn't in terms of any rule of the commission. Remember that this commission, not this commission, the commission is a presidential commission. It was established by President Zuma, but once he left office, basically it gets inherited by whoever the President is. So, it's a presidential commission. One of my obligations is to update the president as to how the commission is doing which I was doing. So, I would meet with him from time to time. I would meet with him when there were, for example, challenges about budget. There was a time, some of the commissioners may recall, when it was in the media that investigators and the legal team had not been paid for a long time. There was a time when Treasury was not giving us money and Department of Justice was not giving us money. And I, it had gone on for a long time. I realized that if something had to be done, I needed to speak to the President, because the next thing the legal team and the investigators would leave, you know. It would be unreasonable to expect them to continue working without being paid for, I think at some stage they had not been paid for three months. So, I had an obligation to meet with him regularly and appraise him about what is happening and what challenges there, where I think he should come in because it's a presidential commission. But then I also said you will have to come and testify before the commission finishes as well and he agreed.

25

Commissioner Malema:

According to which rule do you have to brief the President from time to time about the work of the commission? Because if the President has established a commission, that's it, because it might be seen as if you are now compromising the independence of the commission by constantly briefing the President whereas if the President is also an implicated person in the commission's work.

30

Acting Chief Justice Zondo:

Well, the rules of the commission talk about the proceedings of the commission. They don't provide for every...they don't deal with everything, you know. They basically provide processes how certain things are done, how witnesses come to the
5 commission. So, they don't deal with that. But my understanding is that judges who have headed other commissions would do that, they keep the, if it's a presidential commission, you keep the President informed of the progress of the commission. If it's a commission established by a premier, you keep them informed, how everything is happening, is going and if there are any challenges, you update him.

10

Commissioner Malema:

What...how would you [intervenes]...

Deputy President Petse (Chairperson):

15 Commissioner Malema, excuse me [intervenes]...

Commissioner Malema:

The last one. The last follow-up on a separate matter.

20 **Deputy President Petse (Chairperson):**

Okay.

Commissioner Malema:

Yes.

25

Deputy President Petse (Chairperson):

Very last one, thank you.

Commissioner Malema:

The release of the last report, which is likely to implicate the President, is that not a sword on the neck of the President that he must appoint you or if he doesn't appoint you, the report is likely to go a different way? Because there are two parts of the reports which were released, why was the President's side not included in the reports which were released before this interview? Because we are human beings, and we are politicians, and we are political animals. If you have a report on me and you don't release it and I've got certain obligations towards, I might be tempted to do the right by you, otherwise I'll be dealt with wrongly. So, what do, how will you respond to this that this serves as a sword on the neck of the President, because if he doesn't do the right thing the report is likely to go differently? Thank you, Chair.

Acting Chief Justice Zondo:

Well, interestingly I never thought about that angle, Commissioner Malema, but I think the reason why I never thought about it is because of how it came about that we decided that the report would be in three parts. And how it came about was that for a number of months before the end of last year, we were working flat out to complete the whole report by end of December, because the order of the court that had granted us an extension had given us up to the 31st of December. That's number 1. Number 2, I wanted to finish the work of this commission. I mean for four years I've been doing this, the work of this commission. It's been, I haven't had much time to rest, I haven't had much time for my family over the four years. It's been, I mean there are times when I've worked right around the clock without sleeping to try and push the work of the commission. If there's one thing I would like behind me, is to finish the work of the commission. So, towards the end of last year, I was pushing everybody saying we must finish. So, when I realized that we were not going to be able to finish the whole report, we looked at what portions of the report would be ready by end of December to release and those happened to be the ones that were in part 1. And the ones that are in part 2 were those that were closer to being ready. So, there was no conscious decision to say, no, that part must come later because of what. It was simply which parts were closer to being ready by a certain time in December and saying there is no way we can face the nation and say we want an extension, but we are not submitting anything. Let us submit something at least, that was the idea. Thank you, Commission Malema.

Commissioner Malema:

Thank you, Chair. Thank you, DC.

5 **Minister Lamola:**

A follow-up [intervenes]...

Deputy President Petse (Chairperson):

Thank you [intervenes]...

10

Minister Lamola:

A follow-up, Acting President.

Deputy President Petse (Chairperson):

15 ...Commissioner Malema. Commissioner Nyambi. Please bear with me, Minister, I had Commissioner Nyambi long before you.

Minister Lamola:

Okay, thank you.

20

Commissioner Nyambi:

Thank you, Acting President. Afternoon, DCJ.

Acting Chief Justice Zondo:

25 Good afternoon, Commissioner.

Commissioner Nyambi:

It's one follow-up from my part, taking it from the question of Honorable Singh.

5 **Acting Chief Justice Zondo:**

Mm.

Commissioner Nyambi:

10 I don't want to misinterpret what you are telling us so that when we are having deliberations it's used against you. You said you knew when you were identified to lead the commission that you will create enemies.

Acting Chief Justice Zondo:

Mm.

15

Commissioner Nyambi:

So, I asked myself a question that how is that possible, because you had a clear and objective mind, it was possible to get there and only to find that there was no corruption.

20

Acting Chief Justice Zondo:

Mmhmm.

Commissioner Nyambi:

25 So, I want to have that understanding that [intervenes]...

Acting Chief Justice Zondo:

Yes.

Commissioner Nyambi:

5 ...how can you create enemies [intervenes]...

Acting Chief Justice Zondo:

Yes.

10 **Commissioner Nyambi:**

...before you can get the actual commission starting its work and get the rot that was happening in the country.

Acting Chief Justice Zondo:

15 Yes. No, I think what I mean was you can't run a commission like this without a situation where at some stage or another you are going to make rulings against some people. You might have to make rulings against people in relation to actual corruption, but obviously at that stage I didn't have the evidence, but I know as much all of us know that South Africa has had a high level of corruption for a long time.
20 Leave out state capture, just corruption and remember that the commission wasn't looking in terms of its reference, it was not just looking at, it was not just going to look at state capture, it was going to look at corruption as well. And therefore, it's highly unlikely that you would have this commission in a country that is so full of corruption, and you would think that you would not find any evidence and making
25 findings of corruption against some or other people.

Commissioner Nyambi:

Thank you, DCJ. Thank you, Acting President.

Deputy President Petse (Chairperson):

Thank you, Commission Nyambi. Honorable Minister?

Minister Lamola:

5 I just want to check, Acting Chief Justice, you applied several times to court for the extension.

Acting Chief Justice Zondo:

10 Yes, I did. I did and I must tell you, Minister, that each time I didn't like this idea of applying for an extension. Actually, initially in 2018 I thought it was the President who should apply because it's his commission, but he got a legal opinion that said I must apply so I had to apply. So, I've been the one applying all the time and the one taking flack.

15 **Minister Lamola:**

Ja, so obviously most of the time when you had to apply for the extension you will have to talk to the President or sometimes to the Minister because there will be implications on the work of the commission.

20 **Acting Chief Justice Zondo:**

Yes, yes. Certainly, my approach was that this being a presidential commission, the President should not hear it from the media that we were applying for an extension and obviously the Minister and the Department were supporting the commission and they also needed to hear. But most of the time I dealt with the President.

25

Minister Lamola:

And sometimes there could be budgetary issues that, for example, the Department will have to consider and advise the President, vice a versa and the commission [intervenes]...

Acting Chief Justice Zondo:

Yes.

5 **Minister Lamola:**

...including you talking to the President about these budgetary challenges that [intervenes]...

Acting Chief Justice Zondo:

10 Yes.

Minister Lamola:

...the commission is dealing with.

15 **Acting Chief Justice Zondo:**

Yes.

Minister Lamola:

No, thank you.

20

Acting Chief Justice Zondo:

Thank you.

Deputy President Petse (Chairperson):

25 Thank you, Minister Lamola. Would members of the commission allow me to take Mr. Notyesi before the lunch adjournment?

Various Speakers:

Yes.

5 **Deputy President Petse (Chairperson):**

Thank you.

Various Speakers:

Yes.

10

Deputy President Petse (Chairperson):

Commissioner Notyesi.

Commissioner Notyesi:

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

Acting Chief Justice Zondo:

Good afternoon, Commissioner Notyesi.

20 **Commissioner Notyesi:**

Firstly, I must record that the four of you as the candidates, you are like, you are role models to me.

Acting Chief Justice Zondo:

25 Thank you.

Commissioner Notyesi:

And you have done a lot towards this country.

5 **Acting Chief Justice Zondo:**

Thank you.

Commissioner Notyesi:

10 It's worse for you writing more than 200 judgments, that is prolific writing with articles and publications.

Acting Chief Justice Zondo:

Thank you.

15 **Commissioner Notyesi:**

So, whatever questions I ask either from you or other candidates [intervenes]...

Acting Chief Justice Zondo:

Yes.

20

Commissioner Notyesi:

...are genuine.

Acting Chief Justice Zondo:

25 Yes.

Commissioner Notyesi:

There's nothing [intervenens]...

5 **Acting Chief Justice Zondo:**

Yes.

Commissioner Notyesi:

...obviously, we just want to clarify the issues.

10

Acting Chief Justice Zondo:

Thank you. Thank you.

Commissioner Notyesi:

15 Ja. Now I, from your presentation what I, I must appreciate again, you gave a detailed insight to the constitutional court, the workings of that court, the challenges and therefore I have a better understanding of that court and I must commend you for that.

20 **Acting Chief Justice Zondo:**

Mm.

Commissioner Notyesi:

I definitely have not much questions to ask you in relation to that.

25

Acting Chief Justice Zondo:

Okay.

Commissioner Notyesi:

We have to discuss in relation to your capacity as the head of the judiciary.

5

Acting Chief Justice Zondo:

Mm.

Commissioner Notyesi:

10 And even there I must break it down to the leadership, I think that's where we'll focus on.

Acting Chief Justice Zondo:

Mm.

15

Commissioner Notyesi:

To begin with my question is, would you consider the, your appointment to the commission as the chairperson as part of your leadership enhancement, as part of your leadership which must be considered in the context of you becoming the chief justice?

20

Acting Chief Justice Zondo:

I'm sorry, I keep on forgetting that I don't have to press here. Thank you for that question, Commissioner Notyesi. Yes, I consider that when you, honorable members of this commission, consider my candidacy, you should consider the question of my chairing of the commission.

25

Commissioner Notyesi:

Yes.

Acting Chief Justice Zondo:

5 I say so knowing that some criticize me about how I chaired it, others like how I did it, but I think either way it's fair.

Commissioner Notyesi:

Yes.

10

Acting Chief Justice Zondo:

And so, yes, I think it should be considered, thank you.

Commissioner Notyesi:

15 Yes. Now the first question I want to, I mean it's from my experience in the Eastern Cape sometimes ago, the commission wasn't established, it was headed by the late Justice White. That commission after it was concluded, litigation arising from it lasted for more than 10 years.

20 **Acting Chief Justice Zondo:**

Mm.

Commissioner Notyesi:

25 There were many, many cases. The chairperson, you may attest that, at some stage I think he was one of those involved in matters arising from that commission.

Acting Chief Justice Zondo:

Mm.

Commissioner Notyesi:

5 So, do you agree that any commission is likely to end up in court, to end up in court with reviews, all those involved being called upon to give evidence, testify, do you accept that?

Acting Chief Justice Zondo:

10 Here is what I accept, Commissioner Notyesi. I accept that after the commission has completed its work and submitted its report, there may be a number of people who launch a review application.

Commissioner Notyesi:

Yes.

15

Acting Chief Justice Zondo:

Those review applications, review applications are normally decided by the courts on affidavit [intervenies]...

20 **Commissioner Notyesi:**

Yes.

Acting Chief Justice Zondo:

...without the need for oral evidence.

25

Commissioner Notyesi:

Yes.

Acting Chief Justice Zondo:

So, that I accept will happen.

5 **Commissioner Notyesi:**

Yes.

Acting Chief Justice Zondo:

10 But I also need to say that the commission or Commissioner would decide whether he wants, or he or she wants to oppose a particular application or not.

Commissioner Notyesi:

Yes.

15 **Acting Chief Justice Zondo:**

He or she might decide I will abide.

Commissioner Notyesi:

Ja.

20

Acting Chief Justice Zondo:

Let the court decide. So, he or she might not be so involved in those cases after the commission has finished its work because he or she takes the attitude that my report speaks for itself and I'm not going to be involved.

25

Commissioner Notyesi:

Ja.

Acting Chief Justice Zondo:

5 So, but sometimes, you know, a commissioner might decide to oppose, it could happen, ja.

Commissioner Notyesi:

10 Now the commission, that is the state capture commission report, like all the other commission reports, because people have been implicated, everything has been made, it will be challenged in court and that's a realistic chance.

Acting Chief Justice Zondo:

15 I agree. I agree and I would not be surprised if before I even filed the first part of the report, I would not be surprised if some people had prepared papers. They are ready, they're just waiting to get the report, complete the papers and lodge.

Commissioner Notyesi:

Ja.

20 **Acting Chief Justice Zondo:**

There will be, ja.

Commissioner Notyesi:

25 Ja. Now obviously if that is so, whether you will decide to abide, whether you will decide to oppose, you will be involved in litigation as the chairperson of that commission in the next 6 months, 2 years. In fact, as I indicated, based on my experience, the next period from here is you being involved in court litigation in your capacity as the chairperson of the commission.

Acting Chief Justice Zondo:

Mm.

5 **Commissioner Notyesi:**

Whether you say I don't oppose, or you oppose, but definitely that is going to happen.

Acting Chief Justice Zondo:

10 Well let me say this, Commissioner Notyesi. If for example I'm not opposing and I'm abiding [intervenes]...

Commissioner Notyesi:

Mm.

15

Acting Chief Justice Zondo:

...that means my name is there otherwise I'm not, it's not taking my time, because I'm not filing any affidavits, I'm not opposing. So, and you will have seen, I hope, from part 1 and part 2 of the reports that we are giving detailed, we analyzed evidence quite extensive before we make findings. And therefore, it would be easy for me, for
20 example, to say look, we have analyzed the evidence, the reasons for the findings are there, let the judge decide.

Commissioner Notyesi:

25 Mm.

Acting Chief Justice Zondo:

So, I don't know what decision I will take, but I'm simply saying there are different scenarios. If I'm not opposing, those applications would not involve my time.

Commissioner Notyesi:

5 Ja, I just thought that I pass on from this point. The point I want to make to you, Acting Chief Justice, is that in appointing you as the chief justice, this commission, yourself and all of us must understand that we will be appointing a chief justice who is likely to spend a greater part of his time either opposing court cases or risking of the report of which more than 2 billion has been spent, being set aside because it's
10 not opposed.

Acting Chief Justice Zondo:

Well, you must be carefully, Commissioner Notyesi, not to send the message to other judges [intervenes]...

15

Commissioner Notyesi:

Yes.

Acting Chief Justice Zondo:

20 ...that if in the future there's a need for a judge to chair a commission, they say I don't want to agree to chair this commission because after the commission there will be so many, there will be reviews and I might not be, that might affect my career adversely because now it will be said I will be involved in all of those things. We want to encourage judges when they are called upon to perform this kind of function to
25 consider it favorably because it's an important duty for country. So one, I don't think it's the kind of thing that really should be a problem and, one, I might not oppose partly because we give detailed reasons why we come to, we have come to certain findings. Two, it might be that we say, well, let the court decide. And maybe there will be other people who will oppose.

30

Commissioner Notyesi:

Okay.

Acting Chief Justice Zondo:

5 Ja. Thank you.

Commissioner Notyesi:

10 Ja, I mean whether exactly you get my point it is undesirable in any country to appoint a sitting judge to, especially the head of the court such as the chief justice or deputy to chair a commission of inquiry.

Acting Chief Justice Zondo:

Mm.

15 **Commissioner Notyesi:**

And that I will demonstrate to you by what now has followed up.

Acting Chief Justice Zondo:

Mm.

20

Commissioner Notyesi:

I've read no less than eight objections against you.

Acting Chief Justice Zondo:

25 Mm.

Commissioner Notyesi:

Two, there is this possibility which we both of us agree of the matter taken to court, remaining there over some years because go to the high court, appeals, its' the next five years and your period left as a chief justice is two and a half years.

5

Acting Chief Justice Zondo:

Mmhmm.

Commissioner Notyesi:

10 This is a risk that to me, from day one, ought to have been avoided. And you do [Indistinct – crosstalk 04:45:48] so that I want you to answer holistically. You do say some judges were phoned, were called.

Acting Chief Justice Zondo:

15 Mm.

Commissioner Notyesi:

20 But why did you not simply appoint a retired judge to deal with this, take all the evidence, because you won't have the complaints such as those of Fraser. They would not have much time, complaints and all those things. Just, that's on reflection as a...I'm asking you this question [intervenes]...

Acting Chief Justice Zondo:

Ja.

25

Commissioner Notyesi:

...on the basis of your leadership in relation to this decision, to me which was critical, and it affect us now.

Acting Chief Justice Zondo:

Well, one, you will recall that I said we called a number of judges, and I can't remember whether it was one retired judge, or it was more that we called, but when
5 I realized that the chief justice could turn to me, he was speaking to a retired judge, because we were trying to get a retired judge. President Zuma had said to him this matter is urgent. He needed to; the chief justice needed to go back to President Zuma without delay. So, after our efforts had failed with a number of judges, he turned on me and I took the view that as part of the...I mean I would have preferred
10 to continue in court as deputy chief justice. I had not finished a year, having been appointed as deputy chief justice, I enjoy the court work and so on. But I took the view that the country needs somebody to do this job, the chief justice of the country has tried to get other judges, but now he has turned to me, I can't say no.

15 **Commissioner Notyesi:**

Yes.

Acting Chief Justice Zondo:

So, that was my approach.

20

Commissioner Notyesi:

Ja and there is this complaint of, which is worrying me, the complaint of this Thabo Mtsweni[?] which relates to the recusal application by Mr. Zowe[?]. I will just read.

25 **Acting Chief Justice Zondo:**

Mm.

Commissioner Notyesi:

Acting Chief Justice Zondo became a witness, and he was also a judge with the same recusal application against him by a former president. He gave his version of events against those raised by former President Zuma and later gave an order against former President Zuma". That's now he summarizes it.

5

Acting Chief Justice Zondo:

Ja.

Commissioner Notyesi:

10 I don't want to get into the business of this, but what I, I, remember, I don't get it.

Acting Chief Justice Zondo:

Mm.

15 **Commissioner Notyesi:**

If it is not so, correct me. There was an application launched pursuant to this for your recusal [intervenes]...

Acting Chief Justice Zondo:

20 There was a?

Commissioner Notyesi:

Was there any application for review launched pursuant to that recusal [Indistinct – crosstalk 04:48:43]?

25

Acting Chief Justice Zondo:

Yes, there is a current, a pending review application against my decision not to recuse myself.

Commissioner Notyesi:

5 Yes.

Acting Chief Justice Zondo:

Yes.

10 **Commissioner Notyesi:**

Now you are the chief justice there, that case will go up to the constitutional court and they will go, even if it's on another court, from somebody outside there sitting, objecting, here is the chief justice who is accused in the manner that it is set out here and they will have to make a decision because they say you made, you gave your evidence. Whether right or wrong, that's what they say. The court has to decide now about which version to believe, yours and that one of the...look, is it not a very awkward situation in the form of a chief justice, that is the point, the emphasis that I want to make.

20 **Acting Chief Justice Zondo:**

Let me just understand. Is the question directed at simply that I refused to recuse myself in circumstances where maybe other people might think I should have [intervenes]...

25 **Commissioner Notyesi:**

No.

Acting Chief Justice Zondo:

...or is it that I have a certain version which is different from that of President Zuma?

Commissioner Notyesi:

5 No. No, let me simplify it. It's all about the desirability of a chief justice or the leader of the court being involved in litigation and the implication to the colleagues vis-à-vis the public perception.

Acting Chief Justice Zondo:

Mmhmm.

10

Commissioner Notyesi:

Ja, that's the question.

Acting Chief Justice Zondo:

15 Well, let me say, you know, we have a very independent judiciary. You will recall if you did get a chance to read the first judgment of the constitutional court [intervenes]...

Commissioner Notyesi:

20 Yes.

Acting Chief Justice Zondo:

25 ...in, where the commission asked the constitutional court to issue an order compelling President Zuma to appear before the commission. You will recall that my colleagues in that judgment did criticize me. They said I had been too, as I recall, I'm putting it in my own words, I had been too soft of President Zuma.

Commissioner Notyesi:

Yes. For six months.

Acting Chief Justice Zondo:

5 So, I had a situation here my own colleagues said I was too soft on him, and other people say I've been harsh on him. So, the point I'm making is that, one, my colleagues would not be deterred from making whatever conclusion they need to make just because I'm one of them.

10 **Commissioner Notyesi:**

Yes.

Acting Chief Justice Zondo:

15 And you have seen in the Judicial Conduct Committee, judges have made decisions against other judges. There was a judgment against Judge President Hlophe, there was a judgment against Chief Justice. So, judges seek to do their job the way it should be done, irrespective of who, which judge, what is their position in the judiciary, they try to do that.

20 **Commissioner Notyesi:**

Ja. The other criticism, well I'm going past on this, but the other criticism is that during the proceedings in what ultimately resulted in some complaint in discovery between Mr. Mpofu and some other, you hold a conference about the proceedings of the commission, instead of making a ruling there, the matter ends.

25

Acting Chief Justice Zondo:

Mm.

Commissioner Notyesi:

But you have to hold a conference.

Acting Chief Justice Zondo:

5 Mm.

Commissioner Notyesi:

10 Is it something normal that if a DC is being chaired, DC and inquiry, a court hearing, one of the lawyers misbehave or one of the parties, that a judge must go and actually call a press conference about what is going on? Is it something normal?

Acting Chief Justice Zondo:

Well, you see, Commissioner Notyesi, different people would have handled this commission differently.

15

Commissioner Notyesi:

Yes.

Acting Chief Justice Zondo:

20 Okay.

Commissioner Notyesi:

Yes, I agree.

25 **Acting Chief Justice Zondo:**

Maybe somebody else would have handled the matter differently.

Commissioner Notyesi:

Ja.

5 **Acting Chief Justice Zondo:**

This is a commission that has a lot of public interest and what happened, happened publicly.

Commissioner Notyesi:

10 Ja.

Acting Chief Justice Zondo:

And I don't think that I should have dealt with the issue privately when it had happened publicly. I thought I should deal with it transparently, that's what I did.

15

Commissioner Notyesi:

No, my point is not, the commission was public.

Acting Chief Justice Zondo:

20 Sorry?

Commissioner Notyesi:

The commission was public, it's why we could watch all of us. The issue here, my take is the press conference.

25

Acting Chief Justice Zondo:

Yes.

Commissioner Notyesi:

- 5 Because you called for a press conference about your ruling and your decision. Is it a normal thing by a judge or a chairperson?

Acting Chief Justice Zondo:

Actually, now I remember. I don't think I called a press conference.

10

Commissioner Notyesi:

Okay.

Acting Chief Justice Zondo:

- 15 The...I simply made remarks or made a statement from the commission hearing where the event had happened.

Commissioner Notyesi:

Okay.

20

Acting Chief Justice Zondo:

I think after two days, after I had reflected on it, I didn't call a conference, a press conference, but the proceedings were [intervenues]...

- 25 **Commissioner Notyesi:**

Were public.

Acting Chief Justice Zondo:

...were broadcast, ja. But I didn't particularly call.

5 **Commissioner Notyesi:**

Ja. No, I'm sorry to say you called for a press conference.

Acting Chief Justice Zondo:

Thank you.

10

Commissioner Notyesi:

Now the last aspect. With all these complaints, like we turn to you now as the chairperson of the JSC.

15 **Acting Chief Justice Zondo:**

Ja.

Commissioner Notyesi:

Because that's your role as the chief justice as well.

20

Acting Chief Justice Zondo:

Mm.

Commissioner Notyesi:

25 Out of these objections, I'm right or wrong, I did not look onto the demerits and merits. Do you know if there are complaints that have been filed against you? Are

there any...is there anyone who has filed a complaint or is there any complaint against you arising from all that work?

Acting Chief Justice Zondo:

5 Well, there is no complaint that I'm aware that is currently pending against. There were complaints at some stage before which were dealt with. As far as I recall, as far as I know there is no current complaint [intervenes]...

Commissioner Notyesi:

10 Okay.

Acting Chief Justice Zondo:

...pending. Ja.

15 **Commissioner Notyesi:**

The complaints that were filed arising from the commission were filed, but definitely dealt with.

Acting Chief Justice Zondo:

20 There was, as far as I know, only one that arose from the commission. It was filed by Mr. Montana. It was dealt with [intervenes]...

Commissioner Notyesi:

Ja.

25

Acting Chief Justice Zondo:

...and it was dismissed, he didn't take it further.

Commissioner Notyesi:

And you were the chairperson or acting chairperson of the sub of the JCC at the time, but you just have to recuse some [intervenes]...

5

Acting Chief Justice Zondo:

Yes, yes, I did not take part.

Commissioner Notyesi:

10 Which is normal.

Acting Chief Justice Zondo:

Yes, I did not take part, ja.

15 **Commissioner Notyesi:**

And if there are others that will come, arising from all these things, and awkward situation is that you, it will affect your participation there because they will be coming, we don't know, because I'm looking on the number of objections. If they are anything to go by.

20

Acting Chief Justice Zondo:

Well, firstly those people have made objections here, but have not lodged complaints with the Judicial Conduct Committee. I don't know whether one of them may have lodged a complaint before and it was dismissed, I can't remember. But as things stand, I'm not aware of any complaint that they have lodged in the JCC. Ja.

25

Commissioner Notyesi:

The last question.

Acting Chief Justice Zondo:

5 Mm.

Commissioner Notyesi:

It's simply on the model that you discussed with the Minister of the OCJs or of the OCJ as the department.

10

Acting Chief Justice Zondo:

Ja.

Commissioner Notyesi:

15 It's a pity that you present, and I listened to Judge Mlambo even yesterday, you presented the document which has been agreed by the judiciary, this is what they want.

Acting Chief Justice Zondo:

20 Mm.

Commissioner Notyesi:

25 Can't you consider the implications on the independence of the judiciary? Because once we have this department, I know you want to come with counsels when you say there must be counsels, by passing what actually should happen. Because when you have a department, that department must go to Parliament, because Parliament must vote for your budget. You must have an administration.

Acting Chief Justice Zondo:

Mm.

5 **Commissioner Notyesi:**

Is it not going to bring tensions between the executive and the judiciary, that's one?

Acting Chief Justice Zondo:

Mmhmm.

10

Commissioner Notyesi:

Two, the public appearance, public perception when judges spend lot of time sitting, as it is happening now, I listened to Commissioner Malema and the Minister having to explain, that judges sit, spend time with the executive because you have to, once you run, you take full administration because that's what the department entails. Is it not going to impugned or to trample upon the issue of the independence of the judiciary, institutional independence? The one that you think you're sick, are you not actually compromising it?

20 **Acting Chief Justice Zondo:**

No, not at all. Not at all. Actually, other countries have, some countries have achieved that level of independence. The fact of the matter is even under that system, it is accepted that there would have to be somebody who goes to Parliament. For example, phase 2 of those, that proposal says that the office of the chief justice should be established as an entity that is similar to the Auditor General and the office of the Auditor General goes straight to Parliament. You see? It does not like having, being attached to a ministry, you know. So, what basically that phase 2 contemplates is that before you get to complete institutional independence you are going to have that situation, but basically it does mean there will be no accountability, but it simply means everything is now, is within the judiciary.

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Commissioner Notyesi:

You agree with this...would you agree with the statement on the individual independence, personal independence of judges. Would you agree with the statement that the greatest threat to the independence of the judges or of the judiciary is the judiciary itself? Why so, if you endlessly reserve judgements, if you conduct in a manner that people must question, must have question marks? If you enter into a phrase or spaces that judges are not ordinarily allowed to enter into, and many other, but the biggest threat to the judiciary is the judiciary itself on how it must conduct or it conduct itself.

Acting Chief Justice Zondo:

Well, I would not agree that certainly within the context of the South African judiciary that the biggest threat to their independence is themselves. But what I would agree to is that the judiciary must be careful not to do things that would actually impact negatively on their independence, the way we behave ourselves, we conduct ourselves. We need to make sure that we conduct ourselves in an appropriate manner. So, in other words, yes, there are things that we as a judiciary can do that could impact negatively on our independence, but I wouldn't go so far as saying that we are biggest threat to ourselves.

Commissioner Notyesi:

Ja, no, I will beg as I've said, if you reserve judgment endlessly, people are allowed, they are free to criticize you. They then even go to you rather than say [intervenes]...

Acting Chief Justice Zondo:

Ja.

Commissioner Notyesi:

...our judgment is kept by that judge. They can do that.

Acting Chief Justice Zondo:

Mm.

5 **Commissioner Notyesi:**

Two, if you behave in a particular way, for instance I know this is a call, maybe it might be sensitive, I must, otherwise I must ask, I would not be correct. When you call for the press statement in reaction to Mr. Sisulu's criticism, would it not have been simply sufficient if you for one as judiciary just write a strong worded statement through the office of the CJ rather than calling for a press conference, allowing 10 journalists to ask questions, ending up having questions that you don't have to, I mean you are unable to answer at that level? Because the next thing is for Minister Sisulu to call her own conference and the whole thing, the whole week is occupying the space for a month debating, that drags the judiciary into the public space. Like 15 on a further reflection, I'm not criticizing.

Acting Chief Justice Zondo:

Yes.

20 **Commissioner Notyesi:**

It was your call.

Acting Chief Justice Zondo:

Yes.

25

Commissioner Notyesi:

But calling the press conference itself [intervenes]...

Acting Chief Justice Zondo:

Yes.

Commissioner Notyesi:

5 ...was it an appropriate action?

Acting Chief Justice Zondo:

Well, one, I think it was, but let me tell you how it came about. Initially I thought one would issue a statement. I think about five or six days had lapsed since that article had come up, had been published or at least had become known. I may have known it after two days or three days, about it. Initially I was thinking I should issue a media statement. This happened in the course of a very busy schedule on my part when I was preparing part 2 of the report, working extremely hard. So, at a certain stage I think I had wanted to issue the statement before lunch, but at a certain stage I realized that I had not been able to get the statement ready and it occurred to me that it might only be ready the following day. So, but I was clear in my mind what I wanted to say. So, I decided look, there's already been so many days so let me just go public and do this, but I took the view that I want to try and limit myself to that which I considered to be an insult. I don't want to get involved in other points.

20

Commissioner Notyesi:

Ja. Thank you, Acting President, but once more, Acting Chief Justice, I must say we are inspired by your work [intervenes]...

25 **Acting Chief Justice Zondo:**

Thank you very much.

Commissioner Notyesi:

...as a judge, especially that only you and Judge Mlambo are the only attorneys in this four, in this list of four [intervenes]...

Acting Chief Justice Zondo:

5 Yes.

Commissioner Notyesi:

...and also, as an attorney, you have gone, progressed to the stage where you are as the deputy chief justice.

10

Acting Chief Justice Zondo:

Thank you very much. Thank you.

Commissioner Notyesi:

15 Thank you very much.

Acting Chief Justice Zondo:

Thank you.

20 **Deputy President Petse (Chairperson):**

Members of the commission, I'm sorry to disappoint you. I'm informed that our dining area is crowded at the moment. So, we would be well advised to continue for another 15 minutes. So, if you would kindly bear with me. Thank you.

25 **Acting Chief Justice Zondo:**

Is it possible to get a convenience break?

Deputy President Petse (Chairperson):

A comfort break at this stage, Acting Chief Justice?

5 **Acting Chief Justice Zondo:**

Well, I was just saying a convenience break, a brief one. I think Commissioner Malema understands what [intervenes]...

Commissioner Malema:

10 No, the chair must understand you better than me.

Acting Chief Justice Zondo:

Maybe I thought if you, I thought if you tell him [intervenes]...

15 **Commissioner Malema:**

I hear you. I hear you. He must hear you.

Minister Lamola:

Ja. Ja.

20

Commissioner Malema:

I hear what you are saying.

Minister Lamola:

25 Yes. Please.

Acting Chief Justice Zondo:

Well, there is a witness [intervenes]...

5 **Deputy President Petse (Chairperson):**

Yes. Shall we then take just a five minute's adjournment?

Various Speakers:

Chair [intervenes]...

10

Commissioner Malema:

Chair, I will propose we go to lunch, there's nothing crowded, we are all here. We are South Africans. So, let's just go to lunch.

15 **Deputy President Petse (Chairperson):**

I suppose so.

Commissioner Malema:

Yes.

20

Deputy President Petse (Chairperson):

Let's reconvene then at 15:00. Thank you.

Acting Chief Justice Zondo:

25 Thank you.

Commissioner Malema:

Even the chairperson does not hear you, Acting Chief Justice. You will have run away from him.

5

Acting Chief Justice Zondo:

No, no, I think I know I must just contact Commissioner Malema; he will make sure he understands me.

10 **LUNCH ADJOURNMENT**

Deputy President Petse (Chairperson):

Welcome back, Acting Chief Justice.

15 **Acting Chief Justice Zondo:**

Thank you, Chairperson. Thank you, Commissioners.

Deputy President Petse (Chairperson):

Are you ready? Can we get the [intervenes]...

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Acting Chief Justice Zondo:

Yes, I'm ready.

Deputy President Petse (Chairperson):

25 ...ball rolling again? Thank you, Acting Chief Justice.

Acting Chief Justice Zondo:

Thank you.

Deputy President Petse (Chairperson):

5 Commissioner Matolo-Dlepu.

Commissioner Matolo-Dlepu:

Good afternoon, Chief Justice.

10 **Acting Chief Justice Zondo:**

Good afternoon.

Commissioner Matolo-Dlepu:

Acting Chief Justice, sorry.

15

Acting Chief Justice Zondo:

Acting please.

Commissioner Matolo-Dlepu:

20 I want to take you to, back to your priorities that you gave us in the morning.

Acting Chief Justice Zondo:

Mm.

Commissioner Matolo-Dlepu:

I do know that, you know, the judiciary is structured in terms of the law, you know. The hierarchy and all that, you have to, it's an act of Parliament and you know all those things. But in a sense, I still feel that as much as the structure that where
5 succession planning, you know, succession plan I don't see it within the judiciary and which I think maybe we still have to look at that. I'll tell you why I'm saying that. You spoke about the PEECs and the NEECs, you know, and you said we keep them in place, they seem to be working, but some of us who are still [Indistinct 06:12:23] in those NEECs, we feel that a lot has to be done [intervenes]...

10

Acting Chief Justice Zondo:

Mm.

Commissioner Matolo-Dlepu:

15 ...with those, you know. Some of us became part of those structures, but we still feel that there's no monitoring. We discuss issues and we are not given feedback.

Acting Chief Justice Zondo:

Mm.

20

Commissioner Matolo-Dlepu:

And for me, when we go there, people tend to be justifying certain things.

Acting Chief Justice Zondo:

25 Mm.

Commissioner Matolo-Dlepu:

You know, and there's nobody who tells us from our last meeting this is what we have done, especially public works, especially other departments, somebody, everybody is actually justifying certain things.

5 **Acting Chief Justice Zondo:**

Mm.

Commissioner Matolo-Dlepu:

10 So, I think if you can just elaborate on that. And secondly on the succession planning, because you are not part of it as an acting, as a deputy chief justice, you are not part of all those structures, you seem to be at a disadvantage.

Acting Chief Justice Zondo:

Mmhmm.

15

Commissioner Matolo-Dlepu:

You rely on the heads of court to tell you whether things are happening or not.

Acting Chief Justice Zondo:

20 Mmhmm.

Commissioner Matolo-Dlepu:

So, don't you think as a justice, JP Tlaletsi said you should be part and parcel of everything that the chief justice are. What's your take on that?

25

Acting Chief Justice Zondo:

Mm. No, thank you, Commissioner. I think the question raise about maybe the PEECs in general or maybe a particular PEEC is quite an important one, because it's important when we have structures in place that are established in order to achieve certain objectives. It's important that we monitor how they perform their work, how they're performing and how, and whether they are successful or not. Because if they are not achieving what they were meant to achieve, we may have to reconsider or see how they should be changed. So, I think what you say is important, but I think I would have expected that the chairperson of the PEEC, every PEEC who is the JP, that he or she would have the responsibility to make sure that when you meet today, after you met last month. You look whether the things that you said last month must be done by A, B, C, have been done and if they have not been done, what's the explanation. So, I think that's very important, but I would expect that from the chairperson of the body. So, but one of the things I have in mind is that if I am lucky enough to be appointed by the President, I would want to go around and meet various stakeholders and get their feeling about where challenges are. As I said I have heard from JPs in the different provinces, I think the only JP I didn't speak to is the Western Cape one. Well, I didn't speak to the Gauteng JP, but I spoke to the AJP. And generally speaking, the reports they gave me were that the PEECs are working well. In some provinces they work better than in others, but nobody said they are not working. They said there may be some challenges we need to fix here and there, but overall, they are working. So, my suggestion is that that is something that I would encourage you to raise with the JP to say let us make sure for every meeting that we look at what had been asked of certain people to do last time to see what progress has been made so that we don't end up with a lot of decisions that have been made but have not been implemented. So, that would be my suggestion. With regard to the DCJ not attending the NEEC because he would be at NEEC level rather than at PEEC level, I have no doubt that if it was not for the fact that I've been in the commission, the former chief justice would have asked me to be part of the NEEC. So, I think the reason why I have not been part is largely because I've been in the commission. If I am appointed, I will be able to get quite involved.

Commissioner Matolo-Dlepu:

Thank you. The second input I request from you on your priorities, you spoke about, you know, I know that you have your LL.M in patent law and you really are passionate

about making sure that black judges and practitioners, they get a chance to practice actually in those fields that are reserved for our white colleagues.

Acting Chief Justice Zondo:

5 Mm.

Commissioner Matolo-Dlepu:

10 I just want you to expand, especially on the part of practitioners, what did you have in mind when you said that? What did you have in mind? How are you going to do it, to make sure that we encourage those things?

Acting Chief Justice Zondo:

15 Mm. Well, there may be a need for more discussion about what we do, but what we all know is that when it comes to certain branches of law, the clients that have got that kind of work are companies in the private sector and most of them are white owned. So, it's a question of how do we get work, this work from them. You might not get much patent law work from government, I would imagine. So, we need to know to see what we can do about that. But one of the ideas that has crossed my mind in this regard some time back is this, whether in terms of procurement
20 legislation, whether we should not consider or government should not consider including as one of the factors if you are going to get government work, proof of how much of your work gets given to black professionals, maybe black lawyers, women, it may be accountants, black accountants, women accountants and other professions where blacks are excluded. It may well be that we, that government should consider
25 that to say, if you can show that a certain amount of your work, legal work, is given to black practitioners, women practitioners in order to advance transformation you should get certain points about that. Of course, we must continue to encourage the private sector, not to look at transformation as something just for government, but that they should take part in it because it's good for the country. Some years back I
30 was involved in a certain initiative to try and get some companies to give some black law firms work. We went a certain way; we got a black lawyer to go to their legal department and stay for three months on the basis that after that they would then give her work and then they would get another one to also go there.

5 So, after some time we would have X number of black lawyers who would have stayed at that legal department and come out and be given work. But somehow after some time they seem to lose interest before they could complete the whole process, and that is the company now after that particular black lawyer had worked in the legal department of that company for, I think about three months. During that period, they would pay the black practitioner a salary, ja.

Commissioner Matolo-Dlepu:

The last one, Acting Chief Justice. The, I know you are a champion in labor, you know.

10

Acting Chief Justice Zondo:

Mm.

Commissioner Matolo-Dlepu:

15 And you know how mediation works.

Acting Chief Justice Zondo:

Mmhmm.

20 **Commissioner Matolo-Dlepu:**

It's such a tool to actually to have matters being settled. I just want you to, maybe to expand on your...you haven't said much about access to justice, maybe you may have missed it.

25 **Acting Chief Justice Zondo:**

Mmhmm.

Commissioner Matolo-Dlepu:

How can mediation actually, and the rules of mediation be fast-tracked to make sure that certain disputes are resolved by way of mediation? Because I'm just thinking of intergovernmental disputes, you know, on political party disputes. Maybe EFF and ANC they can mediate, and you don't have to go to court.

Acting Chief Justice Zondo:

Mm.

Commissioner Matolo-Dlepu:

Can you just expand on that?

Acting Chief Justice Zondo:

Well, access to justice is a very important topic of course and there are various components to it. With regard to mediation, my experience with mediation is that a lot depends on the commitment of the people concerned with mediation. Let me make you an example that demonstrates what I'm talking about. You know in the 1980s when I started getting involved in labor law, the, what was called the Labor Relations Act of 1958 made provision for conciliation under Section 35 that in regard to labor disputes there must be conciliation first before the dispute could go elsewhere, whether to court or to strike, your strike and so on. And that system of conciliation which is for all intents and purposes the same as mediation really, it's different forms, ended up almost collapsing and not working and people, the parties just went through the motions and didn't, simply because they were forced to go through it. They never made an effort to resolve disputes. And then there was an organization that came up with a mediation service, maybe some of the Commissioners might remember it. It used to be called IMSSA, Independent Mediation Service of South Africa. I think it was chaired by Charles Nupen if I'm not mistaken. And they went around getting employers and employer's organizations and trade unions to bind to the idea of mediation on a voluntary basis to see its benefits.

And after some time, they had gathered enough stakeholders who were prepared to use mediation and they used private practitioners and so on. And I was one of them, I was trained in mediation. I did mediation and arbitration. That service, that mediation service was very successful. It was very successful. The understanding at the time was that its success lay in its voluntary nature. Actually, they were even paying for it, employers and trade unions and the buy-in for them was that the mediators were people that they had confidence in, that were put on the list. So, we might have to work a lot in getting various people and stakeholders to really see the value of mediation so that it can work. That doesn't mean that it can never or should never be forced, because that has its place as well, but it's important that we should look at trying to do more to popularize it.

Commissioner Matolo-Dlepu:

Ja, I think one of, I was part of IMSSA I think, and we used, we say it's [Indistinct 06:26:22] there was community-based mediation which were very successful.

Acting Chief Justice Zondo:

Mm.

Commissioner Matolo-Dlepu:

So, I was just thinking along those lines that a lot of disputes that come to court can actually be mediated.

Acting Chief Justice Zondo:

Ja.

Commissioner Matolo-Dlepu:

Thank you.

Acting Chief Justice Zondo:

No, I think that can work too, you know, community mediation. There's no reason why it can't work. Actually, mediation can work in lots of things. It can work with neighbor disputes; it can work with community disputes. It's a question of having
5 people who are prepared to run it, maybe in their locality, in their neighbor, in a section in their township or whatever. If people have disputes, they know that there are these people who can be contacted because they are mediators, and they can mediate and resolve the issues.

10 **Commissioner Matolo-Dlepu:**

Thank you, Acting President.

Deputy President Petse (Chairperson):

Thank you, Commissioner Matolo-Dlepu. Commissioner Magwanishe.

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Commissioner Magwanishe:

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

Acting Chief Justice Zondo:

20 Good afternoon, Commissioner.

Commissioner Magwanishe:

We are currently dealing with the cannabis bill, so [intervenes]...

25 **Acting Chief Justice Zondo:**

We?

Commissioner Magwanishe:

We are currently dealing with the cannabis bill, so we're hoping that that smoke when we pass it, we will see it, unfortunately we can't, we can't when we see it on [Indistinct 06:27:45].

5

Acting Chief Justice Zondo:

Mmhmm.

Commissioner Magwanishe:

10 I got worried, Acting Chief Justice, when you said that you would not go back to the issue on the language policy.

Acting Chief Justice Zondo:

Mm.

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Commissioner Magwanishe:

I got worried because one of your colleagues has made a judgment in isiXhosa and I thought that it was a good thing to do. So, if there will be no champion for the, champions for that, I got a little bit worried.

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Acting Chief Justice Zondo:

Mm. Well, the two are not mutually exclusive. The question about language policy was, is more about what language to use officially in proceedings. As I understand Justice Maya did that judgment is isiXhosa in circumstances where I think argument would have been in English, but I don't know, I don't have the details. But you can have English as the official language of record for the proceedings. That's the language in which the proceedings will be recorded, but you can still decide that I will write my judgment, for example, in isiZulu. Let us say for example both parties are Zulu speaking, so I could decide to write it in isiZulu and then of course I would think

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that I would provide an English translation so that they are both there. I applaud Justice Maya for having done that, because she has done better than me, I've been meaning to do one in isiZulu for some time but haven't got round to doing it. Thank you. But part of the reason why I said I wouldn't go back is it's just discipline to say my view did not prevail, I shouldn't, if I get appointed as chief justice and say now, I must reverse that decision that was properly taken, I must respect decisions that don't go according to me and accept them and implement them if the majority agrees with them.

10 **Commissioner Magwanishe:**

No, thank you very much. As the chair of the commission, that is the Zondo Commission, and in terms of the PP, Public Protector, remedial action, you assumed responsibility and accountability for the operational costs of the commission, even if you delegated those to the secretary. Now can you just briefly tell us, just to clarify this, did the commission use 1 billion or 2 billion?

Acting Chief Justice Zondo:

No, no, it did not use 2 billion. I think the amount is around 1 billion.

20 **Commissioner Magwanishe:**

Secondly, along those lines, I want to raise this question because it is linked to your oversight as the chief justice, potential chief justice over the administration. That will be the office of the chief justice. In 2018/2019 9.6 million was paid for private venues for the commission, the Zondo Commission. It escalated to 11.2 million in the following year and then it dropped to 2.2 million because a decision was taken to use public facilities. Now my question is why did it take 2 years to arrive at that decision which saved taxpayers money, serious money?

Acting Chief Justice Zondo:

30 Well, that's a fair question, Commissioner. When the commission started, the, I think the officials from the Department of Justice who were assisting, we discussed the

issue of venue, venues and they said that preference for commissions is given first to using public venues such as municipalities. So, I said no, that's fine. They said they only used, if I recall correctly, private venues if they could not find appropriate or close by venues that are public venues. My recollection is that they spent some time
5 going and checking at venues, including municipal venues. They came back to me and said the municipal venues that they had been looking for either were not available or were not in the right conditions, but as far as I know they tried to get public venues but did not succeed. So, when later on, then they were stuck with a private venue, but once an opportunity came to go to a public venue, that's what
10 they did.

Commissioner Magwanishe:

Now if we were to fast-forward, the President appoints you, you retire in two and a half years, an ordinary person, how would he describe your court, your
15 *jurisprudence*? Judge, the former deputy Judge Moseneke in his book, *All Rise*, he will talk about the [Indistinct 06:34:04] in court, the whole court, how would you want to be remembered? What...how would you want to be remembered by ordinary people as to what will be your court?

20 **Acting Chief Justice Zondo:**

Well, I wouldn't want them to call it Zondo Court. I would leave to people what they call it, but I wouldn't like them to call it the Zondo Court. My interest is to serve and hopefully if I serve, I serve well, and I'm not so interested in labels. I hope I'm not missing your question.

25

Commissioner Magwanishe:

No, I don't think we understand one another.

Acting Chief Justice Zondo:

30 Okay.

Commissioner Magwanishe:

I'm not, I know that you are not interested in the name, but how would you want your legacy to be remembered? As a...what do you want, concretely, I mean you have been very detailed about what you want to achieve, but I think what, in a very summarized way for our people, what would you want...I mean what I could concretely say is that you are more interested in the institutional model, is that what you would want to be remembered for only?

Acting Chief Justice Zondo:

Well, put it, I would put it this way. I'm not so concerned about how I am, I would be remembered, but I would be concerned that I made a contribution and that issue of institutional model I thin would be important to the judiciary. But I would just want to know that I made a contribution and if people associated that development, that achievement with me and remembered me in the context of it, that's fine. But that would not be uppermost in my mind, but in terms of what I would want to do, certainly that is one of the things that I would like to do, but not so much because I want to be remembered, but simply because I think it's an important thing for our judiciary to have.

Commissioner Magwanishe:

The last one, for the purpose of consistency, I have asked almost all the candidates, what is your view with respect to prosecutors and state advocate acting as judges?

Acting Chief Justice Zondo:

So far there has been a concern about them acting as judges. I would have that concern. I must say that it may well be that somebody might put argument that I haven't heard before that suggests that it should be fine, but my understanding is that we have for a long time or always wanted to get people who are independent, private sector, or magistrates. But as I say, maybe I haven't heard recent argument as to why maybe that approach is old fashioned, so I would be prepared to listen to argument.

Commissioner Magwanishe:

Thank you, Acting President. Thank you, ACJ.

Acting Chief Justice Zondo:

5 Thank you, Commissioner.

Commissioner Malema:

A follow-up question [intervenes]...

10 **Commissioner Dodovu:**

[Indistinct – crosstalk 06:38:19] follow-up please?

Deputy President Petse (Chairperson):

Thank you, Commissioner Magwanishe.

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Commissioner Malema:

Follow-up.

Deputy President Petse (Chairperson):

20 Commissioner Malema.

Commissioner Malema:

25 Thank you, Acting President. Acting CJ, are you aware of the march which we organized to the commission demanding that you change the venue to a public venue? We even left a memorandum. One of the reasons indicated in that memorandum was that one of the implicated journalists was actually working in that

building and we said you need to change the venue, not only because, but also that there are people in this venue who are implicated. And secondly, are you are that Mashaba, when the commission was announced, Herman Mashaba was the mayor in Joburg who repeatedly made public announcement that he's got facilities available for the commission to use so that it doesn't cost the taxpayers a lot of money?

Acting Chief Justice Zondo:

I, my memory is not very clear, Commissioner Malema, but I seem to think I may have been aware at the time of maybe a march or maybe a call. I do know that at some stage there were concerns in the public about us using that venue. Well, what I recall now, what I still recall is that it was more about costs, but it may be that your memorandum went beyond costs, you know. So, I don't have a recollection of reading your memorandum, but what may have happened is that your memorandum may have come, and those calls may have come at a time when we had already committed ourselves to a contract up to a certain period. That's what I can think now, I can't remember then. That's what I can think that if we had already committed ourselves up to a certain period and we decided to leave before the end of that period, that might have been a breach of contract and there might have been damages and so on. But certainly, I think the Department of Justice would have officials who I hope would confirm that when they, when we were going to look for the premises, and they did the looking, I didn't, they at least told me that they have gone to municipal offices and elsewhere to try and get a public venue.

Commissioner Malema:

Thank you.

Deputy President Petse (Chairperson):

Thank you, Commissioner Malema. Commissioner Dodovu.

Commissioner Dodovu:

Thank you very much, Deputy President. Good afternoon [intervenes]...

Acting Chief Justice Zondo:

Good afternoon, Commissioner.

5 **Commissioner Dodovu:**

...ACJ. Yes. You did a wonderful job at the commission and what is coming out very clear is that there would be a lot of prosecutions emanating out of that particular process. And now following the question that Honorable Magwanishe was asking.

10 **Acting Chief Justice Zondo:**

Mm.

Commissioner Dodovu:

15 And the way I see it, I'm quite concerned about the quality of our prosecutors. If you've done such a work and those who are on the wrong side of the law are to be prosecuted, and you don't have strong prosecutors, state law, state advocates and so on, what is going to happen with those cases? If the accused contracts Advocate Madonsela or Advocate Mpfu, it means we are in trouble and therefore we will never come to know the truth or the perpetrators of the alleged acts of corruption, state
20 capture or whatever that is are not going to be prosecuted, are not going to be answerable for the dates that they have committed. What is your take on that and how can that be coordinated with the prosecution to ensure that that area is given the necessary attention?

25 **Acting Chief Justice Zondo:**

Thank you, Commissioner. Well, you touched on the prosecutions and the NPA that has reminded me of the fact that I have been in touch with the national director of public prosecutions to try and understand what is happening, what is the state of the NPA is insofar as they may be affected by the operations of courts and there may be
30 delays and backlogs and so on. And in a note that she sent to me one of the

challenges that she mentioned in relation to the NPA was I think precisely the point you make, namely that there are certain crimes, and I think he referred to corruption crimes, I don't know if he referred to the state capture commission and said that in certain cases these cases of corruption require people with certain expertise and experience. And sometimes they don't have those people. I guess what she may have meant is they don't have them in enough numbers, you know. Maybe ja, but she, the note said that there are those problems and it got me thinking to say so with the mountain of, mountains of evidence from the commission, maybe they will be overwhelmed, and it might be difficult. I even thought whether they should not, and maybe they are already doing this, they should not talk to lawyers in private practice, Advocate Mpofu, Advocate Madonsela and negotiate deals with advocates who have got those skills, that experience. In terms of which those lawyers could charge at a lesser rate than their normal rate, but they could have work over a longer period. So, the fact that they would be involved in that work over a longer period would compensate for the lower rates that they would be charging. But they would then get the skills and our, I thought that they could say to those layers, when you think about the lower rate that we are asking you to charge, remember that it's also your way of contributing to a South Africa with a lesser rate of corruption and so on. It's your own contribution to making the country a better country for your children and children's children. And it may well be that lots of lawyers might be prepared to compromise on their rates and be available. I mean I know in the commission, some of the lawyers we had were prepared at a certain stage when there seemed to be no money available, they said, DCJ, we will not abandon the commission, we will not abandon you. This commission is very important for the country, we will see what we can do, but we will, even if we are not charging because there is no money, but we can't leave this commission at a time when it has not finished its work. So, there may be a lot of lawyers who would be prepared to make certain sacrifices for the sake of the country, but there would need to be some discussion, ja.

30 **Minister Lamola**

A follow-up [intervenes]...

Deputy President Petse (Chairperson):

Thank you, Commissioner Dodovu.

Minister Lamola:

Follow-up, Acting President.

5 **Deputy President Petse (Chairperson)**

Honorable Minister.

Minister Lamola:

10 Ja, no, thank you very much, Acting Chief Justice. On the question of Commissioner
Dodovu, I just want to confirm that indeed in terms of Section 38 of the National
Prosecuting Act, I will read it for the benefit of the public. The engagements of
15 person to perform services in specific cases, 38.1 says "The national director may in
consultation with the minister and the deputy national director or director may in
consultation with the minister and the national director, on behalf of the state,
engage under agreements in writing persons having suitable qualifications and
experience to perform services in specific cases". So, I want to confirm that indeed
that has already been the case where we have approved for the national director to
engage, and I think they will still come with more [intervenes]...

20 **Acting Chief Justice Zondo:**

Yes.

Minister Lamola:

...requests.

25

Acting Chief Justice Zondo:

Okay.

Minister Lamola:

And to also confirm that we, we've also raised the fact that the engagements must be sensitive to the demographics of the country. So that it's not just a group of senior white practitioners.

5

Acting Chief Justice Zondo:

Ja.

Minister Lamola:

10 It must be sensitive to the demographics of the country. But also, in terms of the data center, maybe that is what you may want to share with the commission, that it will migrate to the department which can then be used by the entire criminal justice system, which I think it's one of, despite the report, it's one of the biggest legacies you are leaving the criminal justice cluster with.

15

Acting Chief Justice Zondo:

Yes. No, thank you, Minister. That is true. We are leaving the country with really a very important equipment which will be very useful in fighting crime. So, it's very important. But I'm encouraged what you have read, Minister, and I'm encouraged
20 that something seems to be done to address the matter. Thank you.

Deputy President Petse (Chairperson):

Is that it, Honorable Minister? Thank you.

25 **Minister Lamola:**

Yes [Indistinct 06:49:39].

Deputy President Petse (Chairperson):

Commissioner Xaba.

Commissioner Xaba:

Thank you very much, Acting President. Mtiyani, good afternoon.

5

Acting Chief Justice Zondo:

Good afternoon. Good afternoon, Commissioner Xaba.

Commissioner Xaba:

10 Thank you very much. I will put these questions to you because they have been put to the other candidates.

Acting Chief Justice Zondo:

Mm.

15

Commissioner Xaba:

The first question is do you subscribe to the convention that judges speak through their judgments?

20 **Acting Chief Justice Zondo:**

For a long time, it was said that judges speak through their judgments and in no other way, but I don't subscribe to the view now, at this day and age that judges only speak through their judgments. So, I think they do speak through their judgments, but at this day and age in our constitutional democracy, they also give lectures, they also make speeches. They must just be careful and sensitive on the issues on which they talk.

25

Commissioner Xaba:

Yes, and avoid certain controversial or areas that may land on some controversy.

Acting Chief Justice Zondo:

5 Well, they must try and make sure that they bear in mind what is permissible for a judge and what's not permissible.

Commissioner Xaba:

10 Thank you very much. There were concerns about you calling a press conference to deal with matters arising from the statement of the minister of state, are you aware of them?

Acting Chief Justice Zondo:

Yes, I'm aware. I'm aware.

15

Commissioner Xaba:

Thank you very much. Now upon reflection, Mtiyani, do you still think that it was an appropriate platform to voice the concerns of the judiciary?

20 **Acting Chief Justice Zondo:**

No, I think I still think so, Commissioner Xaba. It was in my view quite a disciplined way. I was careful about what I said and before I said it, I consulted heads of court and the heads of court included by three colleagues who are also candidates here. I consulted heads of court to say there is this article, should we respond, what do you say, what do you feel about it. And I consulted justices of the constitutional court and the overwhelming response was that there must be a response. This is unacceptable. And once that, I had received that, I then decided I will proceed, but I was clear in my own mind that I did not want to get involved in a lot of points that Minister Sisulu made in her article.

25

I would want to restrict myself to what we considered to be an insult to the judiciary. So, when I spoke, I made it quite clear that is not our position that as judges we should not be criticized. I made it clear that I accept, and we accept, all of us as judges, that we can be criticized, but we took the view, and it's not just me, that
5 unfortunately Minister Sisulu had included insults in her article against us. So, we, I think it was justified in all of the circumstances.

Commissioner Xaba:

Thank you very much, DCJ.

10

Acting Chief Justice Zondo:

Thank you.

Commissioner Xaba:

15 Some critics think that a statement, a press statement would have been sufficient to deal with the issues as you have correctly, you know, stated.

Acting Chief Justice Zondo:

20 Mm. Well, as I was explaining to Notyesi, initially I thought we would issue a statement, but I was very busy with part 2 of the report and the statement was just taking too long to be completed. I don't know whether you have had this experience. Sometimes when you draft something, sometimes you draft something one time and it's ready. Sometimes you have to draft three, four drafts before you are happy with what you draft. So, the statement, the article had already been in the public domain
25 for about five or six days, so I realized that I was going to take too long, maybe it was going to be only out the following day. That's when I decided, look, let me just deal with it in the way in which I dealt with it, but I'm satisfied that it was justified to deal with it in the way I dealt with it, but I accept that somebody else might have dealt with it in a different way. But, as the acting head of the judiciary, in that situation I
30 made a judgment call.

Commissioner Xaba:

And you confirm that there was no malice involved.

Acting Chief Justice Zondo:

5 No, not at all. Not at all.

Commissioner Xaba:

Okay.

10 **Acting Chief Justice Zondo:**

Ja.

Commissioner Xaba:

Maybe [intervenes]...

15

Acting Chief Justice Zondo:

I never said anything about Minister Sisulu that I would consider was insulting to her. I didn't insult her back, I just pointed out what I pointed out

20 **Commissioner Xaba:**

And my last question, DCJ. Having been in the office of the chief justice since 2012 I think, ja? 2015?

Acting Chief Justice Zondo:

25 Having been in the constitutional court from 2012.

Commissioner Xaba:

No, no, office of the CJ?

Acting Chief Justice Zondo:

5 I've been DCJ from 2017.

Commissioner Xaba:

From 2017.

10 **Acting Chief Justice Zondo:**

Ja, June 2017.

Commissioner Xaba:

15 Okay. Thank you very much for that correction. What has been your experience of the relationship among the various arms of state?

Acting Chief Justice Zondo:

20 Well, the relationship among the three arms of the state is not always the same. Let me start with the judiciary and the legislature and Parliament. I think the speaker will confirm, the judiciary and Parliament, legislature as far as I am concerned really have never had any tensions. We have given judgments where we said that Parliament maybe acted in breach of their constitutional obligations, but as far as I know they have accepted whatever decisions and there have never been any tensions. And when we went for the tea break in the morning, Madam Speaker there
25 greeted me, we greeted well. I think there are no tensions. But with regard to the judiciary and the executive there are tensions from time to time, but I think those tensions are inevitable and I think all of us, both the executive and ourselves, accept that sometimes there will be those tensions. Sometimes the tensions in may be influenced by different events in the country that happen, but I mean like the time

when I think in 2015 the former chief justice asked for a meeting with President Zuma when there had been attacks on the judiciary, there were certain, I think there were certain tensions. So, I think that there is an obligation on both of us in the judiciary, particularly in the leadership as well as the executive, to try and put the country first, put the people first and make sure that we work together, but accept that sometimes we will have different views on very important issues and there will be some tensions, but it's healthy tensions.

Commissioner Xaba:

10 In other words, you confirm that tension would be inherent in the nature of the responsibilities assigned to the different arms of government.

Acting Chief Justice Zondo:

Yes.

15

Commissioner Xaba:

And there has never been tension fueled by personalities, in your view?

Acting Chief Justice Zondo:

20 I'm not aware, I'm not aware of any that could be because of personalities, but it's not impossible, but I'm too aware.

Commissioner Xaba:

Thank you, it's something that can be avoided if it was there.

25

Acting Chief Justice Zondo:

Yes. Yes.

Commissioner Xaba:

Thank you very much, Acting Chief Justice. Thanks, Acting President.

Deputy President Petse (Chairperson):

5 Thank you, Commissioner Xaba. Commissioner Nyambi.

Commissioner Nyambi:

Thank you, Acting President. Afternoon, Acting Chief Justice Zondo.

10 **Acting Chief Justice Zondo:**

Good afternoon, Commissioner.

Commissioner Nyambi:

15 As you are aware that since Monday we are spoilt for choice, people from serious
humble beginnings, different villages and townships in South Africa, Justice
Madlanga coming from inaudible Njini-njini, Mlambo eMjindini, yourself Ixopo. Then
Justice Maya Tsolo, those are historically disadvantaged areas, but when you come
20 to the issue of access to justice, you have courts that don't start on time on Friday.
Some people are leaving early, those challenges that you know. What is it that you
think can do to those seriously historically disadvantaged areas that are still
struggling to date, yet we are enjoying democracy, if you can be given the
opportunity to be chief justice?

Acting Chief Justice Zondo:

25 Thank you very much, Commissioner. As I indicated earlier on, it's going to be
important, it would be important that if I am lucky to be appointed chief justice, that
engage with all stakeholders to establish exactly what can be done with regard to
various problems that are there which impact negatively on access to justice. I would
not be starting afresh because as I said this morning, I have already been in contact

with various people within the judiciary who have shared with me what challenges there are in various courts, high courts, regional courts, district courts. And I would not leave out courts in rural areas and townships because those courts are very important, and they must be given attention. So, my approach would be to try and establish, get a good audit of what the problems are. I already have a good idea, but to say okay, what needs to be done and try and make sure that those challenges are addressed in whatever way they can be addressed.

Commissioner Nyambi:

10 Thank you, ACJ. When you were presenting the vision, looking at the role of a CJ in a constitutional democracy as we are striving to a functional, efficient, accountable and independent judiciary, you were very clear that of course you are not perfect and to err it's human. You made some mistakes.

15 **Acting Chief Justice Zondo:**

Mm.

Commissioner Nyambi:

20 And I total agree with you. Probably anything that you think you singular out with hindsight that you think you made a mistake in your responsibility.

Acting Chief Justice Zondo:

Can I confirm, generally or in relation to a particular position?

25 **Commissioner Nyambi:**

As a judicial officer.

Acting Chief Justice Zondo:

As a judicial officer. Well, I assume that getting your, giving a wrong judgment would not fall under that if you are set aside on appeal.

Commissioner Nyambi:

5 Definitely.

Acting Chief Justice Zondo:

It falls under that?

10 **Commissioner Nyambi:**

No, no.

Acting Chief Justice Zondo:

It doesn't, okay.

15

Commissioner Nyambi:

Yes. It's because...maybe let me explain it better.

Acting Chief Justice Zondo:

20 Ja.

Commissioner Nyambi:

I'm asking this question because I want to understand because I'm aligning myself with that vision.

25

Acting Chief Justice Zondo:

Yes.

Commissioner Nyambi:

But I want to have a sense that it's not just a lip service.

5

Acting Chief Justice Zondo:

Yes.

Commissioner Nyambi:

10 You are acknowledging that [intervenes]...

Acting Chief Justice Zondo:

Yes.

15 **Commissioner Nyambi:**

...of course that is why I said [intervenes]...

Acting Chief Justice Zondo:

Yes.

20

Commissioner Nyambi:

...in hindsight.

Acting Chief Justice Zondo:

Yes. Well, there isn't one that comes to my mind immediately, but that can't be because they are not there. It can't be because they are not there. They must be there and maybe they are not few also, but it's, maybe it is simply because I'm sitting on this seat that's why I can't remember them. The moment I leave this seat I may, I might remember them, but I'm sure I've made mistakes. I might not remember them now, ja. There's no way that you, I think there's no way that you can be a judge for 25 years, as I have been, and you haven't made some mistakes. I just can't immediately remember.

10 **Commissioner Nyambi:**

It's fine. The third one. From your vision, you touch the issue of intellectual leadership and even some bodies like CASA they have made it as part of serious issues to be considered, of course. So, if you can elaborate about it so that we are on the same page and what was the value that you can attach to it.

15

Acting Chief Justice Zondo:

Well, the value of it is that the adjudication of cases, particularly at the high level of the constitutional court is, the adjudicative value is immense and you as the leader as well as other justices of the constitutional court have to be able to grapple with sometimes difficult and complex cases. And as a leader, you must be able to lead. It doesn't mean that you must always be right, it doesn't mean that others can't disagree with you, but you must provide that leadership in resolving complex cases. For example, as chief justice or as judge president in a high court or labor court, labor appeal court or as president of the supreme court of appeal, as far as I'm concerned it is expected that when there is quite a complex case you take it as the leader. You don't lightly give it to somebody else. Obviously, you have to give other people opportunities, according to their level of experience and so on. You might not need to take all those cases yourself, but you are supposed to lead. This might not be concerned with intellectual leadership, but it's also important in terms of leadership.

20
25
30

Another example is that if there is a case to be heard in your court, which could produce an unpopular decision, my view is that as the leader you must take that case and say I'll take it rather than give it to your colleagues. You are the leader, you take it. If you are going to give a judgment that's going to be criticized, somebody must be unpopular, let it be you, the leader. That's what leadership is about. You mustn't

look at the case and say, this is going to be inconvenient or difficult. It might make me unpopular. You shift it to somebody else. No, that's not leadership. That's my belief of leadership. So, in terms of intellectual leadership, that's what you do. You give me a chance by asking about this question to refer to an article that I would have loved to have referred to earlier, but I didn't because it wasn't here. You know, in 5 1987 that was my first year after finishing my LLB, 1987. I was doing articles. I had moved from Ms. Mxenge office to a white law firm because Ms. Mxenge had been assassinated the, what, two years before. I wrote an article which got published in the industrial law journal on a topic that falls within labor law. It is called "Forum 10 Shopping. The Industrial Court versus the Supreme Court 1987" in the Industrial Law Journal. There I picked up an issue which continues to be controversial to this day, more than 30 years later. I dealt there with the question of the relationship between the jurisdiction of the industrial court in dealing with labor matters and the jurisdiction of the then supreme court to say when do matters go to the industrial 15 court or when do they go to the supreme court in the context of dismissals and evictions. It had been inspired by the first legal strike in the mines that had been, that had taken place I think in 1985 or so, and I raised that issue. As we speak, more than 30 years later, there are a number of judgments in our courts, including the constitutional court and the supreme court of appeal which are still dealing with the 20 question of, when do you go to the labor court or the high court, because sometimes people can characterize their case as administrative action and therefore, they say they want to go to the high court. But somebody else might say, no, but this is a labor matter, you should go to the labor court. So, there are those judgments. So, I would like to indicate that I was able to identify something that seems to have 25 continued for many years which still occupy us.

Commissioner Nyambi:

My last issue. It's an article written by retired Justice van der Westhuizen, the one that you spoke about earlier.

30

Acting Chief Justice Zondo:

Mm.

Commissioner Nyambi:

5 It's aware about what is going on today. It's saying the new chief justice must have integrity, fierce independence, sound understanding of legal theory in our society, empathy for our people and outstanding intelligence. It's saying choosing an administrative experience over intellectual excellence may be a way to contain judicial independence. I invite your comment.

Acting Chief Justice Zondo:

10 Well, a number of those things that he mentioned there which he says are things that you must look for when you are looking for a chief justice I agree with. I guess you want my comment on the last part.

Commissioner Nyambi:

15 Exactly, I'm interested in the last part. Choosing administrative experience over intellectual excellence may be a way to contain judicial independence.

Acting Chief Justice Zondo:

20 Well, I won't comment to the extent, because you said he is aware of what is happening. If he is relating that comment to these processes, I wouldn't comment, but I can imagine that under certain circumstances you could have a situation such as that.

Commissioner Nyambi:

25 Thank you, Acting Chief Justice. Thank you, Acting President.

Deputy President Petse (Chairperson):

Thank you, Commissioner Nyambi. Commissioner Mmoiemang.

Commissioner Mmoiemang:

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

Acting Chief Justice Zondo:

5 Good afternoon, Commissioner.

Commissioner Mmoiemang:

10 Let me start by expressing my appreciation in terms of the manner in which you were able to navigate, given the mammoth task that the President gave you in terms of the commission, because as you kindly pointed out, it does the commission of the presidency in terms of the public protector as endorsed by the constitutional court.

Acting Chief Justice Zondo:

Yes. Thank you.

15

Commissioner Mmoiemang:

20 The question that I want to pose relates to the convergence of use that all the constitutional court judges had with the 2016 March judgment on Nkandla around the need to intervene when the, there's a sense that the executive arm of government has dropped the ball. How do you apply the concept of the supremacy of the constitution and also the values like the rule of law, accountability and rationality in that judgment?

Acting Chief Justice Zondo:

25 I'm going to ask you to repeat the question, Commissioner. I'm sorry, when you were speaking there was some noise that came from this side. I think I missed some important parts. I'm sorry about that.

Commissioner Mmoiemang:

Thank you. Thank you, Acting Chief Justice. The question that I want to pose is how do you apply the concept of the supremacy of the constitution and the values as enshrined in the constitution like the rule of law, rationality, transparency and accountability, applying it to the Nkandla judgment where there was a convergence of use by constitutional court judges that the executive has dropped the ball?

Acting Chief Justice Zondo:

Of course, when you talk about the supremacy of the constitution, you are talking about the supremacy of everything that makes the constitution. That includes the values that you are talking about. The court had to particularly look at the issues of accountability in that, in the Nkandla judgment, but as it happens with most of these matters, you don't look at one. You normally have to look at number. You find that they interrelate or at least some of them. So, what, part of what was very important I the Nkandla judgment was accountability.

You will recall that it was not just the executive which had dropped the ball, also Parliament had dropped the ball and the court pointed that out. So, accountability was very important, the rule of law was very important and a number of other things.

Commissioner Mmoiemang:

Thank you, Acting Chief Justice. Let's take that further. In 2017, you dissented when the majority of judges said there is a need to instruct Parliament to make rules to be able to impinge the President by virtue of the same judgement that you agreed upon in March 2016. Thank you. Can you just explain the difference?

Acting Chief Justice Zondo:

Are you saying the difference between...when you were speaking, I was thinking of my minority judgment in [intervenes]...

Commissioner Mmoiemang:

Exactly. That's why did you decide it.

Acting Chief Justice Zondo:

5 Okay. No, thank you. Thank you, Commissioner. Now I understand. Well, you see
in law there are various principles that apply in different circumstances. You know
what the majority said in that case, and I didn't agree with the majority. My approach
and the approach of those who agreed with me was that before any party that serves
in Parliament can approach the constitutional court to resolve a particular problem
10 that relates to Parliament, they should first show that this is a matter that can't be
resolved in terms of the arrangements and procedures that are internal in
Parliament. In other words, my view was please don't rush to us if you do have a
mechanism within Parliament which you can use to resolve this matter. Only come
to us when you have exhausted that. If you have not exhausted that, at least tell us
15 why we should allow you to come to us without exhausting that. If you can't tell us,
my view was, go back. That was my view. But of course, if Parliament or if they told
us no, but it won't work because of A, B, C, D then we would examine that A, B, C, D
and see whether it justifies them coming to the constitutional court, the highest court
in the land directly. But in that particular case there was no explanation really, as far
as I recall, and this was also a case where the opposition parties were not able to say
20 we knew that the ruling party was going to use its majority to block our views.
Because in that particular case, the evidence showed that there had been other
meetings where issues had been discussed and agreed upon. So, there was no reason
to think that if they had continued with the processes, internal processes they would
have been frustrated. Actually, in that case my recollection is that the speaker or
25 deputy speaker said that in the particular committee those parties had said they
wanted to go and consult their principals and they would come back, but they didn't
come back, instead they went to court. That's my recollection and my principle, my
judgement was simply based on saying exhaust your own internal arrangements
before you come to court, because you might resolve this matter and it might not
30 need to take our time.

Commissioner Mmoiemang:

Thank you, Acting Chief Justice. The last point now relates to the observation that
one made with the constitutional court judgment that led to the July incidents last

year. The observation is, that I want to put forward is that in most cases the legitimacy of the court is important, and its independence is sacrosanct, because judiciary is our last line of defense in terms of defending our constitution. But, when a decision is taken by a court that to a certain extent it's interpreted to have been outside the tolerance level, in most cases there will be, it will trigger a political attack on the independence of the judiciary. And that attack necessarily will lead to the institutional weakening of the judiciary and that is not in the interest of our constitutional democracy that people have fought for, and that people have died for. So, given that the lessons from the 2015 of the meeting between the speaker, the chief justice and the President, is there no need to probably have the same conversation because what happened in July last year was unprecedented. And what is it that has to be done to educate, but not from the judiciary side, the executive side and the legislative side, to educate the public about the legitimacy and the importance of the judiciary institution, that is our final arbiter in defending our hard-earned democracy? Thank you.

Acting Chief Justice Zondo:

Thank you, Commissioner. Well, I don't think that we as the judiciary, and I include myself as particularly part of the leadership of the judiciary, that we have done enough to educate people about the judiciary. Maybe about, also the difference, different arms of the state. I remember many years ago when I was still judge president at one of the heads of court meeting, we had made a resolution. We had made a decision that we should even have members of the heads of court speak on television to try and explain certain things to the people about the judiciary, its role and its role in democracy and so on and in radio stations and so on, but unfortunately, I don't think it was implemented. But I would imagine that all of us owe it to our country and to our people to educate them about structures of our constitution, about the importance of the judiciary, the importance of Parliament, the executive and the relationship, the importance of the courts and so on. So, I think that as a leadership of the judiciary, we should revisit that issue. I think there's a need to educate our people.

Commissioner Mmoiemang:

Thank you, Acting Chief Justice. Thank you, Acting President.

Deputy President Petse (Chairperson):

Thank you, Commissioner Mmoiemang. Commissioner Lucas.

5 **Commissioner Lucas:**

Thank you very much, Acting President. Good afternoon [intervenes]...

Acting Chief Justice Zondo:

Good afternoon, Commissioner.

10

Commissioner Lucas:

I nearly said Comrade Zondo.

Acting Chief Justice Zondo:

15 Good afternoon, Commissioner Lucas.

Commissioner Lucas:

Acting Chief Justice Zondo. I said it to JP Mlambo and to [intervenes]...

20 **Acting Chief Justice Zondo:**

Yes.

Commissioner Lucas:

...and to President Maya.

25

Acting Chief Justice Zondo:

Yes.

Commissioner Lucas:

5 It's very strange to find that someone you were sitting on this side with all the time
is on that side. But I think that will not take away from the fact that it is a very
important process and also that the candidates that are sitting here are aspiring to
actually sit in a very high position in the country as one of the representatives of the,
10 one of the states or the arms of state. So, you should expect sometimes that we will
ask questions that you will not be happy with and [intervenes]...

Acting Chief Justice Zondo:

Yes, no accept that completely.

15 **Commissioner Lucas:**

And we are also not here to please anyone. Not that I want to ask you any funny
questions. I just want to put it as a fact, because even if it is reported, what we are
doing inside here, it seems as if when we woke up this morning, we decided we will
20 have a personal fight with any candidate that sitting here in front of us. We don't
have to. We respect each other and we all have a responsibility because we have
been deployed to make sure that we execute this very important task. Now I know
this question have been asked to you, but I am not totally satisfied with the way you
have responded on this one. I still want to know, taking into account the fact that
25 you said inclusivity is something that you want to strive for. Now for me inclusivity
goes to the fact that it can never be business as usual. If we say we want to make
sure that we have a judiciary or even a magistracy or one judiciary that will
understand what we want to achieve in this country, and I'm asking you the same
question that I asked some of the other candidates, how do you envisage,
30 particularly, remember there is also the issue that time is not on your side. And
although you said that two and a half years is neither too long or too short to achieve
whatever you want to achieve if you have a clear vision of where you want to take
the judiciary.

Now my question is, how do you envisage to build a cadre of judicial officers right from the grassroots level up to the constitutional court, that is the apex court, that will understand that we are supposed to serve the people of South Africa and that will understand that we need to give service with empathy and also to make sure that justice is seen to be done to those that are not necessarily having access to justice? That is my first part of the question. Secondly, you have elaborated very extensively on how you have lost women in the process of trying to start to bring about equity within the labor court and labor appeals court and so on. How will you be able to make the judiciary a place where women [Indistinct 07:31:09] appreciated and that also they decide it's a career of choice? You know why I'm asking you that question. You said as soon as you have capacitated a woman, they are snatched by this court and that court and that court. Isn't it because mostly they are appointed as acting and they don't have, they didn't at that stage have that kind of security that they needed? I'm just thinking, but how will you make sure that women and other groupings like, someone spoke about the LGBTIQA, but others that were not necessarily taken with like men was, it seemed that is a given in the judiciary if you are man something will happen for you, but not necessarily for other groupings. Now you said you just want to be remembered that you also contributed, we don't want you just to contribute, we want as a, if we select you as a chief justice, after two and a half years we should say wow, it was worthwhile, even if it was just this short space of time. What is your vision with regards to this question that I just asked you now?

Acting Chief Justice Zondo:

Thank you, Commissioner Lucas. When I said I want to contribute, it didn't necessarily mean it, or I didn't intend that you should say wow.

Commissioner Lucas:

But you also, we also don't want it to be business as usual.

Acting Chief Justice Zondo:

No, no, I accept that. All I sought to emphasize, Commissioner, was that my focus in whatever I do would not be and is not about what legacy I would leave behind. That's the point I was making. Well, Commissioner Lucas, the challenges that I experienced

in the labor court and labor appeal court trying to retain judges and women judges as well was due to the fact that it was like the heads of courts higher than my court would wait until I had identified women that had potential and gave them an opportunity, opportunities in my court and they were waiting. Then they start seeing them in my court and start seeing their judgments and then they want to come and snatch them. And because firstly my court did not give them security of tenure, because appointment would be for a certain period time only. Whereas if you go the high court, it would be permanent or some of them would be high court judges that I wanted to keep in the labor appeal court, but the president of the supreme court of appeal or the constitutional court president or other people would nominate them for higher courts. But I would have, sometimes I would have been the first one to identify talent and potential. Sometimes there may have been others who had also identified the people, but I would give them a chance and in no time other courts would see them and take them and what could I say. I could not do anything. It was good for them. So, that was the challenge. So, obviously that challenge doesn't apply in the constitutional court, but to the extent that there are courts where those challenges still exist, your question is a valid question because they do exist. The labor appeal court still has that problem. The judge president of the labor appeal court shared with me their challenges because they are served by high court judges. But if those judges get nominated for the SCA or the con court they are gone, you know. The land claims court has those challenges. I think the competition appeal court has those challenges. So, I'm aware of all of these challenges that need to be confronted and dealt with and I know them quite well because for a certain number of years as judge president of the labor court and labor appeal court, I was the victim of those challenges. So, they need to be dealt with. So, but insofar as women are concerned, I believe that I would do anything I could to try and ensure that women who are outside the judiciary, lawyers want are made to want to come to the judiciary and those who are inside the judiciary, they are given all the support that they can be given in order to rise. We have advertised under SAJEC, that is the South African Judicial Education Council, we have advertised for women lawyers who may wish to be trained as aspirant judges. That program is going to be starting quite soon. The advert went out I think in December, and it takes the form of a project that Minister Brigitte Mabandla ran with the judiciary when she was minister of Justice which was a very successful program. So, we have gone back to it and there will be a certain number of women lawyers who will spend a certain number of months being trained intensively to prepare them for later when they may wish to be considered for the position of judges. So, I think that I would want to give as much support to

women in that regard as possible. It would not be something that I'm starting now. I have been doing my best to give support to women over a long period. Thank you.

Commissioner Lucas:

- 5 I think besides the issue of the women, I would really want to know how magistrates or at that level how also they could be empowered so that we can say like we are saying it's not too bad in the constitutional court, in the supreme court of appeal.

Acting Chief Justice Zondo:

- 10 Yes.

Commissioner Lucas:

But at that level [intervenes]...

- 15 **Acting Chief Justice Zondo:**

Yes.

Commissioner Lucas:

- 20 ...where it is really the experience of ordinary men and women and they are not really getting that service, how do you plan to build that cadre at that level?

Acting Chief Justice Zondo:

- 25 Well, the program that I'm talking about is not exclusive to women who want to be judges. It also includes the magistracy. So if I could clarify that, but to the extent that, Commissioner, your question relates to the service that is rendered at magistrates court level to the people, how we improve it, that is part of what I was talking about when I said I am aware of various challenges that affect service delivery in the lower courts, because I've got all, I've got the information. And what I would

want is to meet all the relevant stakeholders to say how do we improve this because our people are entitled to proper service, they're entitled to a better service and what are the challenges? Why are they not getting it? As I said I know most of the challenges already, but what would be next, is to say what do we do? Get everybody
5 involved so that we make sure that going forward those problems are solved once and for all and there is no recurrence.

Commissioner Lucas:

10 So, you will agree with what the minister said earlier that possibly we have that once off, bringing together everyone under one roof, understand what we need to do and develop a program of action?

Acting Chief Justice Zondo:

15 Well, there is nothing wrong with the principle or in terms of what the minister was saying, if that's what he said, but I spoke earlier on about the PEECs which are already in place. So, those PEECs involve both the high court and the magistrates court, district courts and the regional courts. So, and their aim is to improve efficiency in the court so that the service that we give to the people is a better service. So, the points that you raise go to exactly what PEECs are supposed to ensure. So, one has
20 got to say if district courts A, B, C, D in the Western Cape seem not be giving a proper service to our people, we need to say PEEC do you know about this, what are you doing about it, why is it continuing, what have you done about it. First of all, they must be aware of the problems. Once they are aware they must decide what needs to be done to resolve those problems, but if they are not aware then it's a serious
25 problem, because at least you must be aware and you must know exactly what should be done to resolve the problem. And maybe if the resources are not there, that's fine, but you must know that the problem exists and what you think should be done to resolve it. You just don't have the resources to implement your plan.

30 **Commissioner Lucas:**

If I may, Acting President, I'm still on the issue of efficiency and defective service. There is also the issue of turnaround times that was something that have been apparently a complaint about, particularly in the constitutional court also, besides

the lower levels. So, if possibly you can also address on that one and let me add the last one that I also wanted, just to comment, but also possibly you can respond to that. I see in your institutional model you speak about the office of the chief justice to be a national department or function as a national department. Currently it is a vote within the budget because when there is reports there is also a vote for the office of the chief justice. Now my point that I want to make is that I think you need to be very clear as to what you want the national or this office of the chief justice to be. Because if you say same as the Auditor General, it become too, it become something else in terms of the constitution because a national department, financially and overall, the PFMA, is it the PFMA, Candy? That is informing, and there is also the Civil Services Act and things that is run, that is informing issues like HR and so on and so on. So, I think before you will be able to implement this, you must be very clear as to how you want the outlook of this, of this office or this department to be. I'm just mentioning it because I get a little bit confused because in terms of the constitution we know where the AGs office are situated, but ACJ, you speak about a department. So, I don't think that one need possibly a response, but [intervenes]...

Acting Chief Justice Zondo:

I'm sorry, may I respond because I think, with respect, Commissioner, you may have either misunderstood me or misunderstood what you read? I said when I spoke this morning, I said there was research that was conducted in 2010 and 2011 at the instance of the then Chief Justice Ngcobo to look at what model we need, and that research produced a report. And in terms of that report, certain proposals were made. The proposal was in three phases. The first one was that there should be a national department, there should be an office of the chief justice which is established, which was established as a national department. That was done. Phase 2 was going to establish the office of the chief justice as an entity similar to the Auditor General. Phase 3 was going to be the establishment of an office of the chief justice that would be a judicial council and I said we, you know, the position is that I think in 2012 or 2013 proposals were made to the executive by the judiciary to say this is what we propose. And as I said, President Zuma agreed to make the office of the chief justice a national department which was a very important step, but we need to move until we reach point, phase 3. So, that's what the minister was talking about. He also confirmed that they have never come back to us as the executive to say we agree or we don't agree but based on what he said there is going to be engagement, I hope soon, between the executive and the judiciary on the matter.

Commissioner Lucas:

I will leave it there because I still have more to say, but I can, but we can still discuss it, it's not an issue. You are still the acting CJ. But what about the issue of turnaround
5 times and also how do you, besides the fact that you spoke about the consultation
and so on, but what do you think would be a better cooperation model that will really
take you somewhere? That is my questions. Thank you.

Acting Chief Justice Zondo:

10 Is that in relation to the office of the chief justice or something else?

Commissioner Lucas:

In relation to the inclusivity over the spectrum. The issue of turnaround times
[intervenes]...
15

Acting Chief Justice Zondo:

Turnaround time, let me deal with that.

Commissioner Lucas:

20 That is...okay.

Acting Chief Justice Zondo:

Ja, let me deal with that. I did say this morning, Commissioner Lucas, and all
Commissioners, that we acknowledge that in the constitutional court there have
25 been delays. We acknowledge that it's been legitimate for people to criticize us in
regard to that. I said that we are doing something about it. We, I hope that we are
going to sort matters out. In relation to turnaround time, I spoke about new
application memos as well as reserved judgments. I said in regard to new application
memos, we have started a new way of dealing with them which we had not used

before. There are signs that it is working, and it's going to work and change the situation and therefore change the turnaround time in relation to new application memos. And I said in relation to reserved judgments, I already have put a certain suggestion to colleagues. We have not finalized, we have not discussed, but we are still going to discuss that particular idea, but I did say that it may include that in some matters we don't all sit together, all 11 of us, so that some colleagues who may be behind with their judgments can get more time to write judgments. But I did say that if maybe that did not work, ultimately, we may have to consider asking that a constitutional amendment be made that would enable a situation where less than 11 judges can deal with certain matters, maybe three judges. Because at the moment we all have to take part in a matter that has come before us. Thank you.

Commissioner Lucas:

Thank you. I think I will for now take the issue of how you are going to coordinate as your PEECs and your NEECs. Thank you very much. Thank you, Acting President.

Acting Chief Justice Zondo:

Thank you.

Deputy President Petse (Chairperson):

Thank you, Commissioner Lucas. Commissioner Breytenbach.

Commissioner Breytenbach:

Thank you very much [intervenes]...

25

Deputy President Petse (Chairperson):

Commissioner Breytenbach, please give [intervenes]...

Commissioner Breytenbach:

Can you hear me?

Deputy President Petse (Chairperson):

Yes, I can, but could you please give me a moment.

5

Commissioner Breytenbach:

Sure.

Deputy President Petse (Chairperson):

10 There's a member who wants to put a follow-up question to the Acting Chief Justice.

Commissioner Breytenbach:

[Indistinct 07:50:42].

15 **Deputy President Petse (Chairperson):**

Thank you. Commissioner Mapisa-Nqakula.

Commissioner Mapisa-Nqakula:

Thank you very much, Acting President. ACJ.

20

Acting Chief Justice Zondo:

Madam Speaker.

Commissioner Mapisa-Nqakula:

25 Commissioner.

Acting Chief Justice Zondo:

Commissioner, okay.

5 **Commissioner Mapisa-Nqakula:**

Thank you very much. Thank you very much, ACJ. There's a matter which she raised now. She ended up with PCCs and NCCs. There's something you raised earlier on which is that in fact prior to your interview, we interviewed some of your colleagues and one of the issues they lamented, I think two of them lamented the fact that there
10 hasn't been a forum where judges come together and interact and just engage for purposes of also restoring confidence in the ability of the judiciary in the country. Now they said the last meeting they had was in 2009 and I don't, they were not raising it out of malice. I think they were raising it because they have concerns. Now
15 earlier on when you presented, you then said it would be seen whether in fact every five period it's necessary for you to come together because the meeting must be determined or the conference must be determined on the basis of its merits, whether there's any reason, in other words, for you to come together. How do you reconcile that, what you presented to us, that which is part of which your vision and that which has been presented by two other judges? I think three of them who are saying, really
20 lamenting that there hasn't been this congregation of the judiciary.

Acting Chief Justice Zondo:

Thank you, Commissioner. I made sure I don't say Madam Speaker now. Thank you.

25 **Commissioner Mapisa-Nqakula:**

[Indistinct 07:53:04].

Acting Chief Justice Zondo:

Thank you. Well, nothing I have said today in regard to conference should be viewed
30 as me being opposed to a conference. I'm not opposed to any conference. Actually,

it may be that it would be a good thing to have it now, but what I did say is to share with the commissioners my recollection of what happened when there was a view that we should have a conference. But having said that, Commissioner, let me make this point, that I don't know which of the, which two of the three candidates you
5 have interviewed may have made those points. I don't know because I wasn't watching the interviews, I was busy preparing for my interview most of the time. But two of them are members of the heads of court and they have been members of heads of court for a long time and depending on when it was, when that issue was discussed, certainly one of them I think would have been part of the heads of court.
10 So, any head of court who has a view as to what judges should do or should not do is free to raise that in meetings of heads of courts that we have, and we can discuss. Of course, it may be that other colleagues don't see it that way, it may be that they see it that way, but in the heads of court the chief justice doesn't dictate and say nobody is going to say anything here, my word is final. There are discussions. We
15 share views. But I, speaking for myself now, in the light of the fact that we haven't had such a conference for a long time, I would be inclined to think there is a need, but again last time, as I mentioned, there was the issue also of budget. I think it had been said there would be budgetary constraints. I can't remember what, how many millions the quotation was. So, I certainly am not opposed to judges having a
20 conference. I think it may well be a good thing because we haven't had a judges' conference in a long time, but obviously we would have to look at budget, see whether there is enough budget and if there are challenges there, discuss what is possible and what's not possible.

25 **Commissioner Mapisa-Nqakula:**

Very much. What happens in the event whereby judges offer to pay for themselves? Because apparently this was another option which had been raised earlier on.

Acting Chief Justice Zondo:

30 Well, my recollection is that there may have been some judges who may have offered, but certainly I don't think that it was all the judges or the majority of judges who would have to be at conference. I may be wrong, but my recollection there was that there may have been some judges who were prepared to pay for themselves, but not enough. But I can't, I don't have a clear recollection, but I do seem to think

there was something like that. But if judges who were supposed to have a meeting and there are budgetary constraints, they are prepared to pay for themselves, there is no reason why a conference can't be held then.

5 **Commissioner Mapisa-Nqakula:**

Thank you very much, Acting President. I don't want a dialogue, but I think I do want to emphasize that this matter has been raised and I think all of us appreciated the importance of holding such conferences on a regular basis, whether on a virtual, in a hybrid form or not, but the point is there were reasons why they were raising the issue.

10

Acting Chief Justice Zondo:

Mm.

15 **Commissioner Mapisa-Nqakula:**

They identified some gaps and I think that is one of things you should also internalize.

Acting Chief Justice Zondo:

Ja.

20

Commissioner Mapisa-Nqakula:

Thank you.

Acting Chief Justice Zondo:

25 No, there's no doubt, Commissioner, that whether after this process I'm chief justice or not, because if I'm not chief justice I guess I will still be deputy chief justice, there is no doubt that I would want to raise it. Whether I raise it as chief justice or deputy,

I would like that the leadership looks at it and there will be consultation and we take it from there.

Deputy President Petse (Chairperson):

5 Thank you, Commissioner Mapisa-Nqakula. Commissioner Breytenbach.

Commissioner Breytenbach:

Thank you, Chairperson. Good afternoon, Deputy Chief Justice. How are you?

10 **Acting Chief Justice Zondo:**

Good afternoon, Commissioner. I'm all right, how are you?

Commissioner Breytenbach:

I'm well, thank you, Sir.

15

Acting Chief Justice Zondo:

Thank you.

Commissioner Breytenbach:

20 My first question is about the effectiveness at the moment or the efficiency at the moment of the courts. So, if you're appointed you will accept that you will be the head of all the courts.

Acting Chief Justice Zondo:

25 Mm, that's true.

Commissioner Breytenbach:

High courts, other courts, superior courts.

Acting Chief Justice Zondo:

5 Yes.

Commissioner Breytenbach:

10 Whatever. None of them are functioning optimally. As a result of, inter alia, state capture in general and your commission and more particularly we should be expecting a deluge of high-level criminal matters to be hitting the courts sometime soon, one hopes. Do you have any plan about how to optimize the efficiency of the court so that they will be able to deal with deluge of cases, because two or three hours a day is not going to suffice?

15 **Acting Chief Justice Zondo:**

There is something that I missed, Commissioner, namely I'm not sure whether you are referring to specific courts or just courts in general.

Commissioner Breytenbach:

20 Courts in general. The courts that will hear these matters are [intervenes]...

Acting Chief Justice Zondo:

Ja.

25 **Commissioner Breytenbach:**

...possibly the regional court [intervenes]...

Acting Chief Justice Zondo:

Yes.

Commissioner Breytenbach:

5 ... [Indistinct – crosstalk 08:00:10] and certainly there will be many appeals. So, [intervenes]...

Acting Chief Justice Zondo:

Yes.

10

Commissioner Breytenbach:

So, how will the courts manage this massive influx of cases?

Acting Chief Justice Zondo:

15 Well, of course, Commissioner, at this stage I think a lot of people are talking about saying well it looks like it's going to take long before we see prosecutions. So, there might be some time because there would need to be quite an army of prosecutors to deal with the cases. But my view is that when the NPA in different parts of the country, when they have cases that seem to require special arrangements then they
20 would need to talk to the judiciary and the judiciary would need to make a plan to try and make sure that those cases can be heard as soon as possible. Obviously, the judiciary doesn't have resources because if you want many cases to be heard and you have a certain compliment of judges in the particular court who have other cases other than the new cases emanating from the state capture report, then you may
25 need to bring in acting judges, get private practitioners to be brought in. You might have to bring in a lot of them in order to deal with the many cases that would emanate from the state capture commission reports. But if the executive says well, there is no money then there is not much that the judiciary can do. But we certainly, as the judiciary would want to come to the party to make sure that the courts can
30 hear as many of those cases as possible. All I'm simply saying is that it depends what is available to us in order for us to be able to do that.

Commissioner Breytenbach:

Thank you, Deputy Chief Justice and my final question is, you did mention in your first interim report that you held the view that the National Prosecuting Authority
5 was perhaps not sufficiently resourced to deal with all these matters and that perhaps some though should be given to a different structure.

Acting Chief Justice Zondo:

Mm.

10

Commissioner Breytenbach:

What type of structure did you have in mind?

Acting Chief Justice Zondo:

15 Well, I think that was within the context of the volume of the report that related to procurement, public procurement and what I had in mind there was an arrangement in terms of which the anti-corruption agency that I recommended could have a unit that would deal with certain cases and prepare them and get them ready and then hand them over to the NPA when they were ready. Simply because if they were just
20 given to the NPA without another unit having worked on them and got them ready, there might not be a capacity to deal with them. So, what I had in mind was exactly that. Obviously, in our country, only the NPA has the power to prosecute and nobody else has the power to prosecute because if you prosecute privately you have got to get a nolle prosequi certificate first. So, that's what I had in mind.

25

Commissioner Breytenbach:

Thank you very much, Deputy Chief Justice. Thank you, Mr. Chair.

Deputy President Petse (Chairperson):

Thank you, Commissioner Breytenbach. Commissioner Mpofu.

Acting Chief Justice Zondo:

5 I think he has been...

Commissioner Mpofu:

No, no, Acting Chief Justice. Good afternoon, ACJ.

10 **Acting Chief Justice Zondo:**

Good afternoon, Commissioner. Commissioner Mpofu.

Commissioner Mpofu:

15 Yes. Yes. No, I just thought let me start with a declaration here. Contrary to what has bandied about, you and I go a long way together.

Acting Chief Justice Zondo:

Of course.

20 **Commissioner Mpofu:**

But there are some people who want to create mischief between you and I. I think we must forgive them. And maybe that should go into the issue of where you and I had an encounter and I'll talk about, first encountered each other maybe I should say. You appointed as an acting judge in 1999 or 2000 when you were JP of the labor
25 court.

Acting Chief Justice Zondo:

That's a long time ago.

Commissioner Mpofu:

5 It's a very long ago. And you, this leads to something that I'm going, two of the topics
that I'm going to talk to you about. One to do with acting judges and the other one
to do with transformation. But so, the way I ask these questions I ask, there's one
standard question that I ask all the candidates. Then I have to ask the transformation
10 question because I'm here for transformation. Then I'll ask one that's salient for you
and then you must hope that I run out of time because the fourth one is the
controversial one.

Acting Chief Justice Zondo:

So, I must give long answers.

15

Commissioner Mpofu:

Yes. And a wink to the Chair. The Chair might make a ruling without [Indistinct
08:07:03] that hearing. Okay. Now the standard question is this. I've developed
what I'll call a broad template about the requirements of the job, it's not an academic
20 job, and you might have heard me putting this to the other candidates.

Acting Chief Justice Zondo:

I must say I didn't hear because I didn't watch.

25 **Commissioner Mpofu:**

Okay.

Acting Chief Justice Zondo:

I was preparing.

Commissioner Mpofu:

5 [Indistinct 08:07:33]. Right. Now okay, this is how I go about it. I said that the job
that you're applying for now requires broadly three, it might require a whole lot of
things, but three broad areas, judicial skills and expertise obviously, that goes for
issues like industry, independence, integrity, intellectual leadership and you might
add temperament. And then the second category is what I call leadership and people
10 skills. The softer skills, ja. Accessibility, judgment, not judgment as in writing a
judgment, just patience, fairness which is very underrated and abused, and
emotional intelligence. Then I talk about administrative and management skills
which you know. So, because it's late in the hour, I will question you about judicial
skills and experience because I think that's, you are excellent in that area.

15

Acting Chief Justice Zondo:

Thank you.

Commissioner Mpofu:

20 Thanks. Administrative and management skills also I think having been a JP for such
a long time, I've encountered you as one your judges, you've been DCJ. So, I think
we can take that for granted. So, I'll question you more about what I call, where I
sense that there might be some weaknesses in this other area of leadership and
people skills. Maybe not people skills because I think you've got the necessary people
25 skills. And that goes to these issues of, you know, whether you should have a press
conference or not, you know those kinds of things that are grey area type of things.

Acting Chief Justice Zondo:

Mm.

30

Commissioner Mpofu:

And I want to associate myself with what has been said here about some of the, at least perceived mistakes in those areas, but I want to ask you a specific question. Why, when you responded to Minister Sisulu, which part of what she said did you find so insulting?

Acting Chief Justice Zondo:

Well, the, at the conference I read specific portions. I don't have the article in front of me, but [intervenes]...

Commissioner Mpofu:

Maybe off the top of your head.

Acting Chief Justice Zondo:

I remember I think was the, something like [intervenes]...

Commissioner Mpofu:

House nigger.

Acting Chief Justice Zondo:

Yes, that. There was also, I don't know whether leaking, not saliva, I can't remember what the word is.

Commissioner Mpofu:

Okay, yes, I remember that.

Acting Chief Justice Zondo:

Yes. And basically, also what seemed to be that the suggestion that we black judges, African black judges were not thinking, we were just following [intervenes]...

5 **Commissioner Mpofu:**

The masters.

Acting Chief Justice Zondo:

...masters. Yes.

10

Commissioner Mpofu:

Okay. Ja. No, that's fine. Well in the area of leadership, I can just give you some free advice.

15 **Acting Chief Justice Zondo:**

Ja.

Commissioner Mpofu:

20 When you're a leader, one of your jobs is to be insulted by all sorts of people who have never even met you here. Former President Kgalema Motlanthe put it in more colorful language which I cannot repeat here, of what a leader actually is. So, my point is that, ja, something like that really you should not, you don't have to call a press conference every time you get insulted. We get insulted, like this week we all got insulted for free cantankerous former apartheid judges and we don't respond to
25 that now.

Acting Chief Justice Zondo:

Well, I certainly would agree that one doesn't and shouldn't, you know, respond each time there's an insult. I certainly would not be planning to collect a press conference or even issue a media statement each time the judiciary is insulted. So, if somebody
5 intended to insult us again, thinking we'd then come out again, we might that we [intervenes]...

Commissioner Mpofu:

To provoke.

10

Acting Chief Justice Zondo:

...we don't do that.

Commissioner Mpofu:

15 No, that's fine.

Acting Chief Justice Zondo:

But I particularly felt and my colleagues in the leadership of the judiciary also felt particularly strongly in regard to this one. I think that you can accept that I certainly
20 accept, and I think the leadership of the judiciary accept that there may be, there will be many instances where we will be criticized, maybe very severely and maybe we'll even be insulted, and we'll just let go.

Commissioner Mpofu:

25 Ja, okay.

Acting Chief Justice Zondo:

But that's the position, ja.

Commissioner Mpofu:

No, I'm happy with that.

5 **Acting Chief Justice Zondo:**

Ja.

Commissioner Mpofu:

And hopefully you also accept our criticism of you [intervenes]...

10

Acting Chief Justice Zondo:

Yes, no, I [intervenes]...

Commissioner Mpofu:

15 ...for having reacted that way.

Acting Chief Justice Zondo:

No, I accept completely that other people might see it differently. I have absolutely no problem with people taking the view that maybe I should not.

20

Commissioner Mpofu:

Yes.

Acting Chief Justice Zondo:

25 I just happen to have a different view together with my colleagues [intervenes]...

Commissioner Mpofu:

Yes.

5 **Acting Chief Justice Zondo:**

...but that's fine, ja.

Commissioner Mpofu:

10 Thank you. Now on a lighter note, sometime in December you and I were talking on the phone, and I managed to dissuade you from issuing a statement, a certain statement.

Acting Chief Justice Zondo:

Ja.

15

Commissioner Mpofu:

Maybe you should have just come to me.

Acting Chief Justice Zondo:

20 You see, I'm, well maybe you are going to charge me a huge fee.

Commissioner Mpofu:

25 Yes. Okay. Now the issue here, DCJ, is this, that we need a rounded product. The chief justice as you know, you're a deputy chief justice, must be rounded and I think that maybe I can sneak this in that this commission has been wrongly criticized. The way my reading of how we have done these interviews is to try and do exactly that, to zoom in on an area where we feel that is an area of weakness. There's no point in

just dealing with the, your strengths. So, Justice Madlanga was grilled on the three and a half years left. Justice Maya was grilled on the transformation and the acting, of white people who act in the SCA because that was a particular criticism. And JP Mlambo I think on the issue of capacity to write judgments and so on, ja. Because
5 we know about his other skills. Now in your case this issue about three and a half years in the case of Justice Madlanga is even worse. Yours is two and a half years. Why should that not be seen as a disadvantage in your particular case? When we do our deliberations why should we not just say, just two and a half years, let's just scratch him off? So, it's an opportunity for you to convince us that that should, that
10 factor should not be overemphasized.

Acting Chief Justice Zondo:

Thank you, Commissioner Mpfu, for that question. You know, whoever gets appointed as chief justice is not going to be starting afresh. A project maybe that will
15 need five years, ten years, there may be new things that he or she will come with, that I accept. But there is, that is a system that is in place, that has been put in place, that enjoys the support of the heads of court. And that is very important because when you are chief justice, you don't just do things on your own. Therefore, whoever comes in I doubt that they are going to say the things that have been put in place
20 with the blessings of the heads of court, which the heads of court say are working, maybe they just need to be fixed here and there. I doubt that that person is going to say no, let's, that's something new completely. I would think that they probably would try and work with what I there. Of course, there may be new ideas, those new ideas might, some of those might fit in within the two years or one year or three
25 years or five years, anything is possible. So, my approach is that unless somebody, unless we had a situation where this commission knew that needs to be done will take five years or seven years or ten years, if it was that situation where you said what needs to be done will take seven years or it will take ten years, then maybe it would be a different situation. But we have a situation where in all probability things
30 that need to be done will including continuing with what is already there. Maybe adding some things, but some of those things might not need to be ten years or seven years. They might be a few years and of course even with the former chief justice who left after seven, for ten years, it is not as if when they left there could not be things that could still be done, but they leave them on the basis that whoever comes
35 in can then either continue or change.

Commissioner Mpofu:

Okay.

5 **Acting Chief Justice Zondo:**

So, I think that there are quiet, some things that can be done and as I said earlier on, when of course, if I'm appointed as chief justice, there would be a position for deputy and the President would decide how he decides not to nominate, but I do have certain things where I think within that period of two and a half years, I could make
10 a big difference.

Commissioner Mpofu:

Ja.

15 **Acting Chief Justice Zondo:**

Particularly that would impact on the judiciary as well as on people on the ground who use the services of the courts.

Commissioner Mpofu:

20 Okay, thank you. I hope the Chair won't use those longer answers against me. Now, no, I get your point, but I think the crisp question is this. All those things that you are saying, why can't you do them as deputy chief justice? Why do you have to be the chief justice?

25 **Acting Chief Justice Zondo:**

Well, of course if you are deputy chief justice you don't have specific assignment or functions other than those that you are given by the chief justice, except insofar as there may be legislation that is specific, you know. So, obviously even if somebody else is appointed as chief justice and I'm deputy chief justice, I can't do those things.

Commissioner Mpofu:

Okay.

5 **Acting Chief Justice Zondo:**

It's not as if, if it's somebody else who is chief justice, suddenly I won't want to cooperate. No.

Commissioner Mpofu:

10 I'm happy.

Acting Chief Justice Zondo:

I'm not like that.

15 **Commissioner Mpofu:**

No, I know.

Acting Chief Justice Zondo:

Ja.

20

Commissioner Mpofu:

No, I just wanted it to be out there, that [intervenes]...

Acting Chief Justice Zondo:

25 Ja.

Commissioner Mpofu:

...you will, if you are not appointed, you will support whoever the chief justice is.

5 **Acting Chief Justice Zondo:**

I can assure this commission that I have high respect, high regard for each one of my colleagues who are candidates here and we all get on quite well.

Commissioner Mpofu:

10 Thank you.

Acting Chief Justice Zondo:

And if anyone of them is appointed, we will work together.

15 **Commissioner Mpofu:**

Thank you very much, DCJ. Now the transformation question is this. The, and for me it's a source of disappointment, because as I said 21 years ago when you invited some of us to come and act then, you really sought out talent that you, at least that you perceived to be talent and I remember there were [intervenes]...

20

Acting Chief Justice Zondo:

It was talent.

Commissioner Mpofu:

25 Thank you, present company excluded. No, the, you had people like Normally Shabalala[?], you know, who were our peers.

Acting Chief Justice Zondo:

Yes.

Commissioner Mpofu:

5 So, aspiringly the lawyers and you gave us that break, but I don't what happened to
that JP who could do that 21 years ago to a person now who can have a compliment,
and this is my constituency is traumatized by this. A compliment of lawyers serving
in the commission where the statistics are like this, where there are seven white SCs,
6 of them white males. I know that there are three African male SCs that are Pule
10 Seleka and Notshe. But nine males and one woman, those are...what has happened
to you?

Acting Chief Justice Zondo:

To that vibrant young JP.

15

Commissioner Mpofu:

Yes, who was looking out there and managed to find us from under the stones to
now just, you know.

20 **Acting Chief Justice Zondo:**

Well, thank you, Commissioner Mpofu, for that question. I think tell your
constituency that there is something they misunderstand with regard to those
statistics. They probably have forgotten how the commission's legal team looked like
when the commission started. I can't remember the number, but whatever the
25 number is there were only two whites, the rest were black, and we had a media
conference. I presented them to the media. It was, there were, I think there were
three women.

Commissioner Mpofu:

Yes.

Acting Chief Justice Zondo:

I've got Kate Hofmeyr, Advocate Leah Gcabashe.

5

Commissioner Mpofu:

And Thandi Norman.

Acting Chief Justice Zondo:

10 Sorry?

Commissioner Mpofu:

And Thandi Norman.

15 **Acting Chief Justice Zondo:**

I don't know whether Thandi...ja, and Thandi Norman. No, actually there were, I think there were more because I think I remember another face.

Commissioner Mpofu:

20 Ja.

Acting Chief Justice Zondo:

25 So, that first team was [Indistinct - crosstalk 08:24:05] was good. It was good. And it continued to be like that, but what happened is that at a certain stage some of the lawyers had one reason or another to leave the commission. Sometimes it was that their practices were suffering, and they needed to go back. Sometimes it was family reasons, because the commission work was quite demanding. Sometimes it was that

members of, those lawyers had made an arrangement with me to say I will give you my time up to when I complete this assignment. When I complete this assignment, please I would like to go back to my practice and not continue into another one. Whereas there were others who were quite happy to start another assignment when they have completed another one.

Commissioner Mpofu:

Yes.

10 **Acting Chief Justice Zondo:**

But when you look at all the members of the legal team from the commencement of the commission up to the end, the overwhelming majority of members of this legal team were black and there were a number of women.

15 **Commissioner Mpofu:**

Yes. No, I understand that, but I want to, I don't accept that answer at face value, DCJ.

Acting Chief Justice Zondo:

20 Yes.

Commissioner Mpofu:

For two reasons. One is the, I can understand attrition that you're talking about.

25 **Acting Chief Justice Zondo:**

Ja.

Commissioner Mpofu:

But surely you would still have had a duty to, in replacing them to have a preference so that we don't end up with this picture which I call traumatic. That's number one. Secondly, my understanding is that some of them left because they were disgruntled, probably because they, the leadership of the team was placed in one of these white SCs.

Acting Chief Justice Zondo:

Well let me say this, going back to your immediate past question. This is what happened. The people who left did not leave at the same time.

Commissioner Mpofu:

Yes.

Acting Chief Justice Zondo:

So, like I would have at a certain time, a certain number of whites and a certain number of women and a certain number of blacks, but they would, some would leave, and the numbers will still be fine and maybe the whites would continue, more blacks would leave. Because remember a lot of black lawyers had started much earlier and their practices had been, they had been out of their practice [intervenes]...

Commissioner Mpofu:

Okay, is your short answer that you, there, you had no option? There were no black Silks available to replace these seven white Silks?

Acting Chief Justice Zondo:

No, no. No, it's not the answer. The answer is simply that at a certain time when the white Silks were taken, my recollection is there was nothing to be spared about the

numbers. But what would happen is that later on others left and most of the time it would be black lawyers because they had spent a lot of time already. A lot of whites joined later.

5 **Commissioner Mpofu:**

I see.

Acting Chief Justice Zondo:

Ja.

10

Commissioner Mpofu:

All right, okay. I'm still not [intervenes]...

Deputy President Petse (Chairperson):

15 Commissioner.

Commissioner Mpofu:

Yes?

20 **Deputy President Petse (Chairperson):**

Commissioner Mpofu [intervenes]...

Commissioner Mpofu:

I'm going to last one.

25

Deputy President Petse (Chairperson):

...be mindful of the time.

Commissioner Mpofu:

Yes. Ja, no, that's why I'm, for the record I'm still not happy with that answer.

5

Acting Chief Justice Zondo:

Okay.

Commissioner Mpofu:

10 But you and I can discuss it [intervenes]...

Acting Chief Justice Zondo:

Ja, no.

15 **Commissioner Mpofu:**

...offline.

Acting Chief Justice Zondo:

We can. We can.

20

Commissioner Mpofu:

Ja. Thank you for your patience, Acting Chair. Now the last issue that I want to talk about which is, okay, I'll see how much I can test the patience of the Chair, because it's not really the last issue, but I'll try to make it the last issue. The...it's a quick one.

25 Going back to the question of acting, you know, I was saying that when you asked me to act, I can still remember what happened. I got a phone call from you and then I got another one, a letter from [intervenes]...

Acting Chief Justice Zondo:

And you acted very well.

5 **Commissioner Mpofu:**

Thank you very much. You even recommended one of my judgments. It was reported.

Acting Chief Justice Zondo:

10 Yes.

Commissioner Mpofu:

15 But and then I got a letter from Minister Maduna and so on. Now, yesterday I asked one of the candidates about how it came about that he, you invited him to act a month or two ago and the answer was quite difficult to comprehend. So, I just want to ask you, can you tell us the circumstances under which you invited Judge President Mlambo to act in the constitutional court now and whether it had anything to do with this process? He said something about the President did this and then he didn't finish the sentence. What actually happened?

20

Acting Chief Justice Zondo:

25 Mm. This is what happened. Some time back I don't know whether it was 2020, I suspect it may have been 2020, the chief justice and I had discussed possible candidates for acting and we had agreed that we should invite him, that is Judge President Mlambo. And the chief justice had asked me to make the phone call and talk to him and try and hear whether he would agree, and I made the call, but he, as far as I can recall he declined. My understanding was that he was not declining on the basis that I not available at that stage. Maybe I can be available later. I may have misunderstood him, but my impression was that he had declined. So, I reported back

to the chief justice. So, we looked for other people. Then last year after I went back to court and became acting chief justice [intervenes]...

Commissioner Mpofu:

5 Sorry, DCJ.

Acting Chief Justice Zondo:

Ja.

10 **Commissioner Mpofu:**

I'm really sorry to interrupt. I do understand, he looked uninterested and then you called him again.

Acting Chief Justice Zondo:

15 Ja.

Commissioner Mpofu:

I just want this particular [intervenes]...

20 **Acting Chief Justice Zondo:**

This part, ja, that's the one I'm coming to.

Commissioner Mpofu:

Ja.

25

Acting Chief Justice Zondo:

I got a letter from the minister expressing a concern that in the constitutional court it looked like we were not affording judges president opportunities to act in the con court. I don't know whether he included senior judges in general, but I know that he mentioned judge's presidents.

5

Commissioner Mpofu:

Specifically, ja.

Acting Chief Justice Zondo:

10 And he asked me if, I can't remember how he put it, but he was asking me that he should be allowed to act in a certain term. I think it was the third term if I'm not mistaken.

Commissioner Mpofu:

15 Who is he?

Acting Chief Justice Zondo:

The minister was asking if Judge President Mlambo could, I could consider him to act in the third term because he was of the view that he has, he's experienced, he has contributed to jurisprudence. At that stage I said no, because I had already enough people [Indistinct – crosstalk 08:32:21] or maybe not enough but I had finalized acting appointments. But I did say to him we had asked Judge President Mlambo sometime before and he had declined, so it's not as if he had been sidelined. And I also took the, I also explained, gave him names of a number of judges president who had been given opportunities in the constitutional court to say here is our track record, how we have given judges president and other senior judges opportunities. But I said to him, if I recall correctly, because had identified him before as one of those who are deserving of being given an opportunity, I could consider him at some stage in the future [intervenes]...

30

Commissioner Mpofu:

Yes, okay.

Acting Chief Justice Zondo:

5 ...which is [intervenes]...

Commissioner Mpofu:

10 No, thanks, that's enough. Acting President, if, I know I'm not allowed to follow-up
on my own question, but just a small question. In the same vein, can you just, and
after this I'll go, can you just tell us now the circumstances under which judge
Unterhalter's acting came about, because the reason I'm asking this is because there
is concern that has been expressed there are judges who were shortlisted, if you
remember and then two were selected by the President. And that at least one of
15 those judges had never acted, but he was overlooked and someone whom the
commission had not even shortlisted has been made to act. Can you just clear the
air?

Acting Chief Justice Zondo:

Yes.

20

Commissioner Mpofu:

Who called who this time?

Acting Chief Justice Zondo:

25 Well, this time it was this body in October when we finished our interviews that
expressed the view that I should consider giving the candidates who had not been
appointed or whom we had not recommended an opportunity to act, and I gave him
an opportunity because that was the view that was expressed by this body.

Commissioner Mpofu:

5 No, but, no we said those people who have not had an opportunity to act, I'm just saying in that group that included somebody who had actually by this body's ranking had been recommended. So, shouldn't that person have been the first person to be considered rather than one who had been, let's say not appointed. Maybe it didn't cross your mind, but I'm just [intervenes]...

Acting Chief Justice Zondo:

10 No, my recollection is that [intervenes]...

Commissioner Mpofu:

15 And there is...I'm so sorry, Acting...the reason I'm asking this is because that person did not put themselves forward again and I suspect that that might be, they might have felt that well if I can be overlooked like this then what's the point.

Acting Chief Justice Zondo:

20 I think that person, if I'm not mistaken, is somebody whose name we put forward to the President. So, at the time I made the decision who to invite. We didn't know whether he would be successful with the President or not.

Commissioner Mpofu:

Thanks. Ja. No, that explains it.

Acting Chief Justice Zondo:

25 Ja.

Commissioner Mpofu:

Thank you very much.

Commissioner Malema:

Follow-up, Chair.

5 **Commissioner Mpofu:**

I'm sorry, Acting President.

Minister Lamola:

Ja, follow-up also, Acting President.

10

Deputy President Petse (Chairperson):

Thank you, Commissioner Mpofu. Commissioner Malema.

Commissioner Malema:

15 Thank you. Thank you very much, Chair. Is it a norm for a minister to send people to, heads of court to act like it happened in this case where a minister suggest that JP Mlambo must come and act at the constitutional court?

Acting Chief Justice Zondo:

20 Did you say is it a norm?

Commissioner Malema:

Ja.

25 **Acting Chief Justice Zondo:**

No, it's not a norm.

Commissioner Malema:

It's a first of its own kind?

5 **Acting Chief Justice Zondo:**

I don't know if he or any other minister may have done it before, but it's certainly not a norm.

Commissioner Malema:

10 It didn't come as a shock to you that a minister can go all out to suggest someone to come and act, particularly a person who's even nominated to, for the position of chief justice?

Acting Chief Justice Zondo:

15 Well, I don't think at that time he was nominated, there were nominations, but I did see it as unusual, but you know, I acted in the manner in which I did.

Commissioner Malema:

On a separate matter, Acting CJ. Do you have a problem with criticism?

20

Acting Chief Justice Zondo:

No, I don't.

Commissioner Malema:

25 Do you find a word, house nigger, an insult?

Acting Chief Justice Zondo:

I considered it an insult.

Commissioner Malema:

5 It can't be because in the historical academic category, this word is used by blacks
criticizing other blacks. Malcolm X uses this word, Steve Biko uses this word when
he describes non-whites. Malcolm X says the house niggers actually wants to go and
stay in a place like Saldanha and be the only who says I'm the only black here, because
he loves his white so much. Biko says black, I mean house niggers are black people
10 who want to be white, who loves their white and want to destroy everyone who
dares to destroy white supremacy. It's a...you can...it can even be an academic
criticism.

Acting Chief Justice Zondo:

15 Mmhmm.

Commissioner Malema:

And that's how she characterizes the black African judges who are sitting there, that
they can go all out to destroy those who seek to destroy white supremacy with an
20 intention to impress. It's an engagement which has not started now.

Acting Chief Justice Zondo:

Well, I find even when you explain it like that, Commissioner Malema, I would find it
insulting to me.

25

Various Speakers:

Exactly.

Commissioner Malema:

No, but let me put it to you, Malcolm X says the model house negro loves his master, prepared to pay three times for this house just to stay next to the white master. Biko says house negroes as a non-white, blacks who seek to be white.

5

Acting Chief Justice Zondo:

Yes.

Commissioner Malema:

10 Blacks who fight against disruption of white supremacy, that's what Biko says.

Acting Chief Justice Zondo:

But if [intervenes]...

15 **Deputy President Petse (Chairperson):**

Commissioner, I'm sorry, Acting Chief Justice.

Acting Chief Justice Zondo:

Please, please, please.

20

Deputy President Petse (Chairperson):

Commissioner Malema, don't you think that it would be best perhaps if there's a need to debate this at some other point? Because here there's a difference of opinion. Whatever the case might be as presently advised if that is not an insult, that is clearly the meaning, and this is the position that is taken by the Acting Chief Justice. So, continuing with the debate has no virtue. It's not going to serve any purpose. You disagree on this, that's your understanding, it's his understanding.

25

Commissioner Malema:

No, we are not disagreeing. You see, Chair, in this platform we have persuaded people who have arrived at certain conclusions, and they come to accept that you see with the information that we just shared, I now appreciate that the way I was viewing it is different. We always persuaded one another here and we have never, we've had a lot of people saying I concede, I buy into that argument. That what I was trying to do and I'm trying to say to Acting CJ when a person says house nigger and I'm not a house nigger, why should I be bothered, there are a lot of people who say man are trash. I'm not trash, but I'm not going to call any press conference and say we are not going to be insulted here as men that we are trash.

Deputy President Petse (Chairperson):

Commissioner Malema, let me interrupt you once again. I will allow you to put your final proposition to him and whatever answers he gives that should be the end of the matter.

Commissioner Malema:

My proposition is that a black African female engaging black African dominantly males and calling them house negros is not an insult, it is a criticism that it's always accepted, especially in the academia and amongst Africans who criticize one another. Do you accept that?

Acting Chief Justice Zondo:

No, I don't accept that, Commissioner Malema. I think it's very insulting.

Commissioner Malema:

The last point, it means Malcolm X and Biko have insulted us. The last point I want to raise is the issue on two and a half year left. To be honest, Acting CJ, what is it that you are going to do which you can't do now, which you have not done now? So, you

see what Judge Maya did when she came here, she gave us, she said when I came in, these are the commitments I've made, this is what I was able to deliver on. As an acting, I mean as a CJ, deputy CJ I came in, these are the powers I can executive and this is what I've done. All I hear is what you are going to do, not what you have done.

5 And you have been acting as well. I don't hear you say this is what I've done and going forward this is what I will do. Because the truth of the matter, Acting CJ, is that, and you described it very nicely earlier, you said you were sitting with a CJ in the same office, calling people to come and be chairpersons of a commission which clearly told me that there's a collective leadership between the CJ and the deputy CJ.

10 So, why would you want to leave the position of deputy CJ and become a CJ to deal with what which you can't do as a deputy CJ in the next two years and a half?

Acting Chief Justice Zondo:

Thank you, Commissioner Malema. Well, I don't whether I should say unfortunately or fortunately, but I didn't serve for a long time as DCJ before I was asked to chair the commission. So, for a long time I spent most of my time in the commission. So, I have not had as much time as I would have had if I had not accepted appointment as chairperson of the commission to get involved in a lot of matters that I would otherwise have been involved in as DCJ. And of course, since I became at Acting CJ

15 from July, everyone knows that I've been doing that while at the same time trying to finish the important work of the commission. Thank you.

20

Commissioner Malema:

Thank you very much, Acting CJ. The last point, Chair, I'm going to ask that we be provided with the letter of the minister and the letter of the acting CJ to Judge President Mlambo to ascertain ourselves that indeed the minister did not attempt to interfere with this process after there were nomination of CJs. Because when we asked the JP Mlambo yesterday, he said indeed it was in December, it was after and Commissioner, I almost said Commissaire, Commissioner Notyesi said in December

25 we had already defined the process, the roadmap to where we are now. So, please,

30 we want to get to the bottom of that matter.

Deputy President Petse (Chairperson):

Thank you, Commissioner Malema. I prefer to say nothing on that. Honorable Minister, you wanted to say something earlier.

Minister Lamola:

5 Ja. No, thank you, Acting President. I have requested the, my staff from the office that they must circulate the letter [intervenes]...

Acting Chief Justice Zondo:

Yes.

10

Minister Lamola:

...Acting Chief Justice, that I wrote to you.

Acting Chief Justice Zondo:

15 Yes.

Minister Lamola:

And I want to confirm most of the things that you have said.

20 **Acting Chief Justice Zondo:**

Yes, thank you.

Minister Lamola:

25 But I just want to go to Section 175(1) of the Superior Courts Act and I'm going to read it for the benefit of the [intervenes]...

Commissioner Mpofu:

Sorry, there's no such [intervenes]...

Deputy President Petse (Chairperson):

5 I beg your [intervenes]...

Minister Lamola:

Of the Constitution, I'm sorry.

10 **Various Speakers:**

There's no section.

Acting Chief Justice Zondo:

I was wondering.

15

Minister Lamola:

Of the Constitution, I'm sorry, Acting Chief Justice.

Acting Chief Justice Zondo:

20 Yes.

Minister Lamola:

25 Section 175(1) of the Constitution says "[t]he President may appoint a woman or a man to serve as an acting deputy chief justice or judge of the constitutional court, if there's a vacancy in any of those offices. Or if the person holding such an office is absent" it continues "the appointment must be made on the recommendation of the

5 cabinet member responsible for the administration of justice acting with the concurrence of the chief justice and an appointment as an acting deputy chief justice must be made from the ranks of the judges who had been appointed to the constitutional court in terms of Section 174(4)". What is your understanding of this section?

Acting Chief Justice Zondo:

Well, it says you, the minister makes recommendations to the President with the concurrence of the chief justice.

10

Minister Lamola:

15 Section 175(2) says "The cabinet member responsible for the administration of justice must appoint acting judges to other courts after consulting the senior judge of the court on which the acting judge will serve" and maybe what is your understanding of this one?

Acting Chief Justice Zondo:

Well, you might have to read that one again because I'm not sure if it's relevant for this question.

20

Minister Lamola:

No, I just want to show the difference.

Acting Chief Justice Zondo:

25 Ja, just read it again.

Minister Lamola:

It's not formulated the same way as the [intervenes]...

Acting Chief Justice Zondo:

Just read it.

5 **Minister Lamola:**

"The cabinet member responsible for the administration of justice must appoint acting judges to other courts after consulting the senior judge of the court on which the acting judge will serve".

10 **Acting Chief Justice Zondo:**

Well, I guess all you are doing, Minister, is just to highlight what the Constitution says [intervenes]...

Minister Lamola:

15 Yes.

Acting Chief Justice Zondo:

...and argument might arise later as to what it means.

20 **Minister Lamola:**

Yes.

Acting Chief Justice Zondo:

25 Commissioner Malema asked me the question and I clarified whether he was asking whether it was the norm.

Minister Lamola:

I'm [intervenes]...

Acting Chief Justice Zondo:

5 And not whether it was lawful or not and I said no, it's not the norm.

Minister Lamola:

Ja. I'm still going there, Acting Chief Justice.

10 **Acting Chief Justice Zondo:**

Yes, okay.

Minister Lamola:

15 The point I want to break you in, as you said when we had the conversation you did not clearly remember what we were dealing with.

Acting Chief Justice Zondo:

Yes.

20 **Minister Lamola:**

To the best of my recollection what I remember is that you were now requesting a further extension of appointments of the two JPs.

Acting Chief Justice Zondo:

25 Mmhmm.

Minister Lamola:

I think it was JP Tlaletsi and JP Japie if I'm not mistaken.

Acting Chief Justice Zondo:

5 Not Japie, maybe DJP Madondo?

Minister Lamola:

10 Ja, I think DJP Madondo. So, I raised the matter to say I mean there are other JPs, why don't we also rotate and give them the same opportunity that we have afforded these other JPs and I think if I remember that was a discussion that I raised at the time. If I'm not mistaken.

Acting Chief Justice Zondo:

15 No, my recollection is different. I received a letter from you. So, it was the letter that I received first that was, as I recall now, saying in effect it looks like you at the constitutional court might not be giving judges president opportunities to act. It may have said and other senior judges, I can't remember.

Minister Lamola:

20 Yes.

Acting Chief Justice Zondo:

25 But certainly, judge's president opportunities to act and that you thought that they should be given opportunities and you mentioned Judge President Mlambo and you said you think that he has the necessary experience, and he has contributed to *jurisprudence* or something like that. And then after I had got that letter, I first phoned you.

Minister Lamola:

Yes.

Acting Chief Justice Zondo:

5 And we had a discussion and what I said earlier is what in effect I said to you, and I
said I'm going to write to you and basically say the same thing. And when I spoke to
you over the phone about it and I told you that we had previously invited Judge
President Mlambo and he declined, you were understanding. That's my impression
that, okay, then you know, that was my understanding, but I decided I was going to
10 respond to your letter because it seemed you had the wrong impression about
whether we had been giving judges president opportunities. And in my response, I
gave a number of JPs that we had given opportunities before, as well as senior judges.
I mentioned the chairperson for example, even though he may not have been a
judge, just to show that we had given senior judges opportunities. So, that's my
15 recollection of how it happened.

Minister Lamola:

Ja, maybe when the letters come [intervenes]...

20 **Acting Chief Justice Zondo:**

Yes.

Minister Lamola:

25 ...they will remind us, but my recollection is that it was prickled by the fact that
[intervenes]...

Acting Chief Justice Zondo:

Yes.

Minister Lamola:

...it is to give other JPs an opportunity.

Acting Chief Justice Zondo:

5 Ja, ja.

Minister Lamola:

But the letters will help.

10 **Acting Chief Justice Zondo:**

Ja.

Minister Lamola:

But I do agree that there was that [intervenes]...

15

Acting Chief Justice Zondo:

Yes.

Minister Lamola:

20 ...deliberation.

Acting Chief Justice Zondo:

Yes.

25 **Minister Lamola:**

Will you say that is an abnormality as the minister if I raise an issue to say but there are other JPs, what is the process and all that? Couldn't we consider it?

Acting Chief Justice Zondo:

- 5 Well, I think you are linking it to Commissioner Malema's question. He was simply asking whether it's a norm and I said it's not a norm which is obviously different from whether it's lawful or not lawful.

Minister Lamola:

- 10 Is it lawful?

Acting Chief Justice Zondo:

No, no, I don't want to get involved in that.

- 15 **Minister Lamola:**

Okay, no that's fine.

Acting Chief Justice Zondo:

- 20 But what I do know is that it's not normal, it had not happened in my experience at least, but I think it had not happened to me, but we discussed it.

Minister Lamola:

Okay.

- 25 **Acting Chief Justice Zondo:**

Ja.

Minister Lamola:

That's fine. I think [intervenes]...

5 **Acting Chief Justice Zondo:**

Okay, thank you, Minister.

Minister Lamola:

...it's fair to leave it at that [intervenes]...

10

Acting Chief Justice Zondo:

Yes.

Minister Lamola:

15 Acting Judge President and I want to say let the staff circulate the letter that [intervenes]...

Acting Chief Justice Zondo:

Yes. And if they have got mine to you, they can circulate mine as well.

20

Minister Lamola:

Thank you.

Acting Chief Justice Zondo:

25 But if not, we will get it from my office, but if they have got mine that came to you, they can circulate that one as well.

Minister Lamola:

Thank you. No, I can confirm that my collection also is the same with you, that it was before the processes started.

5

Acting Chief Justice Zondo:

Yes, okay.

Minister Lamola:

10 Thank you.

Acting Chief Justice Zondo:

Thank you.

15 **Deputy President Petse (Chairperson):**

Acting Chief Justice, before we take a comfort break, I just want just following on this, would it perhaps have lessened or allayed your fears if the letter from the minister had merely said consider inviting as many JPs as possible and not confine the invitation to, if I may put it that way, to a select few of judge's president instead of going further and saying I've got this candidate?

20

Acting Chief Justice Zondo:

Well in terms of, and one can only answer that question in terms of what the norm is. If the suggestion was, it looks like you are not giving judges president an opportunity, opportunities to come and act, just in general, maybe it might not have meant really anything. But the letter didn't just speak about Judge President Mlambo. I think it started by talking in general about judge's president and then Judge President Mlambo was then mentioned, but it started by, I think, expressing a concern that seemed to relate to judge's president.

25

Deputy President Petse (Chairperson):

Thank you, Acting Chief Justice. I think it would best perhaps not to draw you into [intervenes]...

5

Acting Chief Justice Zondo:

Yes.

Deputy President Petse (Chairperson):

10 ...what might [intervenes]...

Acting Chief Justice Zondo:

Yes.

15 **Deputy President Petse (Chairperson):**

...turn out to be controversial. That should be a matter that as members of this commission should, you know, debate in the fullness of time.

Acting Chief Justice Zondo:

20 Ja.

Commissioner Malema:

25 Chair, can I come in there? Please, I don't want us to leave here with an impression that we are going to find in any of the letters a conversation that JP Mlambo must be appointed. That's not the letter I was asking. The letter we were asking to confirm if it came before the process or not. But this, the Acting CJ says following the letter, they had a conversation with the minister where the minister was very specific on an

individual who must be invited to come and act. It's not in the letter. We won't find it in the letter.

Acting Chief Justice Zondo:

5 No, no [intervenes]...

Commissioner Malema:

10 So, we should take what the Acting CJ says as is because if we are going to debate there and then the debate says ja, in the letter there is nowhere where they say Mlambo must act [intervenes]...

Minister Lamola:

No, there is.

15 **Commissioner Malema:**

Then [intervenes]...

Minister Lamola:

It's in the letter.

20

Commissioner Malema:

25 Then we'll be conflicted, but I, all I was saying is that I needed the letter to confirm if the letter came before the processes and then the letter to JP to come and act, if it came before the roadmap we had outlined. Because he said the letter came in December and if it came December, it was already after we had outlined the roadmap to where we are now.

Deputy President Petse (Chairperson):

Commissioner Malema, obviously the letters will be read in conjunction with whatever responses came from the [intervenes]...

5 **Acting Chief Justice Zondo:**

Thank you, Chair.

Deputy President Petse (Chairperson):

...Acting Chief Justice.

10

Acting Chief Justice Zondo:

May I just clarify [intervenes]...

Deputy President Petse (Chairperson):

15 They will not be seen in isolation.

Acting Chief Justice Zondo:

May I just clarify [intervenes]...

20 **Deputy President Petse (Chairperson):**

By all means, Acting Chief Justice.

Acting Chief Justice Zondo:

25 Yes. I just want, don't want Commissioner Malema or anybody to misunderstand. The conversation that I talked about that I had with the minister happened after I had received the minister's letter, but before I wrote, I responded in writing to the

minister. So, before I responded to the minister in writing I phoned him. We had that conversation. After we had spoken, I then wrote a letter which was saying, no I can't take him, and we are giving opportunities to JPs and giving him a list. So, I just want to make sure the sequence is not misunderstood.

5

Deputy President Petse (Chairperson):

Yes. Thank you, Acting Chief Justice. Could we, I make it as 17:50 now, but I think it's time that we take a comfort break, say 10 minutes and I still have about 2, 4, 6, 8, 9 [intervenes]...

10

Various Speakers:

I'm sure five of them have retired.

Deputy President Petse (Chairperson):

15 ...members of the commission.

Various Speakers:

[Indistinct 08:57:48].

20 **Deputy President Petse (Chairperson):**

Members of the commission who still have [intervenes]...

Minister Lamola:

I am mostly covered, I have very little remaining.

25

Various Speakers:

Can we move [intervenes]...

Deputy President Petse (Chairperson):

Yes, we can only determine that when we resume.

5 **Acting Chief Justice Zondo:**

Okay.

Deputy President Petse (Chairperson):

Thank you. Make it 10 minutes. Certainly.

10

Acting Chief Justice Zondo:

And this seat has been very hot. I was hoping you are saying I'm done, it's been very hot, this seat.

15 **TEA ADJOURNMENT**

Deputy President Petse (Chairperson):

Welcome back, Acting Chief Justice.

20 **Acting Chief Justice Zondo:**

Thank you. Thank you, Chairperson.

Deputy President Petse (Chairperson):

25 Not all the letters that we were expecting have come through. So, I propose that in the meantime we continue with the interview. We'll deal them at the tail end of the interview.

Acting Chief Justice Zondo:

Okay.

5 **Deputy President Petse (Chairperson):**

Thank you. Commissioner Dodovu, you are the next.

Commissioner Dodovu:

10 All right. Thank you very much, Acting President. Good evening once more, Justice Zondo.

Acting Chief Justice Zondo:

Good evening, Commissioner.

15 **Commissioner Dodovu:**

Yes, I [intervenes]...

Acting Chief Justice Zondo:

It's been a long day, we start at good morning, good afternoon [intervenes]...

20

Commissioner Dodovu:

Yes, unfortunately.

Acting Chief Justice Zondo:

25 ...we are now good evening.

Commissioner Dodovu:

Yes. I want to traverse with you your CV which is book 1 of 1 and I want to take you to page 4 of that booklet.

5

Acting Chief Justice Zondo:

Page 4?

Commissioner Dodovu:

10 Yes.

Acting Chief Justice Zondo:

Is that the paginated 4?

15 **Commissioner Dodovu:**

Yes, paginated...

Acting Chief Justice Zondo:

Okay.

20

Commissioner Dodovu:

Yes, paginated 4.

Acting Chief Justice Zondo:

25 Okay.

Commissioner Dodovu:

Lower, the marked, yes.

5 **Acting Chief Justice Zondo:**

Okay.

Commissioner Dodovu:

10 I'm very much proud of you in respect of the articles that you served, culminating in your conferment as the attorney. And I can see here that in 1985 in March until August 1985 you served the articles in the [Indistinct 09:20:38] firm of Mxenge.

Acting Chief Justice Zondo:

Yes.

15

Commissioner Dodovu:

I'm sure despite what happened to the two, to the couple in 1981 and 1985, you must feel very much proud that we are part of this, you have large heart and elevated by that.

20

Acting Chief Justice Zondo:

I feel very proud, I feel very privileged to have been articulated to Mrs. Mxenge. Unfortunately, I never got to meet [intervenues]...

25 **Commissioner Dodovu:**

Yes.

Acting Chief Justice Zondo:

...Mr. Mxenge.

Commissioner Dodovu:

5 Yes, I can see that.

Acting Chief Justice Zondo:

Yes.

10 **Commissioner Dodovu:**

The point why I'm raising this is because as we all know the history of this country, Ms. Mxenge was brutally murdered, cold-bloodedly on the 1st of August in 1985 and at the end of the year, at the end of the month you resigned.

15 **Acting Chief Justice Zondo:**

Yes.

Commissioner Dodovu:

20 Was it because there was no principle who could chaperon and usher you [intervenes]...

Acting Chief Justice Zondo:

Yes, I think [intervenes]...

25 **Commissioner Dodovu:**

...in the process?

Acting Chief Justice Zondo:

I think there was no one, her other partners didn't qualify to take an article clerk, if I recall correctly. Or if that was not the case, maybe they had reached the maximum number they were allowed to take. But my recollection is that they were, they didn't
5 qualify. I think at that, during that time you had to have been a partner for, I don't know whether three, to have practiced for three years before you took an article clerk, I can't remember. But my recollection is that they did not qualify.

10 **Commissioner Dodovu:**

I would imagine this would've been a very painful moment, because as we understand when she was cold-bloodedly murdered it was only a week after she addressed the [intervenes]...

15 **Acting Chief Justice Zondo:**

Yes.

Commissioner Dodovu:

...funeral of the Cradock Four.

20

Acting Chief Justice Zondo:

Yes.

Commissioner Dodovu:

25 No, yes, no.

Acting Chief Justice Zondo:

Yes, no it was a very [intervenes]...

Commissioner Dodovu:

Mbulelo Goniwe, Fort Calata, Sparrow Mkhonto and Sicelo Mhlauli.

5

Acting Chief Justice Zondo:

Yes, no, it was a very painful, you know, period. She had been very kind to me. She had allowed me to attend lectures while I was doing articles and, you know, not many principles who would allow you to do that. And when the news broke out of her assassination, I can still remember the spot on which I was on campus and I remember it was a sunny day in the afternoon when I, or evening, but it had been a sunny day that day.

10

Commissioner Dodovu:

15 And despite the setback you resurrected and here you are now.

Acting Chief Justice Zondo:

Yes, no.

20 **Commissioner Dodovu:**

The Acting Chief Justice, aspiring to be at the echelons, top echelons of the judiciary in this country.

Acting Chief Justice Zondo:

25 No, thank you very much. I, it's just a pity that she was assassinated because I think she would have been very, I would have very much liked to see how she contributed in my life. I have told the story in other fora and I think some of the commissioners here may have been in some conference where I spoke to say, to articulate the role

she played in giving me confidence when she allowed me to have a full office, have a secretary, even though I was an article clerk myself and showing confidence in me and saying we don't know labor law, but we think you have some experience from the legal resource center. You must open this labor law department and run it and
5 [intervenes]...

Commissioner Dodovu:

And just as a final word on this subject, before I get to the next one, their names are engraved in the head office of our prosecuting authority.

10

Acting Chief Justice Zondo:

Yes.

Commissioner Dodovu:

15 How I wish that men and women who are in the NPA, you know, symbolize and emulate their exemplary leadership in terms of how to bring about justice in our land.

Acting Chief Justice Zondo:

Mm.

20

Commissioner Dodovu:

Yes, I wish [intervenes]...

Acting Chief Justice Zondo:

25 That's for sure.

Commissioner Dodovu:

I wish...having said that, let me then go straight to the issues that you raised. I carefully listened to you when you shared your vision and please allay my fears and correct me if I'm wrong. You put emphasis on the issues of the institutional model that you, must be implemented. You also spoke of the infrastructure that is not
5 [intervenes]...

Acting Chief Justice Zondo:

Yes.

10 **Commissioner Dodovu:**

...the state-of-the-art infrastructure within the judiciary. And as you were talking, I was carefully listening to you, you kept on saying I've been told by judge president, I've been told, I've been told this. What concerns me is the fact that it doesn't seem to me that you personally as [intervenes]...

15

Acting Chief Justice Zondo:

Yes.

Commissioner Dodovu:

20 ...either the acting chief justice or the deputy chief justice, you have gone there personally. You have seen it; you have witnessed what is happening. It's not only what you heard from them. If that is the case, why are you not doing that? Visiting [intervenes]...

25 **Acting Chief Justice Zondo:**

Yes.

Commissioner Dodovu:

...especially those in the remote areas of our country [intervenes]...

Acting Chief Justice Zondo:

Yes.

5

Commissioner Dodovu:

...as part of leadership.

Acting Chief Justice Zondo:

10 Yes. No, no, thank you. That's a legitimate concern you are having but let me give
you context. These PEECs that I was talking about, they are chaired, they are
provincial structures. They are chaired by the judge's president in the different
provinces, and they are attended by representatives of various stakeholders involved
15 in the justice cluster. So, the chief justice would not go and sit in those meetings. He
would sit in the national enhancement, efficient enhancement committee and that
is the committee to which the PEECs escalate matters which require national
resolution or national leadership. So, I have to rely on the judge's president with
regard to how those PEECs are functioning.

20 **Commissioner Dodovu:**

But that's my point, why don't [intervenes]...

Acting Chief Justice Zondo:

Yes.

25

Commissioner Dodovu:

...you personally visit, go there to those courts, and personally experience what is
really happening. When they say there are cracks [intervenes]...

Acting Chief Justice Zondo:

Okay. Okay, no, no, now I understand. So, it's not so much about what the [intervenes]...

5

Commissioner Dodovu:

No, yes.

Acting Chief Justice Zondo:

10 ...the JPs say. Look, one, since I became acting CJ in July, you will know that I've been
also doing the commission work which has been under pressure to be finished. So, I
wouldn't have had time to go and visit, but if I'm appointed as chief justice there are
a number of courts that I would like to visit. So, certainly when the commission work
is done. But in the light of the fact that I have not had the opportunity to visit, it was
15 legitimate to say JP you are the leader of the judiciary in that province, you chair the
PEEC, what is the state of the courts, including lower courts in your province. And
then they can give me reports and then, but I've also got reports from the lower
judiciary of people who could get information for me from the lower judiciary. But if
I'm appointed as chief justice, I would visit some of the places myself.

20

Commissioner Dodovu:

Just a last point, again as I was listening to you, sharing with us your vision, there are
areas that are of concern to me that you didn't touch on. Firstly, my impression and
correct it if it is wrong, my impression is that you just want to continue to, from where
25 the chief justice, former chief justice was until the end without new innovation,
without new perspectives to the court, without new, entrenching new things that
will take the court to the higher levels.

Acting Chief Justice Zondo:

30 Well [intervenes]...

Commissioner Dodovu:

I'm saying this, listen to me [intervenes]...

5 **Acting Chief Justice Zondo:**

Yes.

Commissioner Dodovu:

10 Let me tell you why I'm saying this. I'm saying this because at the moment as it is, there is a serious concern about the confidence of our courts which in all intents and purposes it has gone down. People no longer trust the courts in the way that they used to. There is a discussion around a single judiciary. I thought that you will share with us, if you support that, what is it that needs to happen in respect of the modernization of our courts which is also a topical issue. For me, all of these issues
15 are current issues that must be taken forward. And as an aspirant chief justice I was carefully listening to hear what are your views about all of these topical issues that must be attended. Concomitant to that is the fact that there is an attack against the judiciary that you delay your judgment for example, that the quality of judgments are problematic, the languages that you use is combative and all of that. And for me,
20 sitting here, as a deputy chief justice, am I incorrect to expect that these are the articulations that must encapsulate your vision going forward?

Acting Chief Justice Zondo:

25 No, thank you. Thank you. I hope I'm going to be able to deal with all of the issues you raise. But let me start with regard to your impression that I was just going to continue from where the former chief justice left off without anything new that I would come with. What I was saying was the structures that have been put in place have been put in place while I was also part of the leadership. These structures, like the PEEC and the NEEC, these structures enjoy the support of the collective
30 leadership of the judiciary, the heads of court. They support it. Their position is that these structures are working well. They might need to be fixed here and there.

So, my approach is that I don't want to unduly want to change something that can be fixed to make to work, but that doesn't necessarily mean that if we look at some of these structures in terms of how they work, we can't start saying but what about if we do it this way in order to improve or enhance its performance. We can look at that and ideas about what else can be done would also be explored. It's important to make sure that the heads of court, you know, come on board because they are very critical in whatever the chief justice does. So, certainly it's not like there is an idea of closing one's mind to say one would not introduce anything, but the idea is let's see where things are not working and where they are not working, if we can fix them, fine. If we can't fix them, let's look at introducing other things, but appreciating the role of the heads of court in the whole process. I certainly support the concept of a single judiciary. It's just that you are given a certain amount of time within which to say what you say, and I think I went beyond that, and you accept that you may be asked on some of the issues that you would have liked to deal with. I certainly support the concept of a single judiciary. On the modernization, I did say that I embrace it and the reason why I didn't go into details is because I know that you have been told about it by Judge President Mlambo for example, but I wanted to make it clear that I embrace it. So, ja. Thank you.

20 **Commissioner Dodovu:**

Right, thank you very much, Acting President.

Deputy President Petse (Chairperson):

Thank you, Commissioner Dodovu. Advocate Madonsela.

25

Commissioner Madonsela:

Thank you, Acting President, and good evening, Deputy Chief Justice.

Acting Chief Justice Zondo:

30 Good evening, Commissioner Madonsela.

Commissioner Madonsela:

I've been largely covered by a number of questions which have been put to this witness, I had five. Now I've been reduced to one or two.

5 **Deputy President Petse (Chairperson):**

He's a candidate, Commissioner Madonsela. He is not a witness. Thank you.

Commissioner Madonsela:

10 I'm so sorry. I'm so sorry, Deputy Chief Justice. But [Vernacular 09:35:20]. I'm so sorry, ja. There is a view, DCJ, that the SCA and the constitutional court as appellate courts should be collapsed into one apex court with panels to determine appeal cases in order to improve access to justice and remove a layer of appellate courts. I recall that the *jurisprudence* of your court, the constitutional court, has been that they benefit a lot from the wisdom that may come from courts below it in terms of
15 fashioning or purifying the *jurisprudence* that emerges ultimately from an apex court. Is there any justification in that view? Do you embrace it, or do you hold the traditional view that there should be an intermediate appeal court?

Acting Chief Justice Zondo:

20 Well, at this stage I would stay with the two courts as they are. This particular issue, this view about the SCA and the con court coming into one, being one court is not new. It was debated for quite some time, many years ago when I was still JP and ultimately it was not accepted. It was debated among heads of courts, it was debated in meetings with I think the portfolio committee of the Department of Justice and
25 Constitutional Development if I'm not mistaken, many years ago as the ministers, different ministers who came, but it may well be that a time will come when maybe it will attract enough support as time goes on. So, my own view at this stage would not be to put the two courts together, but, you know, if there are further arguments one can listen and keep an open mind.

30

Commissioner Madonsela:

That is primarily because you value the wisdom that comes from the lower courts.

Acting Chief Justice Zondo:

- 5 It's very important, particularly, I mean also from the High Court, but if a matter has been dealt with by the high court and dealt with by the SCA, you know, there is a certain value that it's been dealt with at those two levels. And of course, if one is looking at the idea that the constitutional court should not have too many cases that it deals with, then it means a lot of matters should end at the SCA and not really come to the constitutional court. Those that come to the constitutional court must be matters which qualify because of a certain, a level of significance and so on. So, but it may well be that at another time the view might attract enough positive responses.
- 10

Commissioner Madonsela:

- 15 Thank you. It seems to me, since you hold that view, it seems to me then there is merit in the concern raised in the, out there in the public about the election that you made in the warrants case against Mr. Zuma.

Acting Chief Justice Zondo:

- 20 Mmhmm. In which case?

Commissioner Madonsela:

In the warrants case with Mr. Jacob Zuma warrants case, the contempt, sorry, contempt case.

25

Acting Chief Justice Zondo:

Okay, right, okay.

Commissioner Madonsela:

In not allowing the case to go through the high courts, the supreme court and ultimately in the Constitutional Court. I ask, I don't want you to comment about the case, it's a judgment, which judgement is done and dusted now.

5

Acting Chief Justice Zondo:

Ja.

Commissioner Madonsela:

10 It seems to me there was an election open to you to take two routes. One to report the matter to the prosecutorial authority to prosecute to contempt or to go to court, but you chose one route that went, that said he must go directly to the constitutional court. That court now being deprived the wisdom of the other courts if it ultimately had to determine the issue. But it's important for the other reason as well and I want
15 [intervenes]...

Acting Chief Justice Zondo:

Ja.

20 **Commissioner Madonsela:**

...you to deal with it holistically. The other reason why it would be important for it to go through other courts is the level at which you were at the constitutional court at the time as a deputy chief justice in a matter in which your colleagues were to decide a matter brought to court by yourself. Would that not have created a serious
25 pressure on the other judges having to decide a matter, or possibly even dismissing the matter of their own boss?

Acting Chief Justice Zondo:

Well, the previous judgment, because we are now talking about the contempt matter, the previous judgment of the constitutional court had already shown that my colleagues could criticize me, you know, which they did in the first judgment. They
5 saw the matter in a certain way in terms of how I had handled the matter relating to President Zuma. So, there is, certainly I would not have had that view even before the first matter, but certainly not after the first matter where they had clearly shown that it didn't matter at that time, their colleague, I mean I had been party to judgments before where we had dealt with cases involving our own colleagues. We,
10 I was part of the panel that gave a judgment involving Justice Jafta and Justice Nkabinde. So, in that court, we, it was not a first that colleagues are going to deal with a matter that puts on the spotlight their own colleague. Indeed, there was another matter, but I was not there when justices of the constitutional court dealt with the matter involving the extension of the term of office of Chief Justice Ngcobo.
15 He was the chief justice, they dealt with that matter, and they found basically against him. So, there was a history, but even if there was no such history, I would never have thought that justices of the constitutional court might not do the right thing just because I am one of them.

20 **Commissioner Madonsela:**

Thank you. I thought I should clear that up because it was raised with another candidate earlier, yesterday.

Acting Chief Justice Zondo:

25 Okay.

Commissioner Madonsela:

And also in that context, to pick up from what Commissioner Notyesi raised with you, I understand your position that there may be review applications emanating from
30 the state capture report. And it seems to me from what is happening in the state capture and the flurry of complaints and objections against you that the debate is more likely to be ad hominem attacks on you as opposed to really reviews or

rationality or legal grounds which might not involve you personally having to depose to affidavits. Now if you are appointed as the chief justice in circumstances where it is, there's a reasonable prospect that you may be called upon now again to defend your integrity, which is impugned in proceedings challenging your decision in the state capture commission, is not unenviable for the chief justice to be deposing to affidavits each time that the sun rises from the east?

Acting Chief Justice Zondo:

Well, I think that whether it's the chief justice or a deputy chief justice or judge president or any other judge, if somebody takes you to court because of the performance of your constitutional legal duties, you can't simply on that basis and say, you can't say we should not appoint so and so because of that. It's different if the manner in which that person has maybe conducted themselves is the one that gives right to concerns. So, you, it should not be that people who don't want me to be appointed as chief justice because they feel aggrieved by one or other thing I've done, one or other decision I've made in the commission and maybe they vowed that he must never be chief justice, that because they are going to launch a lot of review applications, then they are going to succeed by saying but there's going to be so much litigation against this one. So, my approach is that the correct approach I would urge on this commission is to look at my candidacy and look at what I've done in the commission and if I've not done anything that disqualifies me, the commission should make whatever recommendation or decision it considers fit, but it should not make me feel or any other judge feel that, you know, accepting this commission is career [Indistinct 09:47:27]. So, if you are asked, don't agree, you know, we should not have that situation. We should encourage judges that if you are asked, the country needs you to handle a commission you must make yourself available.

Commissioner Madonsela:

Well maybe the lesson is that it should not be the active judges.

Acting Chief Justice Zondo:

I agree with the view that preferably at least it should be the retired judges, I accept, I agree that that view is preferable.

Commissioner Madonsela:

Thank you.

5 **Deputy President Petst (Chairperson):**

Thank you, Commissioner Madonsela. Commissioner Tshepe.

Commissioner Tshepe:

I waited. Thank you, Acting President. Good evening, Acting Chief Justice.

10

Acting Chief Justice Zondo:

Good evening, Commissioner.

Commissioner Tshepe:

15 Thank you for being patient with us.

Acting Chief Justice Zondo:

Well, thank you for giving me a hearing.

20 **Commissioner Tshepe:**

Acting Chief Justice, I have just a couple of questions. The one is almost a follow-up relating to the question of modernization that the minister raised with you, and I think Commissioner Dodovu also raised. And I've asked the other candidates and I'm happy you embrace it, to use your language, but one of the key issues I have raised with the other candidates is for us as practitioners, we found value in modernization and online CaseLines, virtual hearings and all of that and it has meant there is access to justice. But that is mainly, particularly to those who have access to these

25

resources. Whereas for the vulnerable people in our country where such resources do not exist, in your mind or from your plans what should the chief justice be doing to ensure that access to justice is not just materializing to a few, but it is broadened, particularly when it comes to modernization and online access to courts?

5

Acting Chief Justice Zondo:

Mm.

Commissioner Tshepe:

10 That's my first question to you, Acting Chief Justice.

Acting Chief Justice Zondo:

15 Ja. Can I deal with it? Well, I think that everything possible should be done to make sure that people for example in rural areas are not disadvantaged when it comes to court modernization and IT. But in terms of exactly what it is that might need to be done to make sure they are not disadvantaged, certainly one would need the experts who can say here is advice of what can be done and if the chief justice is somebody who is embracing the idea, he is likely to go along. So, the experts can advise as to what can be done.

20

Commissioner Tshepe:

25 Thank you, Acting Chief Justice. The reason I'm asking this and would have liked to hear if you have thought about it, is the lockdowns during the Covid pandemic meant that this is the one area where easy access to justice was happening online and it's not...for me this is one of those priority areas where we are still in a state of disaster management and therefore access to court is still, it's still a bit of an issue here and there. So, online justice in a way is [intervenes]...

Acting Chief Justice Zondo:

30 Yes.

Commissioner Tshepe:

...an issue. So, it is in that context that I was asking.

5 **Acting Chief Justice Zondo:**

No, thank you, that context is very helpful. In the commission it didn't take us long after the termination of the hard lockdown in 2020 for us to start allowing witnesses to give evidence via Zoom. And initially we were concerned, because it was the first time one had to do this, whether it would work, but we tried it a few times and it worked. Sometimes there were hitches here and there, but it worked, and we used a lot of that. There is no reason why people who are in rural areas or wherever can't participate in courts through Zoom and if, or other methods. If they can then save on travelling and costs and so on. So, all of that should be possible. Actually, I think that as far as possible, we should do away with unnecessary travelling for people to come to court. Anything that can be done to make sure that they can interact with a court from their offices or from their workplaces or from their homes is fine.

Commissioner Tshepe:

Thank you, Acting Chief Justice. The second question I wanted to discuss with you, you spoke about the quorum of the constitutional court when you spoke about your vision as the head of the constitutional court, obviously were you to be appointed, Acting Chief Justice. There is the issue about the minimum quorum of eight and you would know there has been some judgments where they were hang-judgments in a way because of the quorum. And there has been proposals of amending I think it's Section 167.2 if I'm not mistaken. You raised that only in relation to panels and more to do with the other cases. Do you think the amendment should be to, or the, to resolve that matter, should we be amending it, 167.2, ensure that the quorum is not an even number or it's an odd number? Or do you think that a practical directive should be so that you have nine judges sitting or seven judges sitting as opposed to an even number where you have a [Indistinct 09:54:51] split of the court and obviously that is undesirable because you don't have certainly on *jurisprudence*?

Acting Chief Justice Zondo:

Mm. No, I don't think the issue of quorum requires an amendment of the constitution. Two points. When I referred to the fact that the quorum in terms of the constitution is eight, I didn't necessarily mean that we would have to sit eight.
5 We have had occasions when we have set eight and I agree that it's undesirable, because if there is no agreement, you could end up with a tie. So, I think the preferred option, instead of having eight is to have nine because then you won't have a tie. But nevertheless, if you have nine, within the context of what I was talking about in the morning, it would still mean that you have two colleagues who could be
10 asked not to participate, or they could volunteer not to participate in a particular matter so that they could go and write their judgements that have been outstanding for a certain period of time. So, that's possible.

Commissioner Tshepe:

15 Thank you, Acting Chief Justice. I didn't mean that was your suggestion, it was a suggestion proposed by the other candidates previously.

Acting Chief Justice Zondo:

Okay.

20

Commissioner Tshepe:

Yes. I understood your [intervenes]...

Acting Chief Justice Zondo:

25 Yes. Okay.

Commissioner Tshepe:

I understood your suggestion completely.

Acting Chief Justice Zondo:

Okay.

Commissioner Tshepe:

5 Acting Chief Justice, the last question I wanted to raise with you related to transformation and you raised it as one of your, the priorities you would deal with. In the previous interviews we have heard that, for example, there is no national transformation program which sets out some of the goals we're wanting to be, to achieve in order to transform the judiciary at time periods to deal with that. And on
10 gender there we don't have an anti-sexual harassment policy, nationally some divisions do have, but not all of them. There is no maternity leave policy for example. In my mind, I know you said that from a race perspective we've come a long way, but my concern is how do we determine whether we've come a long way when we have not put in place targets? We're aiming for a target, both a gender and race and the
15 other consideration and I just wanted to know whether it's something you have considered and if not, is it something that you think we should be working towards so that we are working towards a particular goal and that some of these policies that do not exist because transformation is not only about the numbers, but once the people are in, that we have mechanisms to support them?

20

Acting Chief Justice Zondo:

I guess that with regard to targets, we could have maybe fixed certain targets some time back, but I suspect that maybe our focus was we are still so far away from whatever target we might wish to fix, let's push and maybe when we have reached a
25 certain point, we can then say okay, maybe it's not too far, the target we would put is not too far, then maybe we can talk about it. I'm just saying, but not that as far as I know there was a discussion, you know. But I think the, there is an acceptance, a general acceptance that with regard to gender, for example, we should have more women in the judiciary than males, because there are more women in the
30 population. There is that view. So, but that's what I can say. It may well be, I think it might be discussed whether or not we should have a target, but certainly I think that we have not reached the point which we should reach with regard to gender transformation.

Commissioner Tshepe:

Acting President, I'm sorry to disturb you, Acting Chief Justice, I don't want us to get stuck in the target, I'm just talking about objectives, what do we want with transformation broadly. So, I just, I didn't want you to be [intervenes]...

Acting Chief Justice Zondo:

Yes.

10 **Commissioner Tshepe:**

...stuck on target.

Acting Chief Justice Zondo:

Yes.

15

Commissioner Tshepe:

It's more the broader objective of transformation.

Acting Chief Justice Zondo:

20 Yes.

Commissioner Tshepe:

Yes.

25 **Acting Chief Justice Zondo:**

No, of course with regard to transformation we want to make sure that we have a judiciary that is representative of us as South Africans in terms of race and gender, but also, we need to make sure that women and black judges get to be involved substantially in all branches of law so that they can make their full contribution to *jurisprudence* and take part in all our courts up to the highest court.

Commissioner Tshepe:

Thank you.

10 Acting Chief Justice Zondo:

And on maternity leave, we might not have provision that talks about maternity leave applicable to the judiciary, but we do have a provision in the law that says that a judge may be provided with special, may be given special leave. I can't remember whether a special leave is supposed to be given by the minister or by the President but may be given special leave for any reason that either the president or the minister, whoever it is, may deem sufficient which I think maternity leave would fall under as far as I'm concerned. And for some reason I think I have, I think I've had judges who have gone on maternity leave, even if it's not called maternity leave. Ja, if I'm not mistaken. Sexual harassment policy, we might not have, but any judge who against whom there would be sexual harassment allegations would be hauled before the Judicial Conduct Committee [Indistinct 10:02:04] if a complaint was laid.

Commissioner Tshepe:

Acting Chief Justice, thank you for the response, but I do think that in the journey on transformation certainty on these sorts of policies, I think particularly regarding gender transformation, I think they are key. They make everyone who's there understand where they stand, particularly on issues of sexual harassment. These are sensitive issues and we; women judges are those who need it, need to know what processes are there, what support structures are there for them if there are any. And I think it would be helpful I think for the judiciary if these would be put in place. That is my view, and I would like to know that were you to be appointed as the chief justice this would be things that you would try and put in place. Any...sorry, I know I'm

saying were you to be appointed. My view with the other candidates were they already in leadership position and these things should be done like as in yesterday.

Acting Chief Justice Zondo:

5 No, thank you, Commissioner. I simply make the point that to the extent that there may have been a concern by any of the other candidates, particularly those who might be in leadership positions within the judiciary, to the extent that there might have been concerns that there is no policy, sexual harassment policy and maternity leave, I would simply say they must raise these things in the heads of courts forum.
10 They are members of that forum. They are not restricted from raising them and certainly I would be very keen to make sure that, you know, I give my support.

Commissioner Tshepe:

Thank you.

15

Acting Chief Justice Zondo:

Thank you.

Commissioner Tshepe:

20 Acting Chief Justice, the last issue relates to appointment of acting judges. The GCB somewhere in one of the comments they provided is that sometimes the process doesn't seem to be completely transparent. And one of the questions I've raised is shouldn't we have a policy on how we appoint acting judges so that we, there are no misunderstanding or perceptions created about this? And I just wanted to find out
25 from you what your view is on that and [intervenes]...

Acting Chief Justice Zondo:

I think if I'm not mistaken, there is a document that the heads of court have agreed upon which sets out factors that are taken into account. I don't know whether it may
30 have been shared with the public or with the profession. But I think there is a

document that does that, even though it might not be a document that has been there for a long time, but I think there is one. So, maybe arrangements can be made for it to be shared with maybe the commissioners.

5 **Commissioner Tshepe:**

Thank you so much, Acting Chief Justice. Thank you, Acting President.

Acting Chief Justice Zondo:

Thank you.

10

Deputy President Petse (Chairperson):

Thank you, Commissioner Tshepe. Commissioner Barnard.

Commissioner Barnard:

15 Thank you. Good evening, Acting President and the Acting Chief Justice.

Acting Chief Justice Zondo:

Good evening, Commissioner Barnard.

20 **Commissioner Barnard:**

Just with reference to your insolvency [Indistinct 10:06:19] there are two I think insolvency cases that you included in the bundle or insolvency related cases. The one was the Section 197.38 of the Insolvency Act that was later amended. [Indistinct 10:06:35] about 2002 and the Ndima versus Waverley case and so on. Don't you think that there's some pretty old procedures in our courts? I've heard you speak about a possibility of, you know, action being started by affidavit instead of the, in the process that we are used to. I think of your Insolvency Act [Indistinct 10:07:00] seems like the, it's a 1936 Act, yes [Indistinct 10:07:03] but you have very old

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procedures that have been in place for applying voluntary surrender, compulsory sequestration and rehabilitation and the like [Indistinct 10:07:16] administration orders in the Magistrates Court Act is referred to as the insolvencies in the smalls, it's a 144 Act and the processes that have been almost patched over time. So, do you think there are some old processes in our courts and our structures which need some rethinking in your head, you know, if you would become head of the judiciary and so on?

Acting Chief Justice Zondo:

I certainly think that it's proper that from time to time we need to look at system that we have and procedures that we have and determine whether they still serve the purpose that they should be serving and whether they should be changed or repealed. So, that would be my view that we should from time to time do that so that we can amend them if there is need so that they serve present purposes better because they may have been put in place in 1937 in a very different society and lots of things have changed. So, I didn't know particularly with regard to procedures in the Insolvency Act, but I certainly think that if the Act is as old as that, it's proper to have a look at its procedures.

Commissioner Barnard:

Then as far as the definition, and I'm thinking Section 165 and [Indistinct 10:08:49] Constitution, so, and thinking of the definition of other courts in terms of the Act, what would you say would be your [Indistinct 10:08:57] something like the small claims court?

25

Acting Chief Justice Zondo:

I think the Small Claims court is an important court and I would think that one would need to have a look at what is doing. I must confess that I haven't had much to do with the Small Claims courts in a very long time. So, but certainly I would be interested in seeing how they are functioning now and what can be done to improve them, because as far as I know a lot of people get access to justice through those courts for claims that fall within their jurisdiction. So, whatever it is that may be necessary to make them work better, I would be wanting to have a look at that.

Commissioner Barnard:

Okay. Now you've provided some good chairing of the JSC [Indistinct 10:10:01] in October, you have, you leave a legacy not only as a leader, but as a developer of
5 leaders on things about that history in the labor court, in the labor appeal court which turned out many [Indistinct 10:10:14] judiciary. So, it's not that the leadership ability is in doubt, but the criticism that you referred to in the, that the constitutional court had regarding the commission, you know, what they say is that the commission, it was the commission's own conduct [Indistinct 10:10:36] caused the need for the
10 direct access and they even go as far I think, the constitutional court in paragraph 67 of that judgment of the Secretariat versus Zuma, where they say that, they referred to the commission's [Indistinct 10:10:52] conduct which is really, the meaning is inefficient or inept or clumsy. But it seems that that might have been a lack of foresight. And so, my question is, this is, is that something that, you know, how can
15 that be prevented in leadership of the judiciary in the leadership role of the chief justice?

Acting Chief Justice Zondo:

Just to make sure I understand, are you referring to the constitutional court's
20 criticism of the commission in that first case?

Commissioner Barnard:

That's right. That's correct. So, the wording [intervenes]...

25 **Acting Chief Justice Zondo:**

Well...yes, well, look I respect the view that was taken by my colleagues in terms of how I handled that case. This was a very tricky case and different people would have handled it differently. It was quite a tricky case. President Zuma, if he took part fully in the commission, his evidence would have been very, very important. So, I wanted
30 him to take part in the commission. I wanted to have his side of the story. I wanted him to explain things before the commission, before the nation. But for me, my consolation with regard to that criticism is this. When I was handling that matter, I

was alive to the fact that I needed to be careful because if I handled it in a certain way, Mr. Zuma could go to court and if the court made a finding that we had been unfair, I had been unfair to him, it could taint the whole commission and the damage that would be caused by that finding would be very far reaching. I would, I'm, I can live with the fact that the court criticized me for the way in which I handled him. But I'm happy about the fact that it never said I treated him unfairly and I'm happy that it seems to me that certainly it did not think I had treated him unfairly. I think if I had handled the situation in such a way that he went to court and was successful in getting a finding that I had treated him unfairly it would have been very, very bad for the work of the commission. So, I can live with the criticism, but I'm happy that the commission was able to go as far as it went and that there was no finding that I treated him unfairly, at least up to now there isn't.

Commissioner Barnard:

Thank you. And then the last aspect I want to deal with is this. You made mention to the, there was a time in the commission's period where the funds were drying up so much to the effect that there was concern whether people would be able to be paid in the interim. And that [Indistinct 10:15:11] the fact that for a true independent judiciary one needs to have the budgetary thing sorted out. Do you have any comments on that and what would your position be or how would you deal with it?

Acting Chief Justice Zondo:

Well, it is true that generally speaking you would want to sort out the budget before or even before the commission starts. But what is also true is that originally this commission, not this commission, the state capture commission was going to, was meant to take six months and then it went on and on because the terms of reference had been widened. And so, I can understand difficulties from the point of view of National Treasury and Department of Justice to adjust and make money available on an ongoing and they think that in three months' time we are going to finish and then suddenly there is another three months and then another three months. So, I can understand their challenges from that context.

Commissioner Barnard:

Sorry, if I can interrupt. I actually moved on; I made an analogy with the commission. So, I'm saying it's like the funds that dried up caused problems for the commission. If the funds aren't sufficient for judiciary, then that would be problems with, give problems with the judiciary independence. And so, the question is the budget for the judiciary. And so that's actually where I want you to focus your answer.

Acting Chief Justice Zondo:

Yes.

10 **Commissioner Barnard:**

I was [Indistinct 10:17:00] moving forward to ensure that that's not a problem which eventually impacts on the independence of the judiciary.

Acting Chief Justice Zondo:

15 Well, the model that I spoke about earlier on I think would make sure that that problem doesn't arise. The model that I spoke about once it has gone up to phase 3, I think that problem would not arise.

Commissioner Barnard:

20 Thank you very much. Thank you, Acting President.

Acting Chief Justice Zondo:

Thank you. Thank you. Thank you.

25 **Deputy President Petse (Chairperson):**

Thank you, Commissioner Barnard. Commissioner Shabangu-Mndawe.

Commissioner Shabangu-Mndawe:

Thank you, Acting President. Good evening, Acting CJ.

Acting Chief Justice Zondo:

5 Good evening, Commissioner.

Commissioner Shabangu-Mndawe:

How are you?

10 **Acting Chief Justice Zondo:**

I'm all right. How are you? I'm tired. It's that time of day.

Commissioner Shabangu-Mndawe:

15 I can see that. ACJ, thank you so much for the work, for the good work that you are doing for the country, and I believe majority of South Africans appreciate what you are doing.

Acting Chief Justice Zondo:

Thank you.

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Commissioner Shabangu-Mndawe:

And also thank you for the training that is coming up, because I believe it's not only aspirant women judges who are going to benefit out of it, but also women practitioners will benefit.

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Acting Chief Justice Zondo:

Yes.

Commissioner Shabangu-Mndawe:

5 Because the skill that they are going to get there, they will be able to apply it in their practices. ACJ, Commissioner Tshepe here spoke about this crucial two policies which we, the harassment, sexual [intervenes]...

Acting Chief Justice Zondo:

Ja.

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Commissioner Shabangu-Mndawe:

...harassment, ja, and the maintenance, sorry, the maternity leave policy.

Acting Chief Justice Zondo:

15 Yes.

Commissioner Shabangu-Mndawe:

20 I heard your response to that regard, and I think the question today, it's not directed to someone who still to be appointed. You are already an acting chief justice, and you are a deputy chief justice. The response that I was expecting from you was to say when I leave here, Monday the process of having those policies will be starting.

Acting Chief Justice Zondo:

Mm.

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Commissioner Shabangu-Mndawe:

And can you maybe comment on that?

Acting Chief Justice Zondo:

Well, I indicated that I would be supportive and I'm quite happy. I think my colleagues who are in the heads of courts who are also candidates here, I'm quite
5 happy to make sure that on Monday I talk to them and say okay, what, how do we move, let's move on this.

Commissioner Shabangu-Mndawe:

Okay.

10

Acting Chief Justice Zondo:

Because I understand it came from one of them if I'm not mistaken.

Commissioner Shabangu-Mndawe:

15 Thank you so much for that, ACJ. These two policies, the non-existent of these two policies, it mostly affects women, I mean women judges.

Acting Chief Justice Zondo:

Mm, okay.

20

Commissioner Shabangu-Mndawe:

And it doesn't look that the whole judiciary doesn't have these crucial policies.

Acting Chief Justice Zondo:

25 Yes, yes.

Commissioner Shabangu-Mndawe:

5 Again, the issue that was raised by Commissioner Magwanishe, the issue of the language. I heard your response and I respect it, but don't you think that it needs to be revisited say that maybe you can maybe refine it properly the way that you have explained it now to say that I think maybe you can, even it can, it can even give
10 courage to other presiding officers to come out or to write judgment in languages, maybe in siSwati or in isiNdebele so that it can be not be something that is untowards when we [intervenes]...

10 Acting Chief Justice Zondo:

Ja.

Commissioner Shabangu-Mndawe:

...we find the judgment which is written in an indigenous language.

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Acting Chief Justice Zondo:

Ja. No, no, I think, Commissioner, it may well be that it needs to spell out that the fact that the official language for purposes of court proceedings is English doesn't preclude you from providing a judgment in an indigenous language, then we talk
20 about how that should happen. So, I think that's a fair point that can be pursued.

Commissioner Shabangu-Mndawe:

Thank you. Again, this morning when you were tabling your vision, you also touched on the issue of reserve judgment that had taken long to be delivered. Then you
25 indicated that you discuss it with your colleagues and came up with models on how are you going to deal with it. But then my question here is that this is not a yesterday's problem, it has been a problem for quite some time and you as a deputy chief justice, why didn't you make those proposals at that time and also now when you are an acting chief justice? Because what I heard you saying was to say when
30 you are, you have already proposed that and when you are appointed you will

proceed with the proposals. So, my question to you is that when you are not appointed, will you still proceed with the proposal that you have made?

Acting Chief Justice Zondo:

5 Of course, yes. Of course, yes, I would. There is nothing that I would do if I'm appointed but would not do if I'm not appointed. Obviously if I'm not appointed, I would not do something that I should leave to the chief justice. I would not usurp the functions of the chief justice, but I would still share with the chief justice what I had in mind before the appointment, his or her appointment, and if he or she says I think it's a good idea, let's proceed then I would do so. But with regard to the fact that I only made those suggestions recently, you must remember that when I was the commission, while the public hears were going on, I was not sitting in court. I was not part of the panels; I was not sitting in court. The chief justice was there. I did say that the chief justice shared with me and consulted with me on certain issues, but I was not part and parcel of the justices who were sitting in matters. I only came back in July this year, after the chief justice had left. So, my mind was on the work of the commission during the past, what, three and a half, four years. Ja.

Commissioner Shabangu-Mndawe:

20 Thank you, ACJ.

Acting Chief Justice Zondo:

Thank you.

25 **Commissioner Shabangu-Mndawe:**

My...there's a question that I asked other candidates, its' the issue or the idea of having sexual offence matters and family law matters to have specialized courts where we are going to have well trained judges and magistrates in that seat, what is your idea on that one?

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Acting Chief Justice Zondo:

Well, I would not be opposed to that. Anything that could make sure that there is improvement of service delivery, including making sure that there is additional training or there is specialization, those are things that are close to my heart.

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Commissioner Shabangu-Mndawe:

Thank you, ACJ. ACJ, my last question. There's an objection you are going to be appointed as, if you are appointed as the chief justice, you are going to be the chairperson of the CC, what is it, JCC.

10

Acting Chief Justice Zondo:

Ja. The Judicial Conduct Committee.

Commissioner Shabangu-Mndawe:

15 Ja. There's an objection from Zakele Khumalo who seemed to suggest that you are easily influenced. You were influenced on an outcome of the complaint that he lodged against one of the judges and you were influenced by one of the senior judges. What is your comment on that one?

20 **Acting Chief Justice Zondo:**

Well, I must confess I don't remember that complaint, but if that is what it says, he's very mistaken. I have a good track record. I told the commissioners this morning how when I was acting JP or a new JP, sitting with senior judges, how I disagreed with both of them and wrote my own judgment. I can give many, many examples about
25 my independence. Let me tell you about a judgment that is referred to in the documents here. Engen, that's a judgment which I wrote and disagreed with the supreme court of appeal on the approach they had taken on a certain matter and the matter raised both labor matters and administrative law when I was still judge
30 president of the labor appeal court. The supreme court of appeal had given a unanimous judgment with five judges and said the approach that the labor appeal court had been adopting since I became judge president in regard to the assessment

of whether a dismissal is fair or not was a wrong approach and we, the correct approach was the so-called reasonable employer test. And I was convinced that the supreme court of appeal was wrong, but I knew that I was bound by their judgment, and I had to implement it, but I felt that it was appropriate for me to articulate correctly in detail why their view was wrong. And I went back to where the reasonable employer test originated from, namely in England in a judgment by Lord Denning. I said this is where this reasonable employer test came from. That judgment which talked about it for the first time was based on a specific statute. We in South Africa don't have a statute which has similar provisions. This test was imported into South African labor law wrongly by this judgment and that judgment and that judgment. If you look at our statute it has no place for a reasonable employer test, and I looked at international jurisdictions. I wrote that judgment. The SCA judgment was then taken on appeal to the constitutional court and the constitutional court upheld my approach and said my judgment was correct. So, I'm just saying here was a case where a higher court had unanimously said we were wrong and we believed, I believed that we were right, but I also was disciplined that this is the higher court, we must implement their decision, but on a point of law they wrong and I said so and the constitutional court upheld my judgment.

20 **Commissioner Shabangu-Mndawe:**

Thank you, Acting Chief Justice. Thank you, Acting President.

Deputy President Petse (Chairperson):

Thank you, Commissioner Shabangu-Mndawe. Professor Schlemmer.

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Commissioner Schlemmer:

Thank you, Acting President. Justice Zondo, when you just said that you haven't been on the bench for the past four years, it made me wonder how much touch have you lost with the bench by being the chair of the commission. How much of the challenges that your colleagues are experiencing can you relate to? And the reason why I'm saying this is in your vision you didn't really point out anything that you have it seemed picked up yourself.

Acting Chief Justice Zondo:

Thank you. Well really the big issues in our court, in the context of what we are talking about is the reserve judgements and our delays in disposing of new applications. We have had meetings, so we have had discussions. Since I came back, I've had a lot of meetings, but also when I, when the chief justice was still around, as I said, he talked to me about some of the issues we discussed. So, I certainly did not sit in matters, but I did not divorce myself completely in terms of knowing what is happening. The chief justice and I talked very frequently about what is happening. But in terms of the delays, I may not have been fully conversant, but I might have known just generally we seem to be taking long without knowing the details at that time. So, I have been back at the court for the past seven months. I have been interacting with my colleagues, so I believe that I am in touch with them, I'm in touch with, I can relate to what is happening.

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Commissioner Schlemmer:

It was put to Justice Maya two days ago, and I also asked the question concerning the quality of the judgments, not only at the SCA, but also at the constitutional court, but precisely or specifically concerning the judgments coming from the SCA that is being appealed against or appealed to the constitutional court. Commissioner Madonsela asked about the issue of legal certainty, the fact that so many of the teams, so many of the SCA's judgments are overturned by this, the constitutional court. How do you see the approach that should be taken by the chief justice if you were to be appointed, to assist in helping the SCA and other courts to, as well as the constitutional court, to get the quality of their judgments at the level that the South African judiciary should be functioning?

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Acting Chief Justice Zondo:

Thank you, Commissioner Schlemmer. You know, the issues of the quality of judgments and the delay in handing down judgments they have, they relate to each other at some level. Because sometimes the delay is because somebody is trying to write a very good judgment and then a delay happens. And that judgment might in the end, when it has been written, indeed be very good and be hailed as very good,

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but if it has taken beyond a certain time then there is a concern to say but it's taking too long. So, the question of delays in handing down judgments and the quality, there needs to be a balance that is struck. Striking that balance is not mathematics. It's not easy, but at least we should always be alive to the fact that we have an obligation to give judgments that give guidance that ensure that there is certainty in the law, but at the same time we must not delay unduly in handing down those judgments just because of considerations of wanting to write a super judgment if I may call it like that. It's a striking of the balance. My own, excuse me, my own view is that certainly the chief justice in the case of the constitutional court needs to keep a close eye on that. We had a discussion, myself and my colleagues in the fourth term last year in terms of which, for example, we agreed that if a certain period has lapsed and a colleague has not circulated his or her first draft judgment, they must report themselves to the chief justice so that the chief justice, the two of them can then see what needs to be done. And obviously, issues of how long it would take after that becomes important, but at the same time quality is important, but...so, SCA I guess is the same considerations that they would have, but the chief justice would play a role in terms of these issues having to be discussed at the heads of court to say there is this concern, what do we do to make sure that, one, we don't delay unduly in handing down judgments, but at the same time we, our judgments should be of the right quality.

Commissioner Schlemmer:

And my question doesn't really relate to quality in the sense of whether it's written well or, it's more related to having the law and the legal position correct because often one finds and it's quite alarming when you read a judgment that the law is applied incorrectly, that the law is stated incorrectly. So, that is more my concern.

Acting Chief Justice Zondo:

Well, that, then in that event it's a question of the care that is taken to make sure that the law is stated correctly. It's a very important point, a concern that you raise, but it just means that in the case of the constitutional court all judges, not just the scribe, need to make sure before the judgement is signed off that it states the law correctly.

Commissioner Schlemmer:

Thank you. So, I'm not going to take it any further. Thanks, Chair.

Deputy President Petse (Chairperson):

5 Thank you, Professor Schlemmer. Commissioner Malema, yes.

Commissioner Malema:

10 Thank you very much, Acting President. I won't take long because my eye is acting
up. When I woke up this morning, my left eye was closed. So, from time to time it
keeps on closing itself so the sooner we finish the better. Acting CJ, now we've got
15 letters from the administration where a minister writes to you in response to you
that the letter was written to him by Chief Justice Mogoeng Mogoeng and he
indicates in this letter that Chief Justice Mogoeng Mogoeng had recommended JP
Madondo and Judge Rodgers. And he makes an argument that you must give other
15 JPs and opportunity to act and so on and so on. And then later on he says to you,
please put Madondo and Mlambo to act, without giving any reason why you should
drop Rodger who was suggested by Chief Justice Mogoeng Mogoeng. Then you
respond to him and then you indicate that, well, you have received the letter and you
20 give the background and you also demonstrate to him that his argument that other
JPs are not given an opportunity is neither here nor there, because the following
people, you give a long list of people who were given an opportunity, including the
deputy judge presidents and all of them. And you say that you cannot appoint JP
Mlambo because it's late, in the letter there. That point has been made. And then
25 from there what shocks me is that then when you go to appoint, you appoint JP
Mlambo and I think [intervenes]...

Acting Chief Justice Zondo:

Advocate, or Judge Unterhalter.

Commissioner Malema:

5 Ja, yes, yes. You appointed two and you've abandoned that argument which you put earlier cogently that this JP has been given an opportunity, declined before, but it's not true that JPs are not given an opportunity, here's a long list and it's also late. Then you leave that argument, you go and appoint Unterhalter and JP Mlambo and Rodgers and Madondo are completely left off.

Acting Chief Justice Zondo:

10 No, they were not left off. They acted.

Commissioner Malema:

Yes.

Acting Chief Justice Zondo:

15 They acted [intervenes]...

Commissioner Malema:

That's a separate thing.

20 **Acting Chief Justice Zondo:**

Here, this is what happened. There is different times.

Commissioner Malema:

25 Yes.

Acting Chief Justice Zondo:

So, DJP Madondo and Judge Rodgers acted. Judge Rodgers just finished mid-January actually, acting.

Commissioner Malema:

Yes.

5 **Acting Chief Justice Zondo:**

Judge Madondo finished at the end of November, and he had indicated to me that he was not going to be available beyond November.

Commissioner Malema:

10 Who's that?

Acting Chief Justice Zondo:

Judge Madondo.

15 **Commissioner Malema:**

Okay.

Acting Chief Justice Zondo:

20 So, I probably would have extended his acting appointment just like I extended Judge Rodgers one.

Commissioner Malema:

Yes.

25 **Acting Chief Justice Zondo:**

But I didn't extend it because he said he was not available for an extension beyond end of November. But as it turned out, it actually fell ill earlier [intervenes]...

Commissioner Malema:

Yes.

5 **Acting Chief Justice Zondo:**

...and by the end of November he was not in court, he was here, he was in hospital and so on and so on. So, they did act, but what I had said to the minister, and I must say immediately that I haven't had a look at my letter to refresh my memory [intervenes]...

10 **Commissioner Malema:**

Yes.

Acting Chief Justice Zondo:

15 ...but based on my recollection I had refused to appoint Judge Mlambo at a particular time and for the reasons that I had given, but my approach was not that I would never appoint him. My approach was that sometime in the future I can consider him which is what happened. Ja.

Commissioner Malema:

20 So, we are in agreement that it is not illegal for a minister to suggest that so and so must act, but it's something unheard of.

Acting Chief Justice Zondo:

25 Well, I said I don't want to say anything whether it's legal or not, but I said it's certainly not something that had happened before as far as I know.

Commissioner Malema:

Okay. Now I want to come to a different subject. This Fraser [intervenes]...

Minister Lamola:

Sorry, before, I beg your indulgence, Chair, before Honorable Malema gets to the different subject, I want to make a follow-up without confusing ACJ. Would you allow me to do that,
5 or do you want him to finish the second subject first?

Deputy President Petse (Chairperson):

Would it not be proper, because it's his turn?

10 **Minister Lamola:**

Okay, it's okay.

Deputy President Petse (Chairperson):

He must [intervenes]...

15

Commissioner Malema:

We have all [intervenes]...

Minister Lamola:

20 No, I respect that.

Deputy President Petse (Chairperson):

Yes, thank you.

25 **Minister Lamola:**

I apologize.

Commissioner Malema:

We have all waited, Chair, for people to finish before we make follow-ups, so I don't know why is the blood running fast now. Now Fraser, my worry with Mr. Fraser is that, you know, as head of intelligence there's a room there at intelligence, a place called Musonda. It's a room called a grabber room where all of us, all of us, have got our things that we communicate on phones, emails. Anyone they want, especially if you are a judge or a high profile, anyone they so wish to listen to, they listen to. And here is a guy who says I want to come there and tell you about judges and all that. Did you fear he's got something on you perhaps that you said this guy must never ever come here, that we are going to be embarrassed here and won't have the capacity to stop him? Because I will tell you if I was the chairperson of the commission, I will be very interested to hear from a former head of intelligence who's implicated in 9 million, 9 billion.

Acting Chief Justice Zondo:

Well, I certainly was not scared of anything like that, Commissioner Malema, and if I was scared of anything like that, I probably would not have adopted the approach that I adopted in April when his lawyers came before me, moving that application that I should order the Minister of State Security and SSA to release documents to them. I, my attitude was the State Security Agency agrees to let you have access to the documents and you have accepted. So, the natural thing for you to do is go there and then you must come back, and I simply said, because of where we are with the proceedings, I just want you to know that when you do come back, we will have to look at what the situation is like at that time and take it from there. So, I was not concerned, but for what it's worth, Commissioner Malema can say that I tell people who speak to me on the phone that they must assume that there are other people listening.

Commissioner Malema:

Ja.

Acting Chief Justice Zondo:

Ja, so when I speak on the phone, I assume that there are lots of people who are listening that, without my permission.

Commissioner Malema:

Okay. You know, Acting CJ, I'm troubled by this because it's what I'm going to raise in the debate there that there is no way you will not subpoena a head of intelligence implicated in a 9 billion. I'm not interested in him trying to get other documents to come and help you.
5 That is his voluntary thing, but where he got mentioned so many times, I even lost the count how many times he got mentioned and so much figures implicating him, you still are not interested in him, and you are fighting corruption. You are trying to expose corruption and the corrupt. Here is a man that worked for the state and worked for a strategic institution which has got a slush fund that not even Auditor General can access it, gets implicated, we don't subpoena him, we don't compel him. I'm troubled by that and worse, he even object himself. He says, having been implicated so many times, why didn't they subpoena me so that I can respond to this all types of allegations. I'm raising it with you because [intervenes]...

15 **Acting Chief Justice Zondo:**

Yes.

Commissioner Malema:

...I'm going to raise it tomorrow during our deliberations.

20

Acting Chief Justice Zondo:

I think that's fair enough for you to raise it, Commissioner Malema.

Commissioner Malema:

25 Thank you.

Acting Chief Justice Zondo:

But I don't think I can add to what I said earlier on, that probably if he had come to, if that what happened, when we realized he was not getting the documents had happened much earlier when the commission still had a lot of time, it may well have, it may well be that I
30

would have taken a different decision, but we were very close to the end. That is what was problematic.

Commissioner Malema:

- 5 No, no, Acting CJ, you are close to the end when he volunteers to come. You are not close to the end when he gets implicated. He gets implicated much earlier.

Acting Chief Justice Zondo:

I agree.

10

Commissioner Malema:

Yes.

Acting Chief Justice Zondo:

- 15 I agree.

Commissioner Malema:

So, the late coming is when he's now volunteering to come [intervenes]...

- 20 **Acting Chief Justice Zondo:**

Yes.

Commissioner Malema:

...and help you.

25

Acting Chief Justice Zondo:

Yes.

Commissioner Malema:

And you said to him, but I've called for this long time ago.

5 **Acting Chief Justice Zondo:**

Yes.

Commissioner Malema:

10 You come very late, and you are demanding things here and they are not forthcoming, therefore I will have to proceed. On that one I said I agree with you.

Acting Chief Justice Zondo:

Ja.

15 **Commissioner Malema:**

My problem is he gets implicated [intervenes]...

Acting Chief Justice Zondo:

Earlier.

20

Commissioner Malema:

...much earlier. He's not called.

Acting Chief Justice Zondo:

25 Yes.

Commissioner Malema:

Zizi Kodwa gets implicated much earlier on 1 million. He's not working for the state, he's in a shack called Luthuli House. He gets called from there or come here and explain why did you get this money, yet he never presided over any big deal. If I were to have Zizi or to have Fraser, I will go for Fraser, because he presided over the most strategic budget in the department. So, that's where my problem comes in because, okay, let's say Fraser for whatever reason he didn't come to you and say I want to help you, like he did much later. It means Fraser was going to be left, even when he's implicated much earlier, Fraser was not going to be called with all so many people implicating him in a...and when you bring amounts together, it's not me, it's him who says 9 billion. How do you get someone implicated on 9 billion and you are not interested in that person?

Acting Chief Justice Zondo:

Well, let's clear that. I don't think it's really 9 billion, but let's leave that for aside. There are certain facts here. Mr. Fraser gets implicated I think in June or there about in 2020. He comes to the hearing with his legal team. His legal team says to, his counsel says to me we are going to present our case, but that is now as far as I recall. I hope I'm not; my recollection is not failing me here. So, they leave the commission, certainly as far as my understanding is concerned, on the basis that they are going to do whatever they want to do and then they will come back. Okay. So, we don't have to subpoena body who says I will come back, because they are going to prepare whatever they want to prepare and then come back. So, we continue with other matters. And then in March, they do come back, but when they come back, they come back with an application to say, Chairperson of the Commissioner, we have asked for documents from the SSA because we want to come and give evidence. They are refusing. Can you please make an order and compel them to give us these documents? So, the SSA responds and says but it's not true that we have refused to give you documents and they put up correspondence. They say here is a letter of, I don't know whether 5 August 2020 or whatever, whatever and September. They put up letters. They say we wrote to your lawyer, we invited you. You never, your lawyer never responded. So, we are telling you now that we will give you documents, but we are not sure what documents you actually want. You would have to come to the offices, and you can tell us what documents you want and then he in response says, I accept your offer that I should come and get the documents. So, that is when they are before me in April. So, I then say well in the light of this it means this application where you want me to order SSA to give you documents must just be postponed because they agree, and you agree. So, you go and find the documents and come back. And when you come back, I just want to say depending what time it, when it will be when you come back, we will have to see where the situation, where the commission is. So, we part on that basis and then he never comes back. And then the hearings come to an end, before

the hearings come to an end, the secretary of the commission writes to the lawyers of both SSA and Fraser effectively saying what happened about those documents that you were going to meet and agree upon. Fraser's, Mr. Fraser's lawyer does not respond. The state attorney responds on behalf of SSA and says we have been waiting for him. We tried to set up some meetings, it didn't work, but we have waited for him. He agreed that he must comply with the regulations if he wants the documents, but up to now he has not complied with the regulations. So, that is what we get told. By that time, it's too late. So, that's all I can say.

10 **Commissioner Malema:**

No, that's fine. I still don't agree. I will take it up with the commission.

Acting Chief Justice Zondo:

Yes.

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Commissioner Malema:

ACJ, I see that you have extended a courtesy to President Ramaphosa because the commission is the commission of the President and the office established the commission, it was President Zuma. Was the same courtesy extended to the former President where you go like you did with the current President? In terms of warm bodies, it's President Zuma who established the commission, long before all the shenanigans started, the same way, the polite way, you went to the President. You talked to him, you show him, whatever, then in the process you say you must come and also testify. Have you tried doing the same thing with President Zuma? President Zuma, that, you may not be the President today, but that issue that you left us with is unfolding, it's doing very well. At some point we will want to have you there coming to testify, because I don't know what was the arrangement or the environment between you and the current President, but courtesy would mean that, you know, that warm type of an approach, brotherly approach to say well, we are here and then at some point please come and do the honorable thing.

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Acting Chief Justice Zondo:

Well, I didn't have a meeting with President Zuma, but remember that the current President was, because he was the President, I would meet him from time to time to

5 tell him what was happening in the commission in terms of if there were challenges
or if there was to be an extension. So, it was one of those occasions when I told him.
With regard to President Zuma, I think, we wrote a letter to him or to his lawyers, I
can't remember whether first to him or to his lawyers straight away and invited him
10 to come and give evidence. He took quite some time before he made up his mind
whether he was going to come or no. Ultimately, he agreed to come. But I can't
remember whether after he had agreed or before he agreed, he raised an issue and
said in terms of what rule was I inviting him to come. And I think my response was
that this was a courtesy, we were not necessarily going to issue a summons. It was a
15 courtesy. When he did come, he still made an issue about the fact that I had
extended a courtesy and not said there should be a subpoena. I had simply written
a letter. They made an issue; it was on TV. So, they made me get the impression that
they did not want me to act in any way other than in terms of the rules, but I had
taken the view that I should do that courtesy to him. I didn't know that he wasn't
going to like it.

Commissioner Malema:

You have been to President Zuma's apartments or hotel rooms in Durban more than
twice through your own statement that you issued or read in the [intervenes]...

20

Acting Chief Justice Zondo:

Please just repeat, I didn't hear that.

Commissioner Malema:

25 You have been to President Zuma's hotel in Durban more than twice, that's the
account you gave in the statement that you read during the recusal application, on
his invitation.

Acting Chief Justice Zondo:

30 Well, I know that I, I remember one time, I don't know if it's twice, I didn't refresh my
memory on the statement, but if you say that's what it says, then it must be so.

Commissioner Malema:

5 Yes. And then it was when you were a judge and then President Zuma invites you to his hotel room twice, or more than that and then you go. What were...why was he inviting you? What were the issues?

Acting Chief Justice Zondo:

Well, I haven't, does the statement say it was a time when I was judge?

10 **Commissioner Malema:**

Yes.

Acting Chief Justice Zondo:

15 Okay, all right. Well, let me put it this way. We knew each other, Mr. Zuma and I, so I think he called, or I got a message that he would like to see me. There was, as far as I'm concerned, no reason why I shouldn't agree to see him. I went to see him, but, well one, I can't remember because that was much later. I can't remember what the issues may have been on that occasion, that was quite a long time ago.

20 **Commissioner Malema:**

No, Acting CJ, as a judge called by such a prominent politician to his hotel room, it can't be a matter that you can easily forget. It's a memorable thing. I mean I remember the day I met Mandela at his house. He said to me, if you want to lead society you have to cut your stomach, it's too big for a youth president to be a president with a big stomach. And I had to make initiatives to meet that demand. 25 So, it's a memorable thing, I can't forget that. You can ask me of any prominent person I met when I was young, I remember that. There's no way I'm going to accept that explanation.

Acting Chief Justice Zondo:

Well, Commissioner Malema, I may have remembered if I was meeting President Mandela, President Zuma, I knew him. We had known each other. As I say, it might have been more than 20 years ago when that particular meeting happened.

5

Commissioner Malema:

Then you went to meet President Zuma again at his...There was one time when I also asked for a meeting with him about the 13 or 14 years ago when we were still out of government, and I met him in his Forest Town house in Johannesburg. On that occasion I wasted to raised, with him a matter that I considered of public importance. That was at his house in Forest Town.

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Acting Chief Justice Zondo:

Yes.

15

Commissioner Malema:

What is this matter of public interest?

Acting Chief Justice Zondo:

Yes. No, that I can tell you what it was. Firstly, because I remember it, but also because I had a look at his affidavit in response to that statement and I know that based on what he said in his response, he would not be taking a view that I should not say what that matter was. In a different situation, I might have been concerned whether if I went and had a private meeting with somebody, I would have to then say what we discussed in private. But because he has taken the view which I understood to be that he doesn't mind if I mention it, then I'm going to mention it. This was, I think it was, I think it may have been 2008. Unfortunately, I didn't get a chance to check newspapers so I could refresh my memory. What had happened is that there had been some event or function where both you, Commissioner Malema and Zuma were together somewhere, and you spoke at that event. Might have been, I don't know if it was a media conference or whatever. I have no recollection, but

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you spoke, and I think he was sitting next to you and if I recall correctly, that's the occasion when you said you were prepared to kill for him. I was concerned about that statement in so far as it could bring violence in the country, particularly in terms of the atmosphere at that time. It troubled me, but I was more troubled by the fact that when he stood up to speak, he did not say anything to you to indicate that this was not right, to talk about killing for somebody in the context of whatever the issues were. After some days, I thought well, I know him. What if this could end up leading to quite some violence? Maybe I should ask him if I can see him and talk about my concern. I made arrangements and he agreed. I went to see him. I told him that I was very concerned because regions, provinces, you know, even a country could be thrown into a lot of violence if leaders do not speak to their supporters and dissuade them from making any statements about violence. I talked to him about the violence that we in KwaZulu Natal had had, which he knew. I think I may have spoken to him about violence in other countries and I indicated that I was concerned about it as a citizen. I was concerned in case we ended up with violence. I thought that he should have spoken to you. He listened to me, and I give him credit, he understood, but my recollection is that he said he had not spoken to you in public, but he spoke to you in private. That's my recollection. I was simply concerned about the possibility of violence.

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Commissioner Malema:

I knew that that was the case and I viewed that as a pure political interference by a judge, because that was a statement made in a political rally and you left. You went to meet President Zuma to discuss my political position as a judge and you proceeded to sit on matters where the organization I lead, and I looked at you, the organization I lead came to a litigation against President Zuma. You have never indicated to court that you knew President Zuma like that, to a point where you can even discuss political issues with him. On two court cases that we brought before the constitutional court, you sat there. Never declared like everybody declares here that they know you in this way or that way. You never said one of the respondents in this case, I know him like this to a point where I had a political discussion with him about the leader of this political party. Don't you think that that was unethical for you to, one, to go and discuss a political statement with a politician as a sitting judge? Two, to go and listen to court cases involving the two politicians without declaring that you know the other side of the case?

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Acting Chief Justice Zondo:

Well, no. I don't share that view, Commissioner Malema. This was about, this was a concern about a statement made by you at the time, at the age at which you were.
5 As a citizen I was concerned, and it didn't mean that, I had nothing against you. My concern was that he should have dealt with the matter in a certain way because we should not have violence and I've never, I didn't have anything against you. So, I wasn't going to be conflicted, I don't know how many years later in hearing a matter involving an organization that you formed many years later. I wasn't going to be
10 conflicted at all.

Commissioner Malema:

But, ACJ, here is a story that you go and discuss another politician with another politician and later on it comes out that this judge who's sitting here has got strong
15 views about you and he sits here to listen to an affidavit that is signed by you. You are the face of this case. Don't you think that it is actually not in the best interest of the judiciary and the, for the judges to go and discuss other politicians, because if you're bringing age, at the age I was, it's immaterial to me. I'm a politician. I'm a president of an organization, even at that time. I was not a leader of a crèche. I was
20 a political leader of an organization with rich history in this country. And for you to go as a judge to discuss another politician with another politician, that amounts to bringing the judiciary into disrepute, because now when it comes out is, this judge holds an extremely, extreme political views about you. It doesn't matter how many years after. And when we say, why, how? No, he drove all the way to come and talk
25 about you and he was a sitting judge. Is that not, does that help to enhance the good image of the judiciary or in what way does it help to improve the good standing of the judiciary in society?

Acting Chief Justice Zondo:

30 I don't think it has, it creates a problem at all, Commissioner Malema. I think as a citizen, I am entitled, if violence may be threatened and I know somebody who can do something to prevent people being killed and so on, I think I'm entitled, even if I'm a judge, if I know that person, I'm entitled to go to that person and say please,

we don't want violence. If there's violence ordinary people will suffer, will be killed and of course they might not agree, but I think as a citizen I'm entitled to do that. And I've never held any strong views against you, Commissioner Malema, political or otherwise. Actually, I have respect for you. So, I've never had any strong views
5 against you. You have a certain way of dealing with issues. A certain way of dealing with matters. Sometimes some people don't like it. Yes. Thank you.

Commissioner Malema:

Thank you, ACJ. I've got a very serious problem when I raise issues and I get to be
10 loved by everyone. I'm not money. I will never be loved by everyone and those who brought me up politically were never loved by everyone. Fought for this country. Got ill-treated to their graves. So, I'm not in a business of trying to impress everybody. I'm here to pursue that which I think is right. Others will be happy. Others won't be happy. It is their own baby to feed Matabele. I'm not in that
15 business. Now I want to go back to the earlier thing of meeting President Zuma in the hotel. This had to be so because we would normally interact then. Interact when we meet at the opening of parliament, of our other government or state functions. However, they were two or so occasions when Mr Zuma was not in government when I asked for a meeting with and agreed to. When he asked for a meeting with, and I
20 agreed to him. I think that this would be, this would have been somewhere between 2005 and 2007. He was staying in a hotel in Durban, and I met him. There was one time when I was also asked for a meeting with him about 13 or 14 years ago when I was still out of government. This is what we spoke about. So, you remember that you met him between this and that in a hotel in Durban twice. I accept that Zuma is
25 not Mandela, but when you come from KZN, Zuma is the Mandela of KZN. That's why you even speak about the role he played in dealing with violence in KZN. There's no way you can be called by President Zuma twice in a hotel. You remember the years. You remember that it was in the hotel. You remember he was not in government. You don't remember what you were discussing with President Zuma at
30 that time. I know. But they're saying you rule here that you don't give people, you don't raise issues that we didn't raise with you before. But you, on your own volition, please ACJ, take the country into confidence. President Zuma asked to see you twice in a hotel. You agreed to go and meet him, and you remember all of those details. The only detail in two meetings you don't remember is what, why President Zuma
35 wanted to meet you.

Acting Chief Justice Zondo:

Well, I certainly don't remember them, Commissioner Malema. The one that I remember, I've told you. I've told the commission the one that I remember.

5

Commissioner Malema:

ACJ, I'm worried that it becomes very easy for you to descend into the political arena. One, is this meeting that you had with President Zuma to discuss politics. Two, is this meeting that you have with ease with President Ramaphosa to discuss this and even go beyond of discussing how he's going to appear and all of that and anyone who says Ramaphosa's appearance was staged, I'm tempted to agree with them, because you met him before and then you now have a press conference to engage politicians in public, descending into the arena. Are we going to have a chief justice that gets easily available to meet politicians at their own comfort? We don't know what gets to be discussed there and when we ask, they don't remember. Will that not even put this judiciary in a more crisis than it is now? Because research has been presented here that people are losing confidence in the judiciary. With an ACJ that visits politicians with ease. I mean I heard others saying it's easy for you to call a minister and all of that. Those things of ministers are insignificant. We're talking presidents here, so we're not talking those minister this and that. Presidents. Worse, those that are implicated in what you are presiding over. You meet them with ease. You discuss with them with ease. It shouldn't be easy for any judge. That's my view. To be available to meet a politician. And it shouldn't be easy for any politician to be available to meet any judge unless they are prepared when that matter is exposed, to disclose publicly with ease what was the meeting about. I'm living here with discomfort that you are a sitting judge. You met a high-profile politician in a hotel twice. You remember all the details. The only thing that cannot be remembered is what was discussed. I don't think that helps to get you to be the CJ of our country if such small details cannot be remembered.

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Deputy President Petse (Chairperson):

Commissioner Malema, I think you have made your point. Acting Chief Justice admits to having had those meetings but cannot remember exactly what was discussed at

those meetings. He explains why he had to see the president of the country on official business, as I understood him, about the work of the commissioner established by the current President's predecessor. I think you have made your point. If there is anything to be said about this matter, it can be said during our deliberations.

Commissioner Malema:

I accept that, Chair.

10 Deputy President Petse (Chairperson):

Thank you.

Commissioner Malema:

Let me make the last point on a different matter. Acting CJ, you are now the deputy chief justice and when we appoint you as a chief justice, as a proponent of transformation, how does that help with regard to transformation? Which box are we going to tick when we are given a form of transformation and say hey, his appointment? Which box does it tick here in terms of what we are trying to do with regard to transformation and exactly in the same vein, shouldn't we hang our head in shame as a country and as black men and African men who were oppressed together with women and African women being oppressed three times than us, that we have a judiciary for almost 30 years which has never produced a female chief justice? Not because it's a female, but because she's qualified. And we have had so many women who were qualified to be the chief justices of this country but till to date we have never had one. Even with the candidates that the president has presented before us. Just gave us one option and never said to us there are more than one woman to be interviewed here so that we can be spoiled of choice before we turn 30 years into democracy, to have a female judge president. What does your appointment help us with in terms of the transformation of the judiciary? I think that is my question and my last question. I won't even come back.

Acting Chief Justice Zondo:

Well, Commissioner Malema, I am here because it seems to me the President wanted to have a choice when he makes a decision as to who should be the next chief justice. He considered that I am worthy of being included in that list. I consider that it's good that this commission should have also an option and a choice. Ultimately what the
5 President decides, it will be his prerogative, but he will look at whatever factors that he needs to look at, including transformation and make his decision. In terms of the, my candidacy, my CV is before you. My, the questionnaire that I've filled is there. My track record is there as a judge, as a leader. But the decision is that of this commission and is that of the President.

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Commissioner Malema:

Thank you, ACJ. Thank you, Chair.

Deputy President Petse (Chairperson):

15 Thank you, Commissioner Malema. Commissioner Dodovu.

Commissioner Mpofu:

Commissioner. Okay, after you, sir, Commissioner.

20 **Commissioner Dodovu:**

Thank you very much, Acting President. Again, good evening ACJ.

Acting Chief Justice Zondo:

Good evening, Commissioner.

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Commissioner Dodovu:

Yes, my, I will only ventilate issues which were raised in this session by Honorable Malema and not any other thing else. I had occasion to look at section 175 of the

Constitution as it relates to the appointment of acting judges. Having looked at this provision of the constitution, it picks up, I pick up the following issues and I want you to tell me whether I'm right or wrong. Firstly, that acting judges, including the deputy chief justice is appointed by the president. Two, that the minister has got the power in terms of this provision to recommend the appointment of the judges and three that the chief justice must concur with the recommendations of the minister. Is this the understanding that you have?

Deputy President Petse:

10 I think your understanding is correct.

Commissioner Dodovu:

Is correct?

15 **Acting Chief Justice Zondo:**

Of what the Constitution says, yes.

Commissioner Dodovu:

20 If that is correct, does it mean that your assertion is not correct that what the minister was doing is abnormal, because as I understand he was within his right as provided for in this provision of the constitution?

Acting Chief Justice Zondo:

25 Well, you talk about what's provided for in the Constitution and you talk about what's abnormal you may remember in my exchange with Commissioner Malema, Commissioner Malema was very careful to, when he asked me a certain question, he said was it the norm, which is different from was it lawful, was it legal and I said if you ask me was it the norm, I'm saying it was not the norm. And later on I said I don't want to get into the question whether it's legal or not.

Commissioner Dodovu:

I understand that and I respect that, but my take and I want you to correct me if I'm wrong. My take is if it was the chief justice or the acting chief justice who was recommending judges to the president, that was wrong. That wasn't correct and the correct procedure would have been that the minister is the one who recommends, and the chief justice must concur in terms of the provision of 175 of the Constitution. I'll tell you why I'm raising this particular point. When the minister recommends in my respective view, he doesn't have to provide reasons why he's recommending this and that person, because in terms of this position as I understand it any judge can be recommended by the minister and for me, I find it odd that any insinuation can be made that whenever the minister recommends it will be unlawful or there will be a motive in that particular respect. Do you agree with me on that?

15 **Acting Chief Justice Zondo:**

Well, the recommends that is provided for in the Constitution is not the minister recommending to the chief justice. It's a recommending being made to the President.

20 **Commissioner Dodovu:**

Yes.

Acting Chief Justice Zondo:

So, he was not recommending to the President. He was suggesting or recommending to me. But I have said nothing beyond simply saying it was not normal. I've not said it was unlawful for him to do it or anything like that. I simply said it was not normal and it was not normal simply because the way it works in practice is that as the chief justice who initiates and talks to judges and judges President to be available for acting appointments and when they've agreed he then writes to the minister to say these are the people, judges that I would like to be appointed as acting judges in the constitutional court and I would like you to recommend them to the President and

the minister then says I will recommend or if he has some issue he might raise some issue, but normally that's how it normally happens.

Commissioner Dodovu:

5 If I say that normally which you are explaining, it is a norm, yes.

Acting Chief Justice Zondo:

Yes.

10 **Commissioner Dodovu:**

A norm that you are explaining.

Acting Chief Justice Zondo:

Yes.

15

Commissioner Dodovu:

It is not, it's a wrong norm. It's not the way it's supposed to be. I want you to dispute that.

20 **Acting Chief Justice Zondo:**

But you see, that's why I keep on saying what Commissioner Malema and I were talking about was what was the norm and when something that is not the norm happens you notice

25 **Commissioner Dodovu:**

Yes. Okay, yes.

Acting Chief Justice Zondo:

But we were not talking about whether it was lawful or not lawful.

5 **Commissioner Dodovu:**

Yes. Let me tell you what I see here. I see, and in this correspondences that I've read, I see a minister who was correcting a practice that was perpetuated and that practice was wrong because under the normal circumstances and in terms of this provision of the Constitution that I see, it is the president who must appoint an acting judge on
10 the recommendation of the minister after the minister has obtained the concurrence of the chief justice.

Acting Chief Justice Zondo:

Well, I did say I was restricting myself to what was the norm and not to what was
15 lawful and what was not lawful. I'm not sure that I should say anything further.

Commissioner Dodovu:

Yes. No, it's okay.

20 **Acting Chief Justice Zondo:**

Yes.

Commissioner Dodovu:

Yes. I think we have extensively exhausted on that. The second matter, the issue of
25 the, of you meeting presidents, whether it's President Zuma or it's President Ramaphosa. It's common cause that you know that President Zuma, rather than being the head of State was the president of the ANC which is based in Luthuli House. Yes. I assume. I make that assumption that you should know that he was the

president of the ANC that was based in Luthuli House. Have you been to Luthuli House?

Acting Chief Justice Zondo:

5 No. I've not been to Luthuli House.

Commissioner Dodovu:

Do you know where it is located?

10 **Acting Chief Justice Zondo:**

Yes. I know where it's located.

Commissioner Dodovu:

Have you ever seen a shack in Luthuli House?

15

Acting Chief Justice Zondo:

I think on that note...

Commissioner Dodovu:

20 No. Please. Okay. I want to lay that matter because the Luthuli House that I know is a revolutionary house and I remember even Commissioner Malema emphasizing that this is a revolutionary house where the Luthuli House is. Thank you very much.

Commissioner Malema:

25 [Indistinct 11:29:49]

Deputy President Petse (Chairperson):

Honorable Minister.

Commissioner Mpofu:

5 Thank you. Okay, people. I think it's late now. Let's try and [intervenes]...

Deputy President Petse (Chairperson):

I thought I was recognizing the minister.

10 **Commissioner Mpofu:**

No.

Deputy President Petse (Chairperson):

Because you raised [intervenes]...

15

Commissioner Mpofu:

I said I'll speak after Dudovu, sorry.

Deputy President Petse (Chairperson):

20 Because you had raised, but he's busy with his electronic device.

Commissioner Mpofu:

Yes. But I need to inform you [intervenes]...

25 **Deputy President Petse (Chairperson):**

Perhaps you may go ahead, Commissioner Mpofu.

Commissioner Mpofu:

5 Yes. It's even for the reason of what I'm going to say, it might be better for him to come afterwards.

Deputy President Petse (Chairperson):

Yes.

10 **Commissioner Mpofu:**

All right. Unfortunately, I can't talk about the other matter of the recusal.

Acting Chief Justice Zondo:

I understand.

15

Commissioner Mpofu:

Because I'm conflicted twice. It's one of those strange things where I was briefed by both sides. You briefed me to appear for you.

20 **Deputy President Petse (Chairperson):**

Please, Commissioner Mpofu, just [intervenes]...

Commissioner Mpofu:

And I was already [intervenes]...

25

Deputy President Petse (Chairperson):

...say what you want to say.

Commissioner Mpofu:

5 No. That's what I want to say, Chairperson, please. Please. I cannot be suppressed at this stage. Okay. So, and I'm saying that for a particular reason because it's relevant to what Commissioner Malema was saying, that you had approached me to brief me in the recusal matter, but I was already briefed by the other side.

Acting Chief Justice Zondo:

10 Yes. Yes.

Commissioner Mpofu:

Thank you. That's important.

15 **Acting Chief Justice Zondo:**

Yes. Thank you.

Commissioner Mpofu:

20 Now I want us to talk about the letters. As I say, I can't speak about that other matter. And please, ACJ, I don't mean any disrespect. I'm just trying to save time, so I'll ask like [intervenes]...

Acting Chief Justice Zondo:

Yes.

25

Commissioner Mpofu:

...a couple of yes and no questions.

Acting Chief Justice Zondo:

Okay. Okay.

5 **Commissioner Mpofu:**

Yes. Is it my understanding that from this correspondence on the 30th of April 2021, CJ Mogoeng wrote a letter to the minister or the president asking for the acting stint for Judge Matondo and Judge Rogers?

10 **Acting Chief Justice Zondo:**

I haven't seen the letter.

Commissioner Mpofu:

Yes. You can take it from me.

15

Acting Chief Justice Zondo:

Yes. But understand that there was some letter. What date it was, I don't know.

Commissioner Mpofu:

20 Yes. Okay. Well, it says in his letter dated 30th April 2021. This is from the minister.

Acting Chief Justice Zondo:

Yes. Okay

Commissioner Mpofu:

And he's here. It says in his letter dated 30 April 2021, Chief Justice Mogoeng recommended Deputy Judge President Matondo and Judge Rogers for appointment as active judges of the constitutional court.

5

Acting Chief Justice Zondo:

Yes.

Commissioner Mpofu:

10 Right. Now this letter is dated 7th, I mean 02/07 [intervenes]...

Commissioner Malema:

Sorry, Chair. Sorry, Commissioner Mpofu. The letters are there with the ACJ.

15 **Acting Chief Justice Zondo:**

The last one. There was only one.

Commissioner Malema:

Yes.

20

Acting Chief Justice Zondo:

So, I think they put, you see, Commissioner Malema, you asked me too many questions. I didn't see them put them here. Okay. Thank you. Thank you. Thank you, Commissioner Malema.

25

Commissioner Mpofu:

All right. Now the, this is unimportant. The, I'm just tracing the history of this thing. 30th of April, Chief Justice Mogoeng asked for Deputy Judge President Matondo and Judge Rogers to act. The minister responds on the 2nd of July 2021 to say that I've
5 seen this letter from CJ and he says having reflected on this matter, I suggest that consideration also be given to judges president for appointment and so on. You've dealt with that.

Acting Chief Justice Zondo:

10 Yes.

Commissioner Mpofu:

And then he says later, in the circumstances I'd therefore recommend that Judge President Mlambo be one of the two judges that are submitted to the president for
15 consideration. It is my view that Judge President Mlambo be recommended with Deputy Judge President Matondo for the upcoming stints. So, in summary what the minister was saying is that Chief Justice Mogoeng has given me two names. Drop Rogers J and replace him with Mlambo JP.

20 **Acting Chief Justice Zondo:**

Yes.

Commissioner Mpofu:

Thank you. All right. Now then you write back on the 9th of July, and you say no, it's
25 too late or words to that effect.

Acting Chief Justice Zondo:

Yes.

Commissioner Mpofu:

In other words, there's no concurrence in terms of 175(1).

Acting Chief Justice Zondo:

5 Yes.

Commissioner Mpofu:

That's, so let's draw the line. That's the end of that.

10 **Acting Chief Justice Zondo:**

Yes.

Commissioner Mpofu:

15 Then on the 8th of November 2021, you write and say that you ask the minister to recommend to the president that Judge President Mlambo and Judge Unterhalter act. Right. Now obviously this is still inspired by the request of July. I'm sorry. If it, Mr. Madonsela, called you a witness. I'd rather you say yes, not mm. Sorry, it's on the record.

20 **Acting Chief Justice Zondo:**

Okay. Just repeat what you said.

Commissioner Mpofu:

25 No, I'm saying on the 8th you write on your own to make that recommendation that I've mentioned but clearly, it's still inspired by that request, the earlier request.

Acting Chief Justice Zondo:

But, my recollection, I haven't read my own, refreshed my memory on my own letter to the minister in response to his one.

Commissioner Mpofu:

5 Yes.

Acting Chief Justice Zondo:

But my recollection is that I had refused to [intervenes]...

10 **Commissioner Mpofu:**

On the 9th of July.

Acting Chief Justice Zondo:

15 Earlier, yes. But my approach either at that time or later, my approach was that that did not mean I would never give him a chance.

Commissioner Mpofu:

Yes.

20 **Acting Chief Justice Zondo:**

25 So later on, when a chance arose, I gave him and part of the reason why I thought I should give him was that from, it appeared that he could make himself very available very quickly, because that's usually, particularly with judge's president, you need quite some time and at that time when I was looking for somebody, I think it may have been towards the end of November or I don't know whether December or whatever.

Commissioner Mpofu:

Yes.

Acting Chief Justice Zondo:

5 Yes.

Commissioner Mpofu:

No. I think we are saying the same thing.

10 **Acting Chief Justice Zondo:**

Yes.

Commissioner Mpofu:

15 So, when you made that recommendation, you were still mindful of the minister's request.

Acting Chief Justice Zondo:

20 I don't think I had forgotten it, but I don't think it was playing a role in my mind. I think what was playing a role in my mind is it looks like he can be available at short notice. So rather than try and look for somebody at this time of the year when it's going to be difficult to get somebody [intervenes]...

Commissioner Mpofu:

Yes.

25

Acting Chief Justice Zondo:

Let me go for him because after all we previously wanted him.

Commissioner Mpofu:

5 Yes. No, but why did it look like he might be available, because of the minister's letter.

Acting Chief Justice Zondo:

Yes. Maybe. Yes. I think [intervenes]...

10 **Commissioner Mpofu:**

Yes.

Acting Chief Justice Zondo:

Yes. I think that is true. Yes.

15

Commissioner Mpofu:

Okay. Now the issue then is that the, I want to, Commissioner Dodovu have say it's lawful and you've said that you're not questioning it's lawfulness.

20 **Acting Chief Justice Zondo:**

Yes.

Commissioner Mpofu:

25 What you are saying... I think you used two words. It was not the norm and it was unusual.

Acting Chief Justice Zondo:

Yes.

Commissioner Mpofu:

5 Yes. Well, I just want to demonstrate. That section of the Constitution says the following or let me...Let's start here. When the minister wanted you to replace Judge Rogers with Judge Mlambo, that was not at that stage the, that was not the same thing as there being a vacancy in the constitutional court. In other words, he didn't want you to fill a vacancy. He just wanted you to substitute as [intervenes]...

10

Acting Chief Justice Zondo:

Yes. I think he wanted to... Me to substitute. Yes.

Commissioner Mpofu:

15 Substitute. Yes.

Acting Chief Justice Zondo:

Yes. Yes.

20 **Commissioner Mpofu:**

Now the... Yes. The section makes that... Or that action was illegal. I'll try and demonstrate. I'll ask you for a comment of the minister, because he says the president may appoint a woman [intervenes]...

25 **Acting Chief Justice Zondo:**

Commissioner Malema said [Indistinct 11:38:19].

Commissioner Mpofu:

[Indistinct 11:38:19]. Yes. No, that was the Luthuli House, the shack story. The president may appoint a woman or a man to serve as an acting deputy justice or judge of the constitutional court if there is a vacancy in any of those offices. So I'm, 5 I don't [Indistinct 11:38:37], but what I will argue at a particular point is that there was those conditions in the Constitution did not exist because there was no vacancy. This was a substitution which is completely illegal and against the Constitution. Thank you.

10 **Acting Chief Justice Zondo:**

Well, the one thing I can mention is that the two, Judge Rogers and Judge Madondo had not yet been appointed.

Commissioner Mpofu:

15 Yes.

Acting Chief Justice Zondo:

So, it means the vacancies in which they were supposed to be appointed still existed.

20 **Commissioner Mpofu:**

No, I understand. But what I'm saying is that the minister was not, in his conduct he was not filling a vacancy. He was substituting one of the names that Chief Justice Mogoeng had put for those vacancies.

25 **Acting Chief Justice Zondo:**

Yes. Okay.

Commissioner Mpofu:

Yes. Thank you.

Acting Chief Justice Zondo:

Okay.

5

Deputy President Petse (Chairperson):

Are you done, Commissioner Mpofu?

Commissioner Mpofu:

10 I'm sorry. Thank you. Thank you. Thanks for your patience.

Deputy President Petse (Chairperson):

You are now leaving me in the lurch.

15 **Commissioner Mpofu:**

Thanks for your patience.

Deputy President Petse (Chairperson):

Now you have served your purpose.

20

Minister Lamola:

Thank you, Acting President.

Deputy President Petse (Chairperson):

25 Thank you. Honorable Minister.

Minister Lamola:

5 Yes. No, I don't agree with Commissioner Mpofu's interpretation. There was two
vacancies when we exchanged the letters. Yes. But what I just want to bring for the
benefit of the public is that I think Commissioner Malema had raised that when we
exchanged these letters, this process had already started. And these letters clearly
demonstrate that it was around June, from April that this is this process had not yet
started. Honorable Malema had raised that he wants these letters so that it can
10 demonstrate that when I wrote the letter the process for the nomination had already
started.

Acting Chief Justice Zondo:

Mm.

15 **Minister Lamola:**

So, I'm raising the fact that these letters do clarify that this process had not yet
started, because it was around April, June when we were exchanging these letters.

Acting Chief Justice Zondo:

20 Ja, well, certainly I only got involved from July, but it was [intervenes]...

Minister Lamola:

Yes.

25 **Acting Chief Justice Zondo:**

...it was, I think it was before the nominations of candidates for chief justice, when I
received your letter and when I responded to your letter.

Minister Lamola:

Okay. Ja. There is the issue of the phone call, Acting Chief Justice. I remember you were also not sure, I also did not remember very well and hence we had to [intervenes]...

5

Acting Chief Justice Zondo:

Ja.

Minister Lamola:

10 ...remind each other with this letter.

Acting Chief Justice Zondo:

Yes.

15 **Minister Lamola:**

So, one of the issues I had raised earlier on was that whereas the issue of the JPs acting was also an issue. When we spoke on the phone, I raised the issue that almost all the JPs were afforded an opportunity as you were stating to act and there is an outstanding JP that is not afforded the same opportunity, should you consider this kind of him to come also forward.

20

Acting Chief Justice Zondo:

Well, let me repeat, the sequence was as follows. I received your letter before we had a telephone discussion. So, I first received your letter and before I could respond in writing I phoned you.

25

Minister Lamola:

Yes, I agree.

Acting Chief Justice Zondo:

5 And part of what I have told you at the time was that the particular JP you are talking about has previously been invited to act in the constitutional court and he declined, you know.

Minister Lamola:

Yes. And [intervenes]...

10 **Acting Chief Justice Zondo:**

And I remember you even said he declined or something like that.

Minister Lamola:

15 With your indulgence, Acting Chairperson, I just want to, on that point [intervenes]...

Acting Chief Justice Zondo:

Ja.

Minister Lamola:

20 ...that when we spoke on the phone and when I wrote you the letter, I was not aware of the fact that he had previously declined.

Acting Chief Justice Zondo:

25 I think you [intervenes]...

Minister Lamola:

I give you my word.

Deputy President Petse (Chairperson):

I think you must be right.

5

Minister Lamola:

Yes. I became aware when you told me on the phone.

Acting Chief Justice Zondo:

10 Yes, no, when I spoke to you on the phone, your reaction suggested to me that you were surprised. You were...it was something you didn't know.

Minister Lamola:

Yes.

15

Acting Chief Justice Zondo:

Ja.

Minister Lamola:

20 No, that's fine. Thank you, Acting Chairperson.

Commissioner Malema:

No, Acting Chair [intervenes]...

25 **Deputy President Petse (Chairperson):**

Thank you, Honorable Minister.

Commissioner Malema:

5 Acting Chair, please we shouldn't do that. We shouldn't allow a situation where we
use this platform to mislead the public. The letter that the minister wrote to you says
here, "having reflected on this matter, I wish to suggest that consideration also be
given to judge's president for appointment as acting judges in the constitutional
10 court". Now he comes and says no, the impression I got is that others got
opportunity, it's only this one that didn't get an opportunity, can you give him an
opportunity. When he first generalized it and then after generalizing it, he zoomed
it to an individual and then you gave him a coherent response by giving him the list
of all those who have acted before and said the matter you are raising is incorrect.
But then he uses this generalization to come to this one individual, yes. Not that he
was speaking for an individual who was isolated from others, no.

15

Deputy President Petse (Chairperson):

Commissioner Malema, we have got the letters. We can debate the import of those
letters at the opportune time. JP Tlaletsi.

20 **Judge President Tlaletsi:**

Thank you, Acting President. We do have the letters, we see the import, but there
appears to be some verbal discussions. Can I perhaps request the ACJ to read these
letters before he leaves so that if there's anything that he might need to add
emanating from the verbal discussions, it can be corrected, or facts must be clear?
25 Rather when he's here, he's not here then we come up with interpretation and say
this is what you could have meant. But let's give him an opportunity to go through
these letters, because what is going on is between him and the minister, this and this
and this and then it was generated into a dialogue. Please, that will be my special
request, thank you.

30

Deputy President Petse (Chairperson):

Thank you, JP Tlaletsi.

Acting Chief Justice Zondo:

5 Chair, I think if I'm to read them and look at the time, it would be better if I know exactly what the issue is. Commissioner Malema earlier on said his issue was to determine when it was in relation to the opening of nominations. That's easy to check if that is the point, but it depends what other point we are pursuing.

Deputy President Petse (Chairperson):

10 Yes, Commissioner Malema.

Commissioner Malema:

No, my point is that this process of this individual recommended to you started once the process has started.

15

Acting Chief Justice Zondo:

Ja.

Commissioner Malema:

20 And this is what happens, Acting Chief Justice.

Acting Chief Justice Zondo:

Yes.

25 **Commissioner Malema:**

CJ Mogoeng Mogoeng writes to them, they don't respond. They wait for him to go. Now they know that the CJ is gone. The process, you are now acting, we are going to look for a CJ. Then they start responding to [intervenes]...

5 **Minister Lamola:**

No, no, Acting Chairperson, that is a lie.

Commissioner Malema:

...Mogoeng Mogoeng's letter during your time.

10

Minister Lamola:

It's a blue lie what Commissioner Malema [intervenes]...

Commissioner Malema:

15 No, but don't say I'm lying, what do you mean I'm lying?

Minister Lamola:

No, it's a lie.

20 **Commissioner Malema:**

No, don't say I'm lying.

Minister Lamola:

No, it's a lie.

25

Commissioner Malema:

That is disrespectful. To say I'm lying it's disrespectful.

Minister Lamola:

No, you are lying.

5

Deputy President Petse (Chairperson):

Order please.

Minister Lamola:

10 He's lying.

Commissioner Malema:

If you are going to allow him to say I'm lying [intervenes]...

15 **Minister Lamola:**

No, he;s lying.

Commissioner Malema:

...it's wrong. You see.

20

Deputy President Petse (Chairperson):

[Indistinct 11:46:26] he was still speaking.

Commissioner Malema:

25 I'm on a platform here and I'm not going to be called a liar here.

Male speaker:

Chair, take charge of your meeting.

5 **Male speaker:** He's out of order, Chairperson.

Male speaker:

Chairperson, take charge of your meeting please.

10 **Minister Lamola:**

No insults please.

Commissioner Malema:

Ja, he can't say I'm lying.

15

Deputy President Petse (Chairperson):

Honorable Minister, I haven't recognized you.

Commissioner Malema:

20 No, he must protect me [Indistinct 11:46:47].

Minister Lamola:

No, I'm raising a point here.

25 **Commissioner Malema:**

He cannot just come in and say I'm lying.

Minister Lamola:

I'm raising a point of order.

5

Commissioner Malema:

If he's going to degenerate this thing because he's a minister, it's not going to work here. Not with me.

10 **Minister Lamola:**

I'm [intervenes]...

Deputy President Petse (Chairperson):

Commissioner Malema, Mr. Malema [intervenes]...

15

Commissioner Malema:

It's not going to work with me.

Deputy President Petse (Chairperson):

20 Mr. Malema, please make your point.

Commissioner Malema:

But protect me, he says I'm lying, protect me. He's insulting me.

25 **Minister Lamola:**

Its out of order, Chairperson.

Commissioner Malema:

5 But he said I'm lying, out of order is something else, he said I'm lying. He must withdraw that.

Minister Lamola:

Ja, no, I withdraw the lie, he's out of order.

10 **Commissioner Malema:**

Now, ACJ [intervenes]...

Deputy President Petse (Chairperson):

Honorable Minister [intervenes]...

15

Minister Lamola:

He's out of order, Chairperson.

Deputy President Petse (Chairperson):

20 ...Commissioner Malema is still on the floor.

Minister Lamola:

Ja, but a point of order is procedural.

25 **Deputy President Petse (Chairperson):**

Let him speak.

Minister Lamola:

It's allowed in a meeting, he's out of order. It's allowed to raise a point of order.

5

Deputy President Petse (Chairperson):

But the candidate, the Acting Chief Justice needs clarification on exactly what is it that is required of him so that he directs his focus when raised those letters to what is in fact at issue.

10

Commissioner Mpofu:

Chair [intervenes]...

Deputy President Petse (Chairperson):

15 And that was the point that Commissioner Malema was in the process of explaining. If you have or you want an opportunity to respond to what, whatever Commissioner Malema says, by all means. Thank you.

Commissioner Malema:

20 Acting Chief Justice, no, let me leave this criminality, let me leave it.

Acting Chief Justice Zondo:

Okay. Thank you.

25 **Deputy President Petse (Chairperson):**

Commissioner Xaba.

Commissioner Xaba:

Chair, I was actually checking if we have not exhausted the issue. My view is that we exhausted the issue.

5

Deputy President Petse (Chairperson):

Yes.

Commissioner Mmoiemang:

10 Can I also [intervenes]...

Deputy President Petse (Chairperson):

Thank you, Commissioner Xaba.

15 **Commissioner Mmoiemang:**

...Acting President. I'm just worried about the direction in which this discussion is taking. It has a potential to taint this process. I think the insinuation that this appearing from this conversation, it has a potential. I think all of us know that we are a country that is highly litigious in terms of the nature of our democracy and my worry is that the direction in which this discussion is taking is making this process vulnerable. Thank you.

20

Commissioner Mpofu:

Yes. Acting Chair [intervenes]...

25

Deputy President Petse (Chairperson):

Thank you, Commissioner Mmoiemang. Commissioner, Nyambi.

Commissioner Mpofu:

Okay.

5 **Commissioner Nyambi:**

Chair, I'm aligning myself with Honorable Xaba that we'll have our own time, we have exhausted the matter, not unless there's something extraordinary. So, I'm aligning myself with Honorable Xaba, let's close this matter.

10 **Deputy President Petse (Chairperson):**

Point taken, Commissioner Nyambi.

Commissioner Mpofu:

Yes.

15

Deputy President Petse (Chairperson):

Is there anything more?

Commissioner Mpofu:

20 Acting President, yes, the, since I was one of the people who raised these issues, I just want to say from my side, I do not think that we should ask the candidate to supply anything else. I think for the purposes of what, of the interview, what has come out is sufficient for us to debate the matter in deliberation. So, I propose that we close it. Other people can, it can be taken up with the correct agencies later.

25

Deputy President Petse (Chairperson):

Thank you, Commissioner Mpofu. Acting Chief Justice, I've got a few issues that I want to clarify with you before we conclude the interview.

5 **Acting Chief Justice Zondo:**

Yes.

Deputy President Petse (Chairperson):

10 Earlier on you mentioned that someone had prepared a list of the chief justices of the Republic from way back during the 1880s or 1800s. I undertook the, or my own exercise but I commenced from 1910 to 2021 [intervenues]...

Acting Chief Justice Zondo:

Mmhmm.

15

Deputy President Petse (Chairperson):

...and I came up with 21 chief justices, all of whom were men, but one thing which might be of interest to you is that Stratford CJ was a chief justice for only a year, 1938 to 1939.

20

Acting Chief Justice Zondo:

Mmhmm.

Deputy President Petse (Chairperson):

25 But that was at a time when the Minister of Justice could pick up his phone and say I'll be recommending you to be appointed as a chief justice to the President or State President.

Acting Chief Justice Zondo:

Mm.

5 **Deputy President Petse (Chairperson):**

Then could we go to page 52 of book 1 of 1, paragraph 16?

Acting Chief Justice Zondo:

Is that paginated 52?

10

Deputy President Petse (Chairperson):

Yes, paginated 52, Acting Chief Justice.

Acting Chief Justice Zondo:

15 Yes.

Deputy President Petse (Chairperson):

Where you deal with the subject of women in leadership position in the judiciary.

20 **Acting Chief Justice Zondo:**

Yes.

Deputy President Petse (Chairperson):

25 And the proposition that I want to put to you is that if one takes that idea to its logical conclusion, it must therefore mean that women must be given the same opportunities as men so that they too can reach the pinnacle in their judicial careers.

Acting Chief Justice Zondo:

Obviously.

5 **Deputy President Petse (Chairperson):**

You have already been asked about the, you know, the delays in the delivery of judgments in the constitutional court and I will not [intervenes]...

Acting Chief Justice Zondo:

10 Yes, I have.

Deputy President Petse (Chairperson):

I will not... [AUDIO ENDS]

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