

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

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DAY 21

20

PROCEEDINGS HELD ON 12 NOVEMBER 2018

CHAIRPERSON: Good morning Mr Pretorius. Good morning everybody.

ADV PAUL PRETORIUS SC: Morning Chair.

CHAIRPERSON: Thank you.

ADV PAUL PRETORIUS SC: Today Ms Barbara Hogan will be led by Advocate Mokoena.

CHAIRPERSON: Thank you. Before, Mr Mokoena before you do that, I just want to attend to one matter that I want to deal with and basically it relates to the media statement that the Commission issued on Thursday. I want to read this media
10 statement again and make an appeal to the public and to the media to please respect the processes of the Commission and to abide by the law. The statement reads:

“Since the commencement of the public hearings of the Commission in August 2018, various sections of the media have disseminated and published contents of witnesses statements submitted to the Commission in connection with the inquiry the Commission before witnesses give evidence before the Commission and without the written permission of the Chairperson.

The latest incident relates to the statement submitted to the
20 Commission by Minister Pravin Gordhan, Minister of Public Enterprises. The same thing also happened with the statement submitted to the Commission by former minister of Public Enterprises, Ms Barbara Hogan. Both minister Gordhan and Ms Hogan are yet to give evidence before the Commission.
An investigation is to be conducted to try and establish the

people responsible for the leaks of witnesses' statements, however, in the meantime I wish to draw the attention of all media houses and the public to the provisions of regulations 11(3) and 12(2)(c) of the regulations governing the Commission."

Regulation 11(3) reads as follows and I quote:

"No person shall without the written permission of the Chairperson

10 (a) disseminate any document submitted to the Commission by any person in connection with the inquiry or publish the contents or any portion of the contents of such document or peruse, that is b;

(b) peruse any document including any statement which is destined to be submitted to the Chairperson or intercept such document while it is being taken or forwarded to the Chairperson."

Regulation 12(2)(c) reads and I quote:

"Any person who contravenes a provision of regulation 11..."

which includes the regulation I have just read.

20 "...is guilty of an offence and liable on convictions (ii) in the case of an offence referred to in paragraph (b) or (c), to a fine or to imprisonment for a period not exceeding twelve months."

Paragraph 3 of the media statement reads - and 4:

"These regulations make it clear that it is a criminal offence for anyone, and that includes the media, to disseminate or publish,

without the written permission of the Chairperson, any document which includes a witness's statements submitted to the Commission by any person in connection with the Commission's inquiry."

Paragraph 4:

"After a witness has given evidence in public before the Commission and his or her statement has been handed up at the public hearing, the media may publish his or her statement or portions thereof, unless the Chairperson orders otherwise."

10 Paragraph 5:

"I urge the media and everyone to observe Regulation 11(3) and desist from disseminating, or publishing witnesses' statements, or portions thereof, before the witnesses have given evidence at a hearing of the Commission, unless the Chairperson's written permission has been obtained. I therefore trust that in support of the work of the Commission, all media houses, journalists, commentators, analysts and the public at large will not act in breach of the regulations and will show respect for the processes of the Commission."

20 I just want to appeal to the media and the public again to say, in support of the work of this Commission, please just exercise patience. We are not saying that you are not going to be allowed to publish these statements. I am giving permission. I have given permission that once the witnesses have given evidence, you may publish the statements.

I just want to point out that, when witnesses have given their statements to the Commission, those statements are still the subject of investigation within the Commission before the witnesses give their evidence. The legal team looks at the statements, looks at issues that are covered in the statements and may themselves or through the investigators of the Commission seek to check certain things and discuss the statement with the witness in regard to anything that they might have picked up in terms of checking certain things covered by the statement.

So, in terms of public interest, I do not think that there is really any special public interest that dictates that they should be published before the witnesses give
10 evidence. Whatever they say in the statements, it means it has been taken care of and will be published and made known to the public. It is just a matter of time. It is not that it is going to be swept under the carpet and therefore that is why it is necessary for the media to publish it ahead of the witness giving evidence.

So, I really appeal to all concerned to just exercise patience and give the processes of the Commission space so that we can do our job properly. Thank you very much. Yes Mr Pretorius.

ADV PAUL PRETORIUS SC: Thank you Chair.

CHAIRPERSON: Mr Mokoena.

ADV PHILLIP MOKOENA SC: Thank you Mr Chair. Mr Chair, a question maybe
20 posed as to where does one locate the evidence of Ms Hogan with reference to the Commission's terms of reference. Ms Hogan's evidence addresses the term of reference 1.1, to the extent that it deals with the undue influence made to members of national executive in the appointment of boards and/or the CEOs of the SOEs. She will also deal with how she was removed as a minister of Public Enterprises.

The testimony of Ms Hogan will also lay the basis, Mr Chair, for the evidence which the Commission intends leading in relation to the SOEs which - such as Eskom, Transnet, Denel, SABC and SAA. It might include also other SOEs which fell under her portfolio.

Apparent from her statement, she will also testify on these terms of reference, with specific reference to Transnet, Escom and SAFCOL. She will proceed, Mr Chair, to also testify on the issue relating to the termination of SAA route from SA to Mumbai. She will also refer and corroborate the evidence of Ms Mentor in relation to the rumours of her removal as the minister of Public Enterprise. You will see that her
10 evidence in a way dovetails with the period which Ms Mentor have testified upon pertaining to when she visited the Gupta compound and when an offer was made to her.

Initially, Mr Chair, you will recall that Ms Hogan, through the assistance of his legal team, did furnish the Commission with her written witness statement. It was after perusal of the statement, we arrived as the legal team at a conclusion that the statement only implicated one person and it was the ex-president, Mr Zuma.

A notice in terms of Rule 3.3 was then dispatched to the ex-president as early as 22 August 2018. The Commission did not receive any applications in terms of Rule 3.4 or any version from the ex-president, and subsequent to that Mr
20 Chair...[intervenes]

CHAIRPERSON: And in terms of actual receipt by him or his legal team of the notice, that is not an issue they did receive it.

ADV PHILLIP MOKOENA SC: They did receive both statements according to the records of the Commission. There is no issue around that Mr Chair.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: And subsequently Ms Hogan, having filed the initial statement, she then supplemented the same statement and attached comprehensive annexures to the statement in order to ventilate the issues which were paramount - or which were appearing in the first statement. So, there is no any change of the version – the version is the same, the second statement simply supplemented the initial statement and it was also delivered to the Commission, on 8 October 2018. In her supplementary statement, Mr Chair, Ms Hogan mentions a number of individuals and organisations and this raised a similar debate, like the one of Ms Lynne Brown, whether a mere mentioning of a person can be equated to that person being implicated within a proper interpretation of Rule 3.3? However, to err on the side of caution, as the legal team we did issue further notices in terms of Rule 3.3 to all individuals, institutions, organisations and parties that we mentioned. The *dies* has since lapsed and no person or party or organisation has applied to cross-examine Ms Hogan, save for two affidavits that we received from Mr Marocha and the other one from Mr Manje, where they simply clarified certain portions of Ms Hogan's statement, which we will deal with them in due course, but none of them have actually made any formal application in order to cross-examine Ms Hogan.

Ms Hogan, Mr Chair, is represented by Harris, Nupen, Molebatse Attorneys and I am informed that Mr Harris and Mr Macheta[?] are in attendance on behalf of Ms Hogan.

Mr Chair, for ease of reference we have also prepared a bundle containing Ms Hogan's witness statement and annexures. We propose that that bundle be marked as EXHIBIT L1. Ms Hogan...[intervenes]

CHAIRPERSON: Is that the one written File 2 of 2?

ADV PHILLIP MOKOENA SC: Yes, Mr Chair. There are two files, both of them - we may have to mark them L1, but we will refer to them as File 1 and File 2.

CHAIRPERSON: Yes. Okay. The two files relating to Ms Hogan's evidence will be EXHIBIT L. You said L, hey?

ADV PHILLIP MOKOENA SC: L1.

CHAIRPERSON: Ja. Exhibit L and the one which contains her statement will be referred to as Exhibit L File 1.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: And the one which contains only annexures will be referred to as
10 File 2 of EXHIBIT L.

FILES RELATING TO MS HOGAN'S EVIDENCE HANDED UP AS EXHIBIT L

ADV PHILLIP MOKOENA SC: Yes, thank you. Mr Chair, for completeness, there are other parties here to listen to the evidence of Ms Hogan and I am aware that Transnet, that is being represented by Mr Mattau, and I am also told that the SACP it is sending also its legal representative to also listen to the evidence of Ms Hogan in these proceedings. Their legal teams are present.

CHAIRPERSON: Okay. Thank you.

ADV PHILLIP MOKOENA SC: Mr Chair we are ready to proceed with the evidence of Ms Hogan.

20 **CHAIRPERSON:** Yes. Ms Hogan once again thank you very much for taking the decision to come forward and assist the Commission in regard to what you know and what happened during your time as Minister of Public Enterprises. We appreciate it very much. We are investigating allegations, as you know, including allegations of state capture and certain aspects which are set out in our terms of reference. You will be asked questions and if in the process you are asked questions you might interpret as

not so friendly, it will not be anything personal, it is simply because we approach the matter in terms of our reference on the basis that these are allegations. We have to get to the bottom of them. We have got to find the truth and so every witness who comes – if there are questions that need to be asked in order to understand his or her evidence properly and get to the bottom – those questions will be asked, but once again for thank you for coming forward. Thank you.

Yes Mr Mokoena - O, the Registrar will take an affirmation.

REGISTRAR: Please state your full names for the record?

MS BARBARA HOGAN: Barbara Anne Hogan,

10 **REGISTRAR:** Do you have any objection with making the prescribed affirmation?

MS BARBARA HOGAN: No objection.

REGISTRAR: Do you truly affirm that the evidence you will give, will be the truth, the whole truth and nothing but the truth. If so please state. I truly affirm.

MS BARBARA HOGAN: I truly affirm.

REGISTRAR: Thank you.

CHAIRPERSON: Thank you very much. Yes Mr Mokoena you may proceed.

EXAMINATION BY ADV PHILLIP MOKOENA SC: Ms Hogan, you had furnished the Commission with witness statements. Is that correct?

MS BARBARA HOGAN: That is correct.

20 **ADV PHILLIP MOKOENA SC:** If you can keep your mic on.

MS BARBARA HOGAN: Ja.

ADV PHILLIP MOKOENA SC: The initial statement and the one which supplemented the initial statement. Is that correct?

MS BARBARA HOGAN: That is correct.

ADV PHILLIP MOKOENA SC: They appear on EXHIBIT L – just for reference sake, you do not have to go there. Page 1 – 24 and the initial statement appears from page 393 to page 399. Do you confirm those statements under oath?

MS BARBARA HOGAN: I confirm them. Yes.

ADV PHILLIP MOKOENA SC: Can you please, Ms Hogan, proceed to sketch for us a brief synopsis of your personal history.

MS BARBARA HOGAN: Okay. Chair, I had the distinction of being born in Benoni and I grew up there and I was lucky enough to go to university. I went to the University of Witwatersrand and I completed a BA Honours in Development Studies.

10 **CHAIRPERSON:** Just one second Ms Hogan. Is her voice audible enough for everybody? Okay, I think the technical – they must do something to make sure everybody can hear.

MS BARBARA HOGAN: Okay.

CHAIRPERSON: Just one second they will try and sort something out.

MS BARBARA HOGAN: Is that better?

CHAIRPERSON: It looks like that is much better. Can you now hear? Just say something again Ms Hogan.

MS BARBARA HOGAN: I was born in Benoni...[laughing]. Many more other famous people were born in Benoni, but I claim that right as well. I went to university at Wits
20 and did my Honours degree there in Development Studies. It was at Wits that I first started to become politically conscientized. I arrived there in 1970, which was really the heyday of *apartheid*, the great heyday, and over time I developed a great misgiving about *apartheid* and what it was doing to the people of this country.

I became involved in the start up of what later emerged as the Congress of South African Trade Unions, COSATU. It was a legal advice office. I was involved in

that and I was involved in student politics and later on I was involved in support work for workers' struggles such as consumer boycotts etcetera.

In 1977 I joined the ANC underground, not the military underground, but the political underground. My reason was that I believed that the apartheid government, particularly after the death of Steve Biko and the banning of the black consciousness organisations, that they had so much power, that unless there was an organisation that was outside of the country which could continue the struggle. We would not be able to break the back of that power.

I also firmly believed in the non-racial stance of the ANC. In my university
10 years I had to engage with the issues of the black consciousness movement, which was a predominant movement at that time and whilst I understood, and still do, sympathise with a lot of the positions they took, I felt that the ANC with its non-racial position provided a future for South Africa. So, I joined the ANC underground a political operative. I then – I registered for a Masters in Unemployment in South Africa and I was a full-time student then, and in 1981 I was arrested by the Security Police. Along with me there were – it was a wide scale raid on people. It was said that it was probably the first time in a long time that a broad range of people had been arrested who covered the entire spectrum of South African Society. Whites, Indians, Coloureds, Black. We were sort of seen as the emergence of a non-racial tradition that was now
20 coming forward.

I was initially charged with six - five other people and then charges were later withdrawn against three – one managed to slip the country and one was found not guilty. I then stood trial on charges of high treason. I was found guilty of high treason by the court, although the judge had said there was nothing absolutely illegal that I had done, but I was party to a conspiracy to overthrow the state because I was a member of

the ANC. So, I was then sentenced to 14 years, four to run parallel and I then went to jail – this whole process, I was in detention for six months and then awaiting-trial and finally sentenced seven months thereafter. So, in late 1982 I was sentenced to prison. I was the only white woman prisoner and I was not allowed to be with other prisoner, so I was on my own.

After that I was joined by one or two, three, four, people at a time and after eight and a half years of my time in prison, President de Klerk announced the unbanning of the ANC on 2 February. I was privileged enough to be released from prison two and a half years ahead of my release date, on parole, and I was released
10 two days before President Mandela was released. I wanted time out. It had been a long hard time. But the ANC had just been unbanned. It was still in exile. There were no structures in the country that were ANC. So, Walter Sisulu who headed the interim leadership core of the ANC, at that stage requested that I sit on an interim leadership committee of the ANC in Gauteng and our task was to build the branches and the structures of the ANC. If we were going to be in negotiations it had to be on a democratic basis and we needed a party.

I became the General Secretary of the ANC in Gauteng and I was there for a period of three years. It was a terrible period, as you would recall. When people were being massacred left, right and centre. It was one of the worst periods and it was a
20 very difficult time to persuade people to believe in a future when they themselves were being massacred. We participated as a province, very much in the policy considerations and negotiations around CODESA and in 1994 after the elections – in 1994 I was put forward as a candidate as a member of parliament and in 1994 I assumed my position as a member of parliament for the ANC, on the National list not the Provincial list.

In parliament I served in various capacities. I was chair of the Parliamentary Budget Committee. I chaired the Finance Committee – the Parliamentary Committee on Finance. When I was in prison I was not allowed to continue with my Masters and I was only allowed to do a BCom degree which turned out to be very useful, because in a new country, a newly emerging democracy, economic and accounting skills were very important.

So I chaired the Finance Committee, we passed the Public Finance Management Act, the Municipal Finance Management Act, we set in process the procedures to reform the South African Revenue Services, which had completely
10 collapsed during the apartheid years. I later served as the chair of the standing committee of the Auditor General. The Auditor Generals, I had a very close working relationship with the Auditor General and through our efforts, we were able to establish Public Accounts committees throughout all the provinces and later in the municipalities and they still survive as one of the greatest, the best committees for accountability.

In 2008, shortly before the 2009 elections, when shortly after President Mbeki was removed, or resigned from office, President Motlanthe asked me to be the Minister of Health. I am not a health expert, but I had strongly – I was strongly committed to making sure that people who had HIV and AIDS and Tuberculosis, received the proper medication in order to survive and I saw that as my challenge and fortunately, during
20 that period of time we were able to start the process for unleashing a proper regime of care for people with HIV and AIDS. That was 2008.

In 2009 there were the elections and President Zuma appointed me as Minister of Public Enterprises and I served in that capacity until he removed me about 18 months later at the end of 2010.

ADV PHILLIP MOKOENA SC: Who was your Deputy? Who was the Deputy at the time?

MS BARBARA HOGAN: My Deputy was Enoch Godongwana, who was head of the ANC's Economic Transformation Committee.

ADV PHILLIP MOKOENA SC: So as a Minister of Public Enterprise, now I am talking from the period May 2009, flowing from your evidence, how many SOEs fell under your department and you may also mention them please?

MS BARBARA HOGAN: Yes. There were nine SOEs. The Department of Public Enterprise does not cover all SOEs but there were extremely important ones. There
10 was Eskom, Transnet, it is in paragraph 10 on page four. Eskom, Transnet, SAA, SA Express, Denel, Infraco, PBMR, Alexkor and SAFCOL. They were entrusted to my care.

ADV PHILLIP MOKOENA SC: Now during your time as a Minister of Public Enterprise, you also obtained two opinions; the one was from Wim Trengove and the one from Michael Katz. May I refer you to, just to identify them, Annexure D, page 53. The one runs from Annexure D, Mr Chair, page 53 to 82 and the other one runs from page 83 to 93 of Annexure D. Are you there Ms Hogan?

MS BARBARA HOGAN: Yes, I have them.

CHAIRPERSON: Did you say, page 53?

20 **ADV PHILLIP MOKOENA SC:** Page 53, Mr Chair.

CHAIRPERSON: And that is EXHIBIT LF, File 1.

ADV PHILLIP MOKOENA SC: EXHIBIT F1, File 1.

CHAIRPERSON: And what I have at 53 is on the letterheads of Public Enterprises and I did not expect Counsel's opinion to be on the letterheads of...[intervene]

ADV PHILLIP MOKOENA SC: Mr Chair, let me just recheck that numbering, I might have given you - page 83 Mr Chair.

CHAIRPERSON: 83?

ADV PHILLIP MOKOENA SC: The one of Mr Wim Trengove is from page 83.

MS BARBARA HOGAN: Mr Katz is 68, I think.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Yes, I have got it at page 83. Have you got it Ms Hogan?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Yes. Are those the opinions that you received?

10 **MS BARBARA HOGAN:** Yes, I have got them.

ADV PHILLIP MOKOENA SC: Would I be correct that those opinions dealt with the appointments and removals of the SOEs and also address the powers and functions of the Minister of Public Enterprises with reference to the applicable legal instruments.

MS BARBARA HOGAN: Correct.

CHAIRPERSON: I am sorry Mr Mokoena, the other opinion is that of Mr Katz, you said.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Katz. I did not hear where you said that is to be found?

ADV PHILLIP MOKOENA SC: It is 68 and he signs at page 82.

20 **CHAIRPERSON:** Okay, thank you.

ADV PHILLIP MOKOENA SC: Yes, Ms Hogan, and do you agree with the conclusions arrived at in those opinions?

MS BARBARA HOGAN: Yes, I do.

ADV PHILLIP MOKOENA SC: Now, may you please in your own words and flowing from your understanding, you know, from your experience as the Minister of Public Enterprise, take us through the structure of ownership and control of the SOEs.

MS BARBARA HOGAN: Okay. There was a period in time before the ANC Government came into power, when SOEs like Eskom, Transnet and whatever, were not companies as such but Government agencies and over the period of time in the late 80's, early 90's and whatever, that status was changed so they then became public utilities and became a company and fell under the Companies Act and in terms of the Companies Act, both the one that prevailed at the time when I became Minister and the
10 Companies Act which then followed on shortly thereafter, the Minister in most cases of all of these nine SOE's is the single shareholder. Now, the Minister is the shareholder and performs her functions as a shareholder on behalf of Government. That is the executive authority assigned to the Minister of Public Enterprise which is to exercise her authority as the shareholder.

Now, as we all know, the shareholder does not run a company, nor does the shareholder interfere in the management of a company. The shareholder has certain prescribed rights conferred on it both by the Public Finance Management Act, by the Companies Act, codes of conduct by the King Report and the shareholders, one of its most important task of the shareholder is to appoint directors at an annual general
20 meeting of the Board and the shareholder can also remove a director under certain conditions.

As a Minister, you have to keep very close watch what is happening in each of these companies and particularly when I refer to companies like Eskom, Transnet, SAA, who have a vast asset base and Transnet and Eskom are essential for the running of the country, for the economy. If Transnet does not work, none of us work. So there is

even a greater need for the Minister to be very close to what is happening but not to interfere. There is a handbook that Government gives, that Government issued and which Cabinet adopted in 2008 which prescribes in very clear terms and I am sure the Commission would be very interested, prescribes how the Minister should go about appointing and it is a very - very careful process because you want to have the best people and the most knowledgeable people to run this company.

So then let us go to the directors. The directors have a fiduciary responsibility to the company, not to me as a Minister but to the company. They have to make sure that everything that is done there is for the good of the company. In order to do so they
10 appoint a manager, or a series of senior managers. Often the CFO, the Chief Financial Officer, and the CEO are the most important appointments.

In many of these SOEs, the memorandums of association as they were called then, prescribe that the Minister appoints the CEO, as in Transnet for instance, but under these circumstances no Minister would just go ahead and appoint a CEO because that CEO then has to enter into formal employment contract with the Board and is accountable to the Board for their performance. If there is no trust or no endorsement of that CEO by the Board, it is a very difficult relationship.

ADV PHILLIP MOKOENA SC: Ms Hogan, while you are still there testifying on the structure and the state as the shareholder, may I for completeness also, refer you to
20 page 84. Mr Chair, that is part of Mr Trengove's opinion, page 84, with particular reference to paragraph 4 and that theme runs up until page 87, paragraph 8.4. Would that also equate to what you have been testifying to the Chair, in as far as the State as the shareholder and the responsibilities of the Board as well as the CEO, the Minister.

MS BARBARA HOGAN: That's correct. Do you want me just to elaborate a bit on that?

ADV PHILLIP MOKOENA SC: Yes, you may please, definitely.

MS BARBARA HOGAN: So, the Minister's executive authority as a shareholder, one of its important roles is to appoint the Board and to allow the Board to do the initial work around the appointment of a CEO in agreement. So you would agree, this is what the shareholder, this is what competencies we want versus the kind of person we are looking for and keep very close to the process and the Board would consult backwards and forwards and say we have done the interviews and from my opinion, we would like to recommend so and so or whatever and then the Minister would make a decision and then take it to Cabinet.

10 Now, it is very important that the Minister, does not interfere with the work of the CEO or that the CEO does not believe that he or she can jump the directors, go past them and go straight to the political executive authority. Corporate governance is very important in this phase and if there is any dilution of that, it leads to the company starting to disintegrate because no-one knows where the real authority emerges and the notion of a shadow state comes up.

ADV PHILLIP MOKOENA SC: You have just referred to an important concept of corporate governance. Can we dissect that in order for us to place it in its proper context?

MS BARBARA HOGAN: Sorry, I did not.

20 **ADV PHILLIP MOKOENA SC:** Now, to place it in its proper context, who runs the day to day operations of the SOE?

MS BARBARA HOGAN: The management and the CEO is the central person in that.

ADV PHILLIP MOKOENA SC: And to whom are they accountable to?

MS BARBARA HOGAN: The Board.

ADV PHILLIP MOKOENA SC: And what is the role of the Board in relation to the SOEs?

MS BARBARA HOGAN: The Board owes a company a fiduciary responsibility so the Board provides us to strategic direction and vision. Obviously in a relationship with its senior managers, you know, in consultation but the Board must provide that strategic direction and must hold the management to account.

ADV PHILLIP MOKOENA SC: Yes, and from your own experience and perspective, what is a focus of a major SOE such as Eskom and Transnet?

10 **MS BARBARA HOGAN:** Well, Eskom is responsible for providing energy to this entire country and there are very few - when I came in as a Minister, I think Eskom was responsible for 97% of the energy generation and I think we have all experienced during the blackouts what the consequences are if Eskom is not performing.

ADV PHILLIP MOKOENA SC: Yes, now...[intervene]

MS BARBARA HOGAN: And Transnet, let me just, Transnet...

MECHANICAL INTERRUPTION [16:58]

CHAIRPERSON: [everyone laughing] So maybe you should...[intervene]

ADV PHILLIP MOKOENA SC: By the blackouts because we do experience them.

MS BARBARA HOGAN: I will undertake to do so.

ADV PHILLIP MOKOENA SC: You were just about to explain about Transnet?

20 **MS BARBARA HOGAN:** Transnet does not deal with passenger rail. Transnet only deals with the movements of manufactured goods or goods or chemicals across the country. If you look at the moment at the trucks that carry coal, it is just two holders, containers. If you look at a Transnet train, it can go on for nearly a kilometre, the length, so obviously having an efficient rail infrastructure with an efficiently run infrastructure is incredibly important, because in our country we depend a lot on mining.

A lot of what is mined needs to be taken out of the ground, taken to where it is needed to be manufactured or taken for export. If Transnet is not operating at full capacity, we damage the economy and many people are of the view and I cannot corroborate that, that South Africa was not fully able to take advantage of the commodities boom that happened in the early 2000s because Transnet was not up and running with the efficiencies required. Maria Ramos then came in, she managed as a CEO, she got the balance sheets up and running and Transnet in my time was ready to start doing what it needed to do.

ADV PHILLIP MOKOENA SC: And these SOEs, where do they derive their capital
10 from?

MS BARBARA HOGAN: They were?

ADV PHILLIP MOKOENA SC: Their capital, where do they derive their capital from, these SOEs.

MS BARBARA HOGAN: Yes, now one of the differences between a company and a State-Owned Enterprise is that the State is not in a position to provide equity on the scale that any shareholder would be able to provide that equity. So a State-Owned Enterprise has, you know, they are doing massive investments. Transnet and Eskom's biggest investments in the country in infrastructure, they have to raise their capital for infrastructure investment from the issuing of bonds, you know, by borrowing and
20 hopefully they can cover their running costs through the tariffs that are imposed.

What has happened in my time in the case of the SAA for instance, is that technically SAA already at that time could have been declared bankrupt and the only way that the State could respond at that point was to offer a guarantee that, you know, if the SAA reneged on its payments, that the State would then come in so a lot of the State's strategy in those early years when I was there, was around giving guarantees

which National Treasury had to approve of. So you can imagine that the financial health of those two institutions is watched extremely closely by National Treasury, by us in Public Enterprises, by the ratings agencies because if these two fail, the consequences for the country are huge so the question of the funding model of State-Owned Enterprises was never properly resolved during my period. Cabinet asked Mr Gordhan, who was Minister of Finance at the time, and myself to set up an inter-ministerial committee to look at that funding model but that was then shut down when President Zuma appointed an independent commission to investigate State-Owned Enterprises.

- 10 **ADV PHILLIP MOKOENA SC:** Yes, you did also mentioned that one of the things that National Treasury would sometimes do was to issue loan guarantees and you mentioned SAA as a case in point. Now, may I link that evidence of yours with reference to Exhibit K1. Mr Chair, I have only provided the extract, that is the evidence of the ex-Minister of Finance, Mr Nene, with particular reference only to paragraph 102. I see that my colleagues are looking at their bundles, they will not find it. I have just provided the extracts. It is on a separate page, have you found it? You will see that the ex-Minister of Finance, Mr Nene, also touched on the things that you have now testified upon. At paragraph 102 he stated the following:

- 20 “SAA was brought under the arbitration of Treasury on the 11 December 2014, gazetted on the 19 December 2014, due to poor governance and financial instability. At the time of the transfer, SAA’s financial position was extremely weak. In the 2012/2013 financial year, the airline suffered a loss of 1.2 billion. The loss increased on 2.6 billion in 2013/2014 and the airline was on track to realise an even larger loss for the

2014/2015 financial year which eventually amounted to 5,6 billion. The company was technically insolvent with its liabilities exceeding its assets by 3.5 billion as at March 2014 and was experiencing severely depleted challenges. I was only able to raise a funding with the support of government guarantees”,

and that is what you have also touched on during your time as this was your experience of Treasury having to provide those guarantees.

MS BARBARA HOGAN: Correct, yes.

10 **CHAIRPERSON**: Mr Mokoena?

ADV PHILLIP MOKOENA SC: Mr Chair?

CHAIRPERSON: The handwritten notes on those two pages, are they Mr Nene’s corrections or are they...[intervene]

ADV PHILLIP MOKOENA SC: No, no, no, those are just for ease of reference so that you must know where are we finding those documents, where those documents are sourced.

CHAIRPERSON: Okay, all right.

ADV PHILLIP MOKOENA SC: They have nothing to do with Mr Nene.

CHAIRPERSON: Thank you.

20 **ADV PHILLIP MOKOENA SC**: Now, in relation to the SOEs Ms Hogan, what is the purpose of a shareholders compact?

MS BARBARA HOGAN: So, one has to ask the question, the Minister is a shareholder for these large enterprises, the Minister belongs to the Department of Public Enterprises which is not a policy department. So, for example, the Department of Energy formulates policy around energy and there is a document which is produced

on a regular basis which looks at the long term energy needs of the country and that provides the basis for Eskom to move forward and of course there is a lot of consultation with Eskom. So what a Minister does in Public Enterprises is, the Minister signs a shareholders compact with the Board in which that shareholders compact reflects the main direction and the performance objectives that government expects of that company and it goes through a lot of discussion and whatever and that is what you hold as a Minister, that company to account so you hold the Board to account on that. So that becomes then the mechanism whereby the shareholder has an influence on the direction of a company, its strategic possibilities and whatever, but does not dictate and

10 it provides a basis for evaluation. In the Department of Public Enterprises we had what we called a dashboard, so every three months we would look at the results of all the companies, we would spend a day analysing those results and then engaging with the various companies on the basis of our assessment.

ADV PHILLIP MOKOENA SC: Yes, now, who appoints the Boards of the SOEs and what is the role of the Minister of Enterprises, if any, on such appointments? Who appoints the Boards of the SOEs and also please deal with the role of the Minister of Public Enterprise, if any, on such appointments?

MS BARBARA HOGAN: Okay, it is the Minister who appoints the Boards of the SOEs.

ADV PHILLIP MOKOENA SC: Yes. Now, can we take through, is there a process that

20 is in place? What process must be undertaken?

MS BARBARA HOGAN: Yes. In the Department of Public Enterprises there are various teams of speciality. You have got to have a team that specialises in energy, in logistics, rail infrastructure, in forestry, in nuclear. It is a wide range, that covers a lot of what the economy is composed of and that team keeps very close to the companies that fall within its speciality. It is a number of Deputy DGs and the DG, the Director

General of the department, runs all of that. They have to keep a watch on the Board because the Boards are usually appointed for three years and, you know, there is the usual provisions that might be in a memorandum of incorporation which says, you know, a third of the Board must move, two-thirds, it differs from company to company but nevertheless, there has to be a succession plan worked out around the Boards and the department has to keep ahead of that so if it is expected that certain directors will move on, then the search begins.

My experience in the Department of Public Enterprises, was that the DG would lead the process but in close consultation with myself. In virtually all cases, a
10 professional search company would undertake professional searches under the guidance of Public Enterprises about the kind of skills that would be required on the Board. An assessment would be made of the kind of skills, what skills were lacking, what they needed more etcetera and that would be in discussion with the present Board, and then on that basis a brief would be given to a professional company.

But people would also headhunt, they would also look around and see and they would also – the Board often had a very good idea of who could come in. But that would all be subjected to interviews with the prospective Board members, not by myself, but by the professional agencies, there would be competency checks. For instance in Transnet and the big senior organisations, there would be professional
20 psychological tests done, management competency tests done and these are not just – you know these are used in the corporate world extensively. You really got to have the best of the best on these Boards.

ADV PHILLIP MOKOENA SC: Yes and then who ...[intervenes]

ME BARBARA HOGAN: Ja?

ADV PHILLIP MOKOENA SC: And who appoints the CEOs in the process?

ME BARBARA HOGAN: The CEO appointment, once again depends on the memorandum of incorporation, all the founding legislation of a particular SOE. I took the view and that is also endorsed by the opinion of Michael Katz Senior Counsel that that appointment, even though a Minister may and it was not always, be said to do the appointment, the Minister would authorise the Board to do a search along commonly agreed parameters. So the Minister would never appoint a CEO out of the blue and would allow the Board to go ahead. The reason being is that the CEO is accountable, like I have said. You cannot have a CEO who the Board does not even know coming in.

- 10 **ADV PHILLIP MOKOENA SC:** Yes and what is the role of the President if any, in the appointment of the Boards of the SOEs, or the CEO what role does he play?

ME BARBARA HOGAN: The President has in terms of the Constitution exercises authority in two ways. One, as Head of State and he is permitted in terms of that Constitution to exercise that without consultation what the Cabinet can do and the President can then do appointments, you know, I am not *au fait* with this, but it might be the National Prosecuting Authority for instance. But the President is also a Head of the Executive Council of the Cabinet and exercises an authority there. But in that case, Constitution lays out what the President's responsibilities. Could I just read that, it is just a very short thing from the Constitution which spells out the President's

20 responsibilities?

ADV PHILLIP MOKOENA SC: Yes you may.

ME BARBARA HOGAN: Section 85 (2) of the Constitution says that the President in his capacity as Head of the National Executive, exercises that Executive authority together with members of his cabinet and does so jointly by – and this is the quote:

"Implementing National Legislation, developing and

implementing National Policies, coordinating the functions of State Departments and Administration, so it is coordination, implementation, preparing and initiating legislation and performing any other executive function provided for in the Constitution or the National Legislation."

There is not a specific role in any legislation, which envisages that the President must make a decision about the appointment of people to a Board of a State Owned Enterprise.

Now when one becomes a Minister Chair, you are allocated as a Minister an executive authority. As Minister of Public Enterprise, I was given the executive authority to appoint members to the Board.

ADV PHILLIP MOKOENA SC: Yes.

ME BARBARA HOGAN: I had occasion to seek an opinion from Advocate Wim Trengove on this matter, because I clearly wanted to understand what my authority was. Firstly, must the cabinet agree with my proposed candidate and what role, if any, does anyone else play in this process?

If you do not mind Advocate Mokoena can I refer to the Trengove ...[intervenes]

ADV PHILLIP MOKOENA SC: Opinion?

20 ME BARBARA HOGAN: The prerogative of an executive authority?

ADV PHILLIP MOKOENA SC: Yes you may.

ME BARBARA HOGAN: I will not be long.

ADV PHILLIP MOKOENA SC: Yes you may.

ME BARBARA HOGAN: Okay. Now ...[intervenes]

ADV PHILLIP MOKOENA SC: I intended to take you there, but now that you are there it is fine you may continue.

ME BARBARA HOGAN: Is that okay?

ADV PHILLIP MOKOENA SC: Yes.

ME BARBARA HOGAN: Okay. The implications of a constitutional scheme, this is what Advocate Trengove writes.

ADV PHILLIP MOKOENA SC: And you are reading from?

ME BARBARA HOGAN: On page 86.

ADV PHILLIP MOKOENA SC: Page 86 yes.

10 **ME BARBARA HOGAN:** Paragraph 8. Okay?

CHAIRPERSON: Yes.

ME BARBARA HOGAN: It is a prerogative – and this is the Minister exercises powers as the shareholder. Firstly Trengove says:

"It is the prerogative of cabinet, in terms of Section 85 (2) (b) of the Constitution to develop National Policy. Cabinet may in the exercise of this power, develop a policy on SOEs. It may determine, not only whether there should be such a policy, but also what it is and to what level of detail it goes to."

20 So that is, as I have said to you, I follow the Policy Departments. The only limitation on this cabinet prerogative is that the policy must be consistent and may not contradict National Legislation. So Trengove saying Parliament in the enactment of legislation still means that Parliament determines the full, you know, legislation trumps all. He goes onto say:

"It is in the first place for the Minister to determine how to exercise the State's power as a shareholder."

So the Minister has the policy, now how do you exercise it?

"If cabinet has, however, formulated a policy, then the Minister is bound to exercise it in terms of that policy. The Minister may consult the cabinet on the exercise of her powers, but she is not obliged to do so. Whether she does so, is in the first place a matter of cabinet, protocol and custom, but not law and in the second place a matter of personal discretion."

Now this is an important point:

10 "The Minister is bound in law to exercise her powers in accordance with these rules."

So I must exercise my powers in accordance.

"It does not follow, however, that if I fail to do so, that the exercise of a Minister's powers is invalid."

Trengove goes on to say:

"I am of the view that the Minister's exercise of her powers remains valid in law, even if she fails to adhere to National Policy determined by cabinet."

ADV PHILLIP MOKOENA SC: Yes.

ME BARBARA HOGAN: So the law trumps all.

20 "The external validity of the Minister's conduct does not depend on her compliance with the internal policy laid down by cabinet. The remedy for any failure by the Minister to adhere to cabinet policy, is for the President to dismiss her from cabinet, or to transfer her powers to another member of the cabinet."

ADV PHILLIP MOKOENA SC: Yes.

ME BARBARA HOGAN: So my understanding is just clear, once you become a Minister you are assigned executive powers and you must exercise those powers in terms of legislation and in terms of the policy given by cabinet and as long as you are exercising your powers in that way, you are doing your job.

ADV PHILLIP MOKOENA SC: Yes. Now flowing from that testimony and with reference to the opinion that you have read, can the President acting outside the cabinet instruct you as the Minister as to which Board a member he must appoint?

ME BARBARA HOGAN: No.

ADV PHILLIP MOKOENA SC: Can a President instruct you as the Minister, or instruct
10 the Board as to which CEO must be appointed?

ME BARBARA HOGAN: No.

ADV PHILLIP MOKOENA SC: Now in that ...[intervenes]

ME BARBARA HOGAN: That would be in terms of the opinions that I sought, if any cabinet Minister or the President tried to instruct me on who should be appointed, they would be usurping my executive authority. The opinion went so far as to say that if a President or a cabinet Minister requested three names from which cabinet would choose, that would itself be usurping the authority – usurping the executive authority of that Minister, because then it is cabinet that is choosing and not the Minister.

Now I do not want a false impression just given here that you just go and do
20 your own thing. Obviously you consult with your fellow Ministers, we are working as a team. But I think it is extremely important for us to understand executive authority and when it has been usurped, or when it is not being recognised.

CHAIRPERSON: I just want to ...[intervenes]

ADV PHILLIP MOKOENA SC: Mr Chair?

CHAIRPERSON: I just wanted to – Mr Mokoena, I just wanted to emphasise that you

are asking her about what the President may or may not do on the basis of her understanding of those opinions and not on the basis of anything else, is that right?

ADV PHILLIP MOKOENA SC: Yes Mr Chair.

CHAIRPERSON: Okay alright.

ADV PHILLIP MOKOENA SC: Mr Chair I am told that it is 11:15.

CHAIRPERSON: I did not understand her to be a lawyer, I do not know she may be.

Are you a lawyer Ms Hogan?

ME BARBARA HOGAN: Am I?

CHAIRPERSON: Are you a lawyer?

10 **ME BARBARA HOGAN:** No I am not.

CHAIRPERSON: Oh okay. No I just want to make sure that legal questions that are being put to you, that you are asking – you are answering them on the basis of your understanding.

ME BARBARA HOGAN: My understanding.

CHAIRPERSON: Of the opinions that you obtained.

ME BARBARA HOGAN: Yes.

CHAIRPERSON: Ja thank you.

ADV PHILLIP MOKOENA SC: Exactly that Mr Chair.

CHAIRPERSON: Thank you.

20 **ADV PHILLIP MOKOENA SC:** Mr Chair I am told that it is 11:15.

CHAIRPERSON: We shall take the short adjournment, a tea break and we will resume at 11:30. We adjourn.

COMMISSION ADJOURNS FOR TEA

COMMISSION RESUMES AFTER TEA

ADV PHILLIP MOKOENA SC: Thank you Chair. Ms Hogan can you please tell us

what happens once you have approached the composition of the Board?

ME BARBARA HOGAN: Chair ...[intervenes]

CHAIRPERSON: I am sorry. Can we go back to the question you had asked earlier on, so that I can just make sure I understood the answer. The role of the President in the appointment of the Board and the – ja the Board and maybe CEO of an SOE, is the position that he has no role at all in terms of the law as you understood it after those legal opinions?

ME BARBARA HOGAN: My understanding in the founding legislation of the various institutions over which I had oversight, that there is no envisaged role for the President.

10 The President chairs cabinet and I would imagine that if the President has concerns about a particular candidate or whatever, it would be at that cabinet meeting that those concerns would be raised. But I have not been able to find an instance in law or elsewhere, you know, yourselves as a Commission might assist me here, where the President has the executive authority to instruct a Minister to do this or that. You know, to appoint this particular person or not appoint that person.

CHAIRPERSON: The cabinet itself, was your understanding that it also did not have a role, unless that role was captured in a policy?

ME BARBARA HOGAN: Let me explain that, okay. It will just go back just two steps to explain that. Once I am satisfied as a Minister about the composition of a Board,
20 then a cabinet memorandum is prepared which I sign off on, but it does not go directly to cabinet. It goes to a subcommittee of cabinet and in this instance it would be the Economics subcommittee, because my Ministers who are involved in the Economy would have an interest in who I was proposing and they would be able to comment. This happens with every Minister, any, any memorandum, a decision memorandum goes through a cabinet subcommittee. So cabinet meets one weeks, the following

week a subcommittee, the next week cabinet okay. So the agenda of a cabinet is determined by the decisions that arise out of that cabinet subcommittee and that subcommittee then is the committee that makes the recommendation to cabinet itself, on the basis of the memorandum that a Minister would have prepared. So, in those circumstances, the agenda becomes – the agenda is managed by the cabinet secretariat who receive all of these memos, these decision memos from Ministers, it goes onto the particular subcommittee and then it becomes part, if they approve it, it becomes part.

Now, when it goes to cabinet, cabinet is allowed to discuss the merits or
10 demerits or that. But it is not usual that it would be dismissed like that.

CHAIRPERSON: Sending the memo that you are talking about to the subcommittee, would that, as you understood the position have been a requirement of law, or would that have been based on the booklet that you said was issued in 2008, would that be based on practices that had been evolved over time?

ME BARBARA HOGAN: Yes Chair. The handbook for the appointment of persons to Boards of State and State controlled institutions says fairly specifically, that you cannot send every appointment to cabinet. It says under – on page 22 of that handbook and I think it is page 475 of your documentation, paragraph 15 it says:

"It has become common practice for all appointments of
20 persons to Boards – to refer all appointments of persons to
Boards to the cabinet."

This places an unnecessary administrative burden on the cabinet, particularly in those cases where legislation specifically provides that the responsible executive authority may appoint Board members. Elsewhere – and I will not go into that. It does say, however, that if the Board is significant, then it ought to go to cabinet for approval

and then it also defines what is significant. One of the definitions is, if that particular institution has an asset base exceeding 1 billion.

So my understanding in that regard is that it would go to cabinet, you know Eskom, Denel all of those. However, the big issue which is not clarified in the handbook, and was never clarified in my day is, does it go to cabinet for approval, for noting, what is the point? The Department of Public Enterprises, when this became an issue, conducted an assessment of the extent of the cabinet's involvement in order to establish a trend. The review was from April 2002 to February 2009, relating to the appointment of CEOs, not Boards, to a variety of SOEs. The result show that cabinet's
10 involvement varied between approval that was ten times, concurrence six times and noting twice of the Minister's decision. Indicating that every CEO appointment is dealt with on a case by case basis, having considered the size, importance and circumstances facing the SOE at that time.

Now I did consult with one or two cabinet colleagues and people who worked with the cabinet secretariat on this matter around, would the President be in a position to stop a process and whatever. I was informed by a previous cabinet Minister that in his experience of President Mandela and Mbeki, if a cabinet memo was patently incompetent, if it was a badly drawn-up memo, the President would request that – or the cabinet would request that the Minister go back and discuss it, you know and bring
20 in. But it was not – now both who I consulted said it was never a precedent that the President must approve everything.

CHAIRPERSON: Thank you. Mr Mokoena.

ADV PHILLIP MOKOENA SC: Mr Chair following on your questions, just to clarify the issues. Ms Hogan may I refer you to page 89. You will see that initially in my question when I asked you about who appoints the CEO or the Board and that would be

regulated from time-to-time by the specific founding documents of that company, do you agree?

ME BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Now let us take, for instance Transnet in order to ventilate the issues which the Chair was canvassing with you. If you look at paragraph 12 it says that:

"In terms of Section 2 (1) and 3 read with Section 4 (1)
Transnet it is a public company. The State is its only
shareholder and the Minister exercises the rights of the State
as a shareholder on its behalf."

10

Is this your understanding when you dealt with the issues pertaining to Transnet?

ME BARBARA HOGAN: Correct.

ADV PHILLIP MOKOENA SC: Yes. Now it also proceeds at paragraph 13 to say that:

"The State's right as a shareholder exercised on its behalf by the Minister
include the following ..."

And those are tabulated in terms of key 1.

ME BARBARA HOGAN: Correct.

ADV PHILLIP MOKOENA SC: And with reference to particular sections of the
Companies Act linked with the Transnet documents, am I correct?

20

ME BARBARA HOGAN: Correct.

ADV PHILLIP MOKOENA SC: Now would you get the same sense also in Eskom,
one; you will have go to the founding documents and to see how do they regulate those
specific powers *vis-à-vis* the shareholder, the President, the Board and the CEO, am I
correct?

ME BARBARA HOGAN: Correct.

ADV PHILLIP MOKOENA SC: Yes. Now, let us take the following example, in instances where you as the Minister had went through a lawful process of appointing the Board and having interacted with the relevant structures. Can a President unilaterally rescind that decision of the Board?

ME BARBARA HOGAN: A rescind of a decision of a Board appointing a CEO?

ADV PHILLIP MOKOENA SC: Sorry, or the decision of you as the Minister to appoint the Board. Let us start by the Board first, we will then move on to the CEO. Where you have gone through the process of identifying individuals, their expertise, they are being
10 interviewed, you have consulted with the relevant structures. Can thereafter the President unilaterally outside cabinet simply rescind that decision of the appointment of the Board?

ME BARBARA HOGAN: Based on the opinions that I have received, I would say that it would be extremely incorrect, or irregular for the President to intervene and stop a process outside of a cabinet process.

ADV PHILLIP MOKOENA SC: Let us take the CEO, whereby the Board which it is having the powers in terms of the relevant founding documents or Transnet or Eskom, having identified the candidate, having engaged the experts, having recommended, or found a suitable candidate, can that be ignored by the simply say-so of the President
20 simply saying that that is not the candidate that I want?

ME BARBARA HOGAN: In my understanding not.

ADV PHILLIP MOKOENA SC: Yes. Mr Chair at an appropriate time we will make submissions with reference to the relevant documents, but also bringing the evidence of this witness to fall in within that regulatory framework. We understand that she cannot comment on the legalities, but we want her to give the factual spectrum on the issues

that confronted her at the time.

CHAIRPERSON: No, no that is in order.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: I do not know whether you are still going to deal with the issue of the different roles of different office bearers, or whether you are done speaking in general?

ADV PHILLIP MOKOENA SC: When we deal with the specific entities like Eskom and Transnet, she will ventilate on those issues Chair.

CHAIRPERSON: Okay no that is fine. Let me ask this question. The cabinet is a collective, it is appointed by the President, the Ministers are appointed by the President
10 and as any Minister is supposed to execute his or her functions in her or his portfolio in accordance with the Constitution, the law, the policies of Government and the particular department and whatever else it is that the Government of which she is part seeks to achieve for the country. Now, I can imagine that where, for example, in terms of policies, in terms of even legislation maybe as a Minister you are required, or you have a discretion to approach cabinet and hear what they may have to say about certain candidates that you are thinking of approving or appointing or supporting in terms of a Board. I can imagine that you might not necessarily always want to stick to – you might not want to be rigid to say, for example, this can only be discussed at cabinet. You might want to say, no before I go to cabinet, let me find out what the President's views
20 are on this matter, because you might want to have an idea whether by the time you go to Cabinet you have the support of the President on the particular candidate and if the President has got some issues you might want to apply your mind to those issues before the matter goes to Cabinet is that right?

MS BARBARA HOGAN: Correct.

CHAIRPERSON: Yes. So does that not mean that maybe problem areas arise

when maybe the different office-bearers, let us say well one such office-bearer is the President, the Minister is another office-bearer and there are others. You might have a situation where rightly or wrongly the President might think the Minister is not understanding her role properly, saying well I appointed her. The Minister might be saying well the President is now overstepping you know.

But where for example the President understands that you have, in law, the final say and whatever views they express they express with an appreciation of that, there should not be serious problems should there be, when they express their views, what is your view? In other words is the position not that it is not who you consult it is how they perceive their role to be. If they, if for example a President perceives that you, if he or she says no even though the executive, the power in law vests with you then no matter what the circumstances are you should not pursue what you believe is right then there is a problem. But if the President says look I would not go along with, I would not support this candidate for this and that and that reason but it is your decision. Take into account everything you are supposed to take into account and then you have heard my views but then make up your mind then there should not be problems if that is the approach is it not?

MS BARBARA HOGAN: I think you are absolutely correct Chair. No Minister would make an appointment to as crucial an institution without talking through the matter with people who do matter who will have to back up those institutions at a certain stage.

Consultation is different from interfering with what a minister does. My experience was that the President stopped things from going to Cabinet, instructed me to withdraw things and I will go more into the details but what was very worrying about that was that in some, in one of those instructions related to Transnet there

was a potential breach of law.

So you know you do consult you know, the President would phone you and say listen I hear this, can we talk a bit, but it is in a collegial basis. The same as you expect with your fellow Cabinet Ministers, they are not going to be driving their own agendas for their own purposes but remember that the Executive Ethics Act says that you may not make a decision in your, in exercising your powers as an executive authority if it is to benefit someone close to you or along those lines. So there is a constraint, a Minister or President cannot be doing if it is to benefit some unknown persons.

10 **CHAIRPERSON**: No thank you very much.

MS BARBARA HOGAN: Thank you.

CHAIRPERSON: I thought at a general level it was important just us to understand what your views are in regard to that.

MS BARBARA HOGAN: Yes.

CHAIRPERSON: Because it may be that the problem might not really be consultation, the problem might be how consultation is understood and how everyone understands their role. Thank you very much. Mr Mokoena?

20 **ADV PHILLIP MOKOENA SC**: Ms Hogan if I understood your interaction with the Chair you emphasised on a distinction between a consultation and an interference, and those interferences, we will deal with them in due course when you talk to specifics. For now just to complete the picture, can you explain to the Chair what happens once you had approved the composition of the Board and in relation to the Cabinet so that we get a full picture of your evidence?

MS BARBARA HOGAN: Once the Board is approved, you are saying what is the process or before?

ADV PHILLIP MOKOENA SC: Yes once you had approved as the Minister.

MS BARBARA HOGAN: Oh once I approved then it goes to a subcommittee of Cabinet and that goes through the Cabinet secretary. You know the Cabinet had a secretariat and they run all the processes so that, I have to sign off on it and then that would go to the Cabinet subcommittee. Sometimes the secretariat would say oh you have not added this in and you know there is a certain protocol about what must go into a memorandum.

Then your fellow Ministers will discuss it and then it will go to Cabinet based, your decision will go to Cabinet, the decision of that subcommittee goes to
10 Cabinet as a recommendation to Cabinet. Cabinet can further engage, the President chairs that Committee and that is the process that takes place and then it is announced the next day.

ADV PHILLIP MOKOENA SC: Yes, and whatever that the President does will have to be within those structures that you have actually testified upon, that Cabinet Committee and those are the processes.

MS BARBARA HOGAN: Those are the processes that I understood and once you become a Minister you are given a handbook which explains the Cabinet decision-making process.

ADV PHILLIP MOKOENA SC: Yes.

20 **MS BARBARA HOGAN:** And it is very carefully run. In each department there is one person who is responsible only for Cabinet documentation. That person links into the Cabinet secretariat. There is a very sophisticated filing system. The minutes of those Cabinet meetings are taken very seriously. If you have to do something in terms of a decision of Cabinet the secretariat will remind you. So those documents, and as you know they are State secret, those documents and that

process is the ultimate decision-making process of a Government.

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: Of an executive authority.

CHAIRPERSON: Well let me just ask this question because I think it probably belongs at this stage when you are just talking in general; we have looked at the role of a Minister and the President and the Cabinet. Is there a legitimate role for the ruling party in the appointments of CEOs and Boards of SOEs? Obviously I ask this question because I have read your statement.

MS BARBARA HOGAN: Yes, ja. Well that is what ...[intervenes]

10 **CHAIRPERSON:** In other words I am saying.

MS BARBARA HOGAN: Ja.

CHAIRPERSON: You have told us your understanding about what role the President has, on your understanding he cannot instruct you to say you may or may not appoint so and so.

MS BARBARA HOGAN: Ja.

20 **CHAIRPERSON:** And you have said as a Minister you will not just go and just appoint whoever you want, you would want to hear what your fellow Cabinet members have to say you know, but you will appreciate that in the end I think if the power is given to you it is the power you must exercise. Now is there any legitimate role for the ruling party to make any input to a Minister who is a member of the ruling party, when she has to consider whether a particular CEO must be appointed, whether certain people must be put on the Boards or is there none?

MS BARBARA HOGAN: Chair, in law obviously it does not exist you know, the ruling party, there is nothing in law that requires a Minister to consult with the ruling party. The problems that I think many of us may have experienced with the ruling

party was that in 1994 when we came to Government the ANC set up a Deployment Committee. Now at that time the entire civil service was occupied by people from the apartheid era. There needed to be transformation, there needed to be transition. At the same time there were large numbers of people who had been in a struggle or had been sympathetic or who were wanting to use their professional skills for a new South Africa and how were they now going to be deployed. And in that sense the ANC set up a Deployment Committee which would say you Mr Gordhan, you will – no they did not say that to him but you know that it would be preferable if you ... [intervenes]

10 **CHAIRPERSON**: You want to say ... [intervenes]

MS BARBARA HOGAN: Let me not interfere with the Minister.

CHAIRPERSON: You are Mr X or Ms X.

MS BARBARA HOGAN: Mr X, Mrs X, you know we would want you to go. Like they said to my partner Mr Kathrada we would like you to be the parliamentary advisor to the President, to President Mandela. And so it was a question when you had to look at the resources available to you, the capable people, the people who understood what a new South Africa actually meant, to be deployed, and it had to be on a massive basis and those are the issues that come up with any change, fundamental change in Government.

20 I – my own view after an experience nowadays is that I sincerely wonder if a Deployment Committee plays a useful role now. You know it is a handful of people, if you see the number of appointments that go to Cabinet every time, I mean it is huge numbers of people, you do not know how many institutions Government has got, and for a handful of people just simply to decide that this is their preferred candidate, on what basis, what transparency is there?

I am not saying that that Deployment Committee did not always operate with honesty and integrity but the weakness of the system is that if that Deployment Committee is captured by whatever forces it can have a fundamental impact on Government. And so we do have to protect Government from undue influence.

Now that again does not mean, I did it myself, I spoke to the Secretary General. We had differences of views on some matters and we agreed on other matters, on other appointments. He never wanted to know the full Board or the – you know it was on sensitive matters. Often those sensitive matters were related to issues of transformation but the President – but you know I would consult but I was
10 very clear that I was hearing, because I needed to hear what the issues were, and on the basis of hearing everything then I would apply my mind.

But it became apparent during my time, and we will see it later in a press statement issued by the ANC or statements to the press that even the NWC, the National Working Committee, which is the Executive Committee of the ANC saw it as their right to instruct a Minister who should be appointed and not appointed. That is an abuse of power and that is usurping executive authority. Why have a Minister if you are going to instruct that Minister about what happens.

I feel the same way very strongly about Parliament. When you become an NP your responsibility is to a constitution. You take into consideration of course,
20 ruling party views, but to be instructed by a ruling party about what you should do is usurping the legislative authority of you know finally MPs must make a decision. But yes, robust engagement. Yes discussion, yes persuasion. You do not want anyone appointed who is going to be knifed in the back by some political formations but it cannot be instructions.

CHAIRPERSON: And you may or may not be able to say, to answer this one and

feel free to say so if you are unable to, do you know whether there is clarity within the ruling party as to where their role starts and where it stops in regard to for example the appointments of SOEs, Boards and CEOs, and I know you have raised the question of Parliament, it is a very important question as to what a party can say to members of Parliament who are there on his ticket as it is said, and that issue may become quite a big issue in regard to the work of this Commission because one of the things that we have to look into is what environment existed that may or may not have provided fertile ground for State capture.

MS BARBARA HOGAN: Ja.

- 10 **CHAIRPERSON:** Is there anything in our legislation, is there anything in our electoral system, is there anything in our laws that may have made it easy for certain things to happen which should not have happened? So – but we will deal with those and I hope that people, political parties, Government and everybody can start thinking about that very wide and important issue. But for now my question is simply whether you know whether there is clarity in the ruling party about whether their role starts and where it ends in regard to the appointment of Boards of SOEs, CEOs of SOEs and so on. In other words maybe they can be – their views can be sought but it is just views and nothing more, or whether they can insist on certain appointments.

MS BARBARA HOGAN: Chair, I can only speak to my experience at the time.

- 20 There was no clarity on this even when there were talks of a Deployment Committee I would ask now who is on this Deployment Committee and who is doing what, and I would be told well it is really not functional. So you know that leaves you very confused about what is happening.

But my first experience of this, my first negative experience of the relationship between the party and State emerged very early on in my career as a

Minister. As you will know the ruling party, on the question of State owned enterprises had vetoed any privatisation, and that was the position of the tripartite alliance, and had accepted though that there needed to be restructuring, and that was left very open-ended.

You will recall that I came into that position as – from the Minister of Health into Public Enterprises. In Health I had to deal with the Free State Government running out of antiretrovirals in August. Government did not have money, I had to go and speak to the American and British Governments to make grants. Now that is how desperate funding is for people on the ground.

10 So when I came to the portfolio and I had a look at it one of the first things I noticed was how financially stressed, apart from Transnet, many of these SOEs were under control, and SAA, within two days of my appointment I was already harassing the Minister of Finance to give them a guarantee to keep them a going concern. And so I was really concerned about it and I was interviewed by a reporter and I said you know there will have to be an equity partner somewhere in this game, and I was saying that not in defiance, I was saying it because the reality was Government would not – did not have the resources to fund the deficit.

20 We were also – it was shortly after the 2008 financial crisis so the revenue that we were going to expect was terrible. That was reported. The Secretary General and the Deputy Secretary General kicked up a huge fuss in the media and publically summonsed me to explain myself at Luthuli House, myself and the Deputy Minister. We both went and we explained you know, at that meeting I explained that SAA was in severe problems and it was not easy to see a funding model, and I said trust me you are going to have real problems there and they would not release a statement after that meeting.

But my concern at that stage was if I was seen to be going outside of Government policy it should have been the President who summonsed me not the party. And so I am not saying that I was saying the right or the incorrect thing but it is the President not the party. And what made things even more vulnerable at that time was that a certain faction, and I hate using these words but a certain faction who was supporting a President who came in, President Zuma, was very powerful in that NEC at that stage. If you look at the National Working Committee at that stage it consists almost entirely of his very vocal supporters.

10 So there is a weakness there. You know they were driving a whole agenda and they saw themselves as super powerful and they could now dictate. The tripartite alliance could dictate to the Government what it should be doing down to the level of who should be a CEO or not. And I think there are real problems there.

CHAIRPERSON: Thank you very much and again part of the context for this is that as we investigate these allegations of State capture and so on, at a certain stage I will have to make findings and reach conclusions, and one of the things we have to look at is where did things go wrong. And if things that go wrong include the role of a ruling party we would need to deal with that to say this may or may not have contributed to facilitating certain things happening and what needs to be done in the future. What should future ruling parties not do if we are to avoid a repeat of things
20 such as those that we are looking at, so that is the context.

MS BARBARA HOGAN: Yes, absolutely.

CHAIRPERSON: Ja thank you. Mr Mokoena?

ADV PHILLIP MOKOENA SC: Ms Hogan, the issues arising from the Chair's questions, would I be correct that they are dealt in your witness statement with reference to paragraphs 22 to 27? That is where you are talking about a parallel

behind the scene processes.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: And you are also talking about the Deployment Committee of the ANC. Now if I have understood the debate between yourself and the Chair correctly, what you are saying it is not necessarily that you are not ... [intervenes]

CHAIRPERSON: More a conversation than a debate.

ADV PHILLIP MOKOENA SC: A conversation with the Chairperson.

CHAIRPERSON: We did not have any debate.

10 **ADV PHILLIP MOKOENA SC:** There is a thin line Mr Chair, the conversation with the Chairperson, you do not take issue with the question of having to consult the ruling party but I think what we describe as the weakness is the lack of transparency or where there could be inherent conflict.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: And that would result in people who are conflicted being appointed regardless of the proper lawful process that you had actually undertaken am I correct?

MS BARBARA HOGAN: Correct yes.

20 **ADV PHILLIP MOKOENA SC:** Ja, now you in fact summarise that conversation with the Chair, it is captured in paragraph 21, if you can go there, of your statement, and if you can read paragraph 21 and also for completeness read paragraph 25 and 26 so that at least we get a proper picture of what you wanted to convey to the Chairperson about the parallel behind the scene processes, on page 6 of your witness statement, paragraph 21.

MS BARBARA HOGAN: Okay I have read part of the paragraph 21 that said the pro

– you know the assessment of how many came, of how many you appointments were approved, concurred, noted. That and then page 20 ... [intervenes]

ADV PHILLIP MOKOENA SC: Page 7.

MS BARBARA HOGAN: Page 7 then it is ... [intervenes]

ADV PHILLIP MOKOENA SC: Paragraph 25 and 26.

MS BARBARA HOGAN: And 26.

ADV PHILLIP MOKOENA SC: If you can read that so that we can be able to understand better what you are conveying to the Chair.

MS BARBARA HOGAN: Yes, I was appointed a Minister shortly after the
10 Polokwane Conference and that Conference was noted for the emergence of very strong factional tendencies within the ANC. So I say from paragraph 25:

"Regrettably these factional battles in the ANC only serve to encourage an entrenched nepotism and patronage from within the ranks of the ANC in the tripartite alliance and this would have very damaging consequences for State owned enterprises and by extension for our economy, which I will illustrate below with regard to my experience in the appointment of Board members and CEOs of Transnet and Eskom during my time. It is important to note that there were
20 three damaging processes afoot in my time with regard to SOE related appointments. There were the very political and public manoeuvrings of certain elements within the ANC and the tripartite alliance to get their way. Then there were ways that President Zuma and some Cabinet colleagues thwarted my attempts to get Cabinet approval for Board appointments, and I

stress the word thwarted. And finally the inexcusable interference with my responsibilities as a Minister by President Zuma that eroded my executive authority, and I refer in particular to Eskom in that regard."

ADV PHILLIP MOKOENA SC: And that is what you were conveying to the Chair is it not?

MS BARBARA HOGAN: The last paragraph 27.

ADV PHILLIP MOKOENA SC: No, I am saying that paragraph 25 and 26.

MS BARBARA HOGAN: Yes, ja.

10 **ADV PHILLIP MOKOENA SC:** Those are the essence of what you were conveying to the Chairperson during your conversation.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: Yes Chair.

ADV PHILLIP MOKOENA SC: Now I need to move to another topic. I need to deal with Transnet specifically Ms Hogan. Just to remind ourselves you were appointed as the Minister of Public Enterprise around May 2009. Who was your predecessor?

MS BARBARA HOGAN: Minister Brigitte Mabandla. She had been there for a short period of time after Minister Alec Erwin had resigned and Minister Mabandla took
20 over for the eight or nine months ja.

ADV PHILLIP MOKOENA SC: And who succeeded you?

MS BARBARA HOGAN: Minister Malusi Gigaba.

ADV PHILLIP MOKOENA SC: Okay. Now did you have an opportunity to familiarise yourself with the issues and events which took place prior to your appointment?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: And you are introducing the topic of Transnet, in fact with reference to page 8?

MS BARBARA HOGAN: Correct.

ADV PHILLIP MOKOENA SC: Paragraph 28.

MS BARBARA HOGAN: Ja.

ADV PHILLIP MOKOENA SC: And therein you are saying that:

10 "A simple, but important job of appointing a CEO of Transnet, after the resignation of Maria Ramos at the end of February 2009 became the site of an ugly protracted battle between President Zuma and I, in which he thwarted all the legal and legitimate procedures that I took to obtain Cabinet approval for any appointments whatsoever to Transnet including the appointment of a CEO. As a consequence, Transnet had an Acting Chairperson, an Acting Group CEO and Acting CFO and later on an Acting CEO in one of the divisions Transnet Freight Rail for one and a half years".

Now can you please contextualise the issues which you are prefacing in that paragraph in relation to Transnet?

20 **MS BARBARA HOGAN:** Okay. As I have indicated before Transnet had gone through a restructuring process. Its balance sheet was now...[indistinct] and it now had to embark on a major investment in equipment, in trains and in infrastructure to really step up its performance. Maria Ramos had been CEO for five years and in November 2008 she announced that she would be moving on and the board then undertook a succession planning exercise. They consulted extensively with Minister Mabandla and

there is a document for timeline of Transnet. We can get – I did a document that shows the extent of that...[intervenes]

CHAIRPERSON: Well, between you and Mr Mokoena you must feel free if you want to refer to it.

MS BARBARA HOGAN: Yes.

CHAIRPERSON: To refer to it, so...[intervenes]

ADV PHILLIP MOKOENA SC: We will refer to it ...[intervenes]

MS BARBARA HOGAN: A bit later on, yes.

ADV PHILLIP MOKOENA SC: Just give us the context.

10 **MS BARBARA HOGAN**: I am not going to speak to it, but I am going to – I am summarising more here, but it was thoroughly - a very thorough process in which the Transnet board met with the Minister. They discussed the criteria for the appointment of a new CEO. What skills, what competency, what the time frames would be, how the interviews would be conducted, what tests would be conducted on short list? Who would be on the subcommittee of the board that would run that process? It was – you know a very, very professional run process.

And this is in line that the Minister is in power to appoint a CEO, but this is what you do. You allow the board, because they know what they need to run the process, but you make sure every step of the way that you have applied your mind. So
20 that process went ahead and a number of people were short-listed. Some were internal candidates, others were external and in a letter, early February 2009 the Head of the Board Mr Fred Phaswana, the Chair, sends a formal letter to Minister Mabandla and says they have decided that they are recommending one candidate only, because he stood head and shoulders above the rest, and that was Minister Ghordan – well Pravin Ghordan. Okay, ...[intervenes]

ADV PHILLIP MOKOENA SC: Ms Hogan, while you are still there we will come to that.

May I refer you to page 386?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: In order to help you with the time line that you are referring to.

CHAIRPERSON: You say 386?

ADV PHILLIP MOKOENA SC: 386. Mine is paginated 386.

MS BARBARA HOGAN: 386?

ADV PHILLIP MOKOENA SC: 386, yes, the first file, Mr Chair.

10 **CHAIRPERSON:** Okay, thank you.

MS BARBARA HOGAN: 386, of the timeline, 387. Yes, the timeline for Transnet is on page 387, is that what ...[intervenes]

ADV PHILLIP MOKOENA SC: It is the one that you were referring to, to the, Chair?

MS BARBARA HOGAN: Yes, but that is a detailed – yes...[intervenes]

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: It is a detailed summary. I am just speaking to...[intervenes]

ADV PHILLIP MOKOENA SC: Just to check and have reference to it, yes.

MS BARBARA HOGAN: Ja.

20 **ADV PHILLIP MOKOENA SC:** Now may I refer you to annexure A? As you were talking about Transnet on page 25, Mr Chair. You were just about to talk about the candidate that was recommended by the board?

MS BARBARA HOGAN: Yes, annexure A1, yes.

ADV PHILLIP MOKOENA SC: Yes, if you may identify that document firstly for us? If you can identify the document for us? What is that document?

MS BARBARA HOGAN: Yes, yes. This is the document that I was referring to.

ADV PHILLIP MOKOENA SC: What is that document? What was the purpose for that document?

MS BARBARA HOGAN: 13 February 2009.

MS BARBARA HOGAN: And the purpose?

MS BARBARA HOGAN: The purpose was to make a recommendation to the Minister for the appointment of a group CEO of Transnet.

ADV PHILLIP MOKOENA SC: Yes, you can then proceed to take us through your evidence with reference to that document. You were saying that there was only one candidate. That is where I interrupted you.

10 **MS BARBARA HOGAN:** Yes, there was only one candidate.

ADV PHILLIP MOKOENA SC: I interrupted you, yes.

MS BARBARA HOGAN: Now, Chair, in this, in this proposal we have blacked out the assessments of other candidates, because it is confidential.

ADV PHILLIP MOKOENA SC: Can you refer to page 27?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Paragraph 4.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Would that entail ...[intervenes]

MS BARBARA HOGAN: That is a recommendation.

20 **ADV PHILLIP MOKOENA SC:** Yes.

MS BARBARA HOGAN: Yes. They say that – so at paragraph 4 on page 27 says:

"The Corporate Governance and Nominations Committee
conducted interviews, although..."

And this is important, because this was distorted all the time, and this paragraph is very important.

"...although the preference was to a point a suitably qualified internal candidate. After consideration of the current global meltdown and the global recession its current and future potential impact on Transnet Ltd and as a consideration of these individuals the nominations committee fully supported by the board recommended the appointment of Mr Pravin Ghordan on the basis of the strengths he displayed against the competency profile and in comparison with the other candidates who were interviewed."

10 **ADV PHILLIP MOKOENA SC:** Yes, and you also referred to a letter that was subsequently written. May I refer you to page 31? Mr Chair, it is annexure A2.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Are you there Ms Hogan?

MS BARBARA HOGAN: Yes, now this is a letter that was sent again by Mr Phaswana to Mrs Mabandla, which says that although the board approved Mr Ghordan – hang on wait, and that is on page 34, that although the board had appointed – approved Mr Ghordan, he has withdrawn from the process and we know of course that he became Minister of Finance shortly thereafter.

ADV PHILLIP MOKOENA SC: Then what happened ...[intervenes]

20 **MS BARBARA HOGAN:** Then on page 33.

ADV PHILLIP MOKOENA SC: Yes?

MS BARBARA HOGAN: Now on page 33 there is a very important paragraph there.

"In the light of your letter...[intervenes]"

ADV PHILLIP MOKOENA SC: Are you now reading at the bottom of page 33?

MS BARBARA HOGAN: At the bottom of the page.

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: Bottom of page 33.

ADV PHILLIP MOKOENA SC: The last paragraph?

MS BARBARA HOGAN: The last paragraph:

10 "In the light of your letter it is also incumbent upon me to
highlight that in respect of Mr Ghama the Transnet board has
received documentation and reports including, but not limited
to a recent forensic report from Transnet's internal auditors
which detailed serious allegations of misconduct on the part of
Mr Ghama, that require the company to conduct investigation
to ascertain the truth thereof and decide on any appropriate
action from Transnet's internal audit – any appropriate action
against the individual involved."

Do you want me to continue?

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: "I annex hereto annexure C."

20 That is what I am annexing. Then:
"...correspondence from Transnet internal auditors relating to
the matters in question which sets out some of the summarised
information relating to the main allegations against Mr Ghama."

ADV PHILLIP MOKOENA SC: So at the time the board had already considered these
issues in relation to the candidacy of Mr Ghama?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Yes, now what happened after Mr Ghordan has
withdrawn his candidate?

CHAIRPERSON: I am sorry, I am sorry Mr Mokoena, you may have said this and I missed it, do you just want to confirm Ms Hogan that at page 32, which is part of the letter from which you were reading just now, there is a list of names of the candidates who had been short listed and to mention that Mr S Ghama is one of the candidates who are listed there.

MS BARBARA HOGAN: Yes, but you will note it is not written in numerical order.

CHAIRPERSON: Yes.

MS BARBARA HOGAN: Ja.

CHAIRPERSON: Yes, thank you.

10 **ADV PHILLIP MOKOENA SC**: Yes, my question Ms Hogan, what happened after Mr Ghordan has withdrawn his candidature? What happened?

MS BARBARA HOGAN: The board then approached – once – you know the board then had to find another CEO and this is already getting towards the end of February when Ms Ramos was due to move on. So the board then requested Minister Mabandla if they could then start a further search, because in the interviews that were done with the other candidates both internal and external, although they did receive good reports they just felt that those candidates did not meet the requirements for being a group CEO.

20 Let me also say that Transnet had several divisions. All of them, I think a part one were all run by black Managers, very capable black Managers and the board was dominated by black Directors. I say that, because that became accusations later on.

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: Okay.

ADV PHILLIP MOKOENA SC: In fact you also capture the board's decision. The letter that you referred to of the Chairperson at the time Mr Fred Phaswana, if I may refer to page 34? 34.

MS BARBARA HOGAN: 84?

ADV PHILLIP MOKOENA SC: 34.

MS BARBARA HOGAN: 34, yes?

ADV PHILLIP MOKOENA SC: 34. The second paragraph you are saying there:

10 "The withdrawal of Mr Privan Ghordan has resulted in the
 board's view in the need to commence a new appointment
 process as none of the other short listed candidates are at the
 level required for such a key position for the organisation and
 indeed for the country given the central role that Transnet must
 play in the government's economic and infrastructural
 development plan."

 That is what you are testifying about. Yes.

20 **MS BARBARA HOGAN:** Correct. So the board then requested the Minister to then –
 that they would like to embark on a further search, and they never got a definitive reply.
 The Minister asked to receive the CV's of the other internal candidates and their
 assessments, plus the professional assessments, which they sent on. At one stage he
 said send me a couple of names and I will put it before a panel for them to decide. It
 was not a cabinet panel, I am not sure what panel she was referring to, but you know it
 went backwards and forwards, and when I came in as Minister in May this matter had
 still not been resolved.

 The board, however, in considering its ...[intervenes]

CHAIRPERSON: And Ms Ramos was about to leave at that time?

MS BARBARA HOGAN: Ms Ramos had already left.

CHAIRPERSON: O, had already left.

MS BARBARA HOGAN: And Minister Mabandla had approved Chris Wells as the Acting CFO, as the Acting CEO, he had been the Chief Financial Officer and had approved Anauze[?] Singh who had been in the Treasury as the Acting CFO, prior to my appointment. So Transnet already had an Acting General Group CEO and an Acting CFO, and one must always take into consideration that when there has to be a succession of a CEO is always a very vulnerable moment in any major enterprise.

10 So the board did not get a definitive thing, but in exercising their fiduciary responsibilities they went ahead and did a search, and out of that they came up with a candidate and when I, sorry – and in June when I became a Minister and they had done exactly the same procedures as they had done in the previous, they then submitted that document to me, recommending a candidate, a Mr Sipho Maseko who is now the CEO of Telkom.

ADV PHILLIP MOKOENA SC: May I refer you to page 35?

MS BARBARA HOGAN: 35, yes. Yes, that is the correspondence. Mr Phaswana met with me in person and gave me this document. What is missing from these memo's are the entire assessments of all the other candidates and reasons for accepting and not accepting. So it was not just a blank, we want this person. Details of all the others and
20 the strengths and weaknesses were identified.

ADV PHILLIP MOKOENA SC: And then may I refer you to page 38, paragraph 4?

MS BARBARA HOGAN: The recommendation is then for the appointment of Mr Sipho Maseko, and he gets a very glowing report. He had been Head of BP South Africa, he was familiar with logistics, various matters, developed very sophisticated interpersonal skills and whatever.

ADV PHILLIP MOKOENA SC: And may I refer you to page 45, paragraph 13?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: So that is a recommendation and you are saying that, that was the most qualified person with skills, and that was the recommendation of the board to appoint him premised on those credentials?

MS BARBARA HOGAN: Yes, yes.

ADV PHILLIP MOKOENA SC: Now, I want to take you to the events which happens after this recommendation. On page 9, paragraph 33 of your witness statement you referred to your meeting with the ex-President Mr Zuma approximately a month after
10 your appointment. Could you share with us what transpired in that meeting?

MS BARBARA HOGAN: I felt it necessary to inform the President that Transnet did not yet have a CEO. That is a serious thing. And I gave him a full background to the whole process for the appointment of a CEO. I also said to him that the Transnet AGM was coming up and that, you know, the shareholder would then appoint the group CEO at that meeting, and a Chairperson of Transnet, because Mr Fred Phaswana by that stage had resigned, and he was leaving the company at the end of July.

So both the Chair, the Chair had also now resigned.

ADV PHILLIP MOKOENA SC: Yes, what happened – what was Mr Zuma's reaction to all the issues that you are raising in relation to Transnet?

20 **MS BARBARA HOGAN:** Chair, I was extremely shocked. The President would not hear of any candidate except Siabonga Ghama. I informed him how professional the selection process was. I informed him that he was facing some serious misconduct charges. That the board in terms of the PFMA was obliged to investigate these charges, it was not just going ahead, and under these circumstances it would not be in the interest of Transnet to appoint a group CEO who was facing, you know, whose time

would be caught up with defending himself in a misconduct, but even over and above that I was recommending Mr Maseko on the basis of the recommendations made by the Transnet, the recommendations made by the professional evaluation agency. I will not go through them here, but they are here in this report that Mr Phaswana forward – gave to me.

It speaks very glowingly of Mr Maseko. I had also ...[intervenes]

CHAIRPERSON: Well I will ask you to go there and just ...[intervenes]

MS BARBARA HOGAN: Do you want me to go ...[intervenes]

CHAIRPERSON: Tell us what the Chairperson had to say about Mr Maseko.

10 **MS BARBARA HOGAN**: Okay.

CHAIRPERSON: Ja.

MS BARBARA HOGAN: Yes, do you want me to do that?

CHAIRPERSON: Yes, please, yes.

MS BARBARA HOGAN: Okay.

CHAIRPERSON: What is...[intervenes]

MS BARBARA HOGAN: So they...[indistinct] has an LLB in law from...[intervenes]

CHAIRPERSON: I am sorry what page is it?

ADV PHILLIP MOKOENA SC: Page 38.

MS BARBARA HOGAN: Sorry, it is page 38.

20 **CHAIRPERSON**: 38.

ADV PHILLIP MOKOENA SC: I have got it page 38 and let us talk about the profile of Mr Maseko, paragraph 4.1.

CHAIRPERSON: Thank you.

MS BARBARA HOGAN: Yes, and it is paragraph 4.1. He has a BA, a LLB, BA at Wits, LLB at KZN University in Durban Westville. Now it says here:

10 "During the interview process the panel was very impressed with his skills, experience, track record and knowledge that Mr Maseko had. The Transnet board are of the opinion that Mr Maseko who is currently the Chief Executive Officer of BP Africa has demonstrated the ability and track record to effectively lead and manage the strategic challenges and key responsibilities related to the post of group Chief Executive. Owing to his extensive experience, knowledge and utility in leading and transforming a large complex multi-national organisation across Africa. He has a stable track record in BP and has successfully improved operational efficiencies, reduced costs, increase service delivery and managed risk in a highly volatile foreign currency based revenue stream and dealt with the issues and challenges presented by regulatory authorities and constraints in infrastructure development. His leadership style contributes to a transformed and streamlined organisation."

I will then go further and refer you to page 39.

ADV PHILLIP MOKOENA SC: Yes?

20 **MS BARBARA HOGAN:** To effectively the second paragraph there, he displays, it starts with.

"He displays very sophisticated interpersonal skills and has an ability to communicate influence and negotiate effectively at all levels with all stakeholders. Mr Maseko has successfully implemented world class standards in terms of operational

efficiencies, quality standards, cost structures, process service delivery and safety standards. His innovative flare has enabled him to effect meaningful black economic empowerment structures and partnerships for the organisation. He is well schooled in all aspects of governance and he has a high integrity reputation. In the past two years in BP Africa he has successfully refocused the business significantly reducing costs by 60%, moving the South African Head Office and remodelling the interface between the African satellite operations in South Africa."

I then just go onto the independent assessment, that is at the bottom of the page.

"His suitability in terms of his leadership style, his cognitive level of functioning to handle the complexity of an organisation as large as Transnet, his personality to lead with maturity, his drive and his integrity have all been independently..."

And I stress this.

"...have all been independently assessed by an independent counselling psychologist who confirms he has a requisite skills competencies and attributes for the job. In summary he is assessed as having a good all round profile."

I do not think I need to go further than that. Okay.

ADV PHILLIP MOKOENA SC: I think you need to go further.

MS BARBARA HOGAN: Okay.

ADV PHILLIP MOKOENA SC: It is quite important.

MS BARBARA HOGAN:

10 "He has good thinking skills and the potential to be very effective in this executive leadership role. He is particularly good at dealing with detailed complexity and he spends a lot of time thinking through problems in order to consider all the ramifications. He has a high level of learning potential and can be expected to engage effectively in the new learning institutions. He has sophisticated social skills and an inspirational and supportive style of leadership. He is good at motivating and encouraging people, but will confront underperformance when he needs to do so. He forms good relationships with people and has a great respect for diversity and individual differences. He likes to listen to people and guide them rather than direct them, although he can be strong and assertive when a situation requires strong leadership. He is assertive in a quiet manner, and manages situations with sensitivity. He can be direct and straightforward."

Do you want me to continue?

ADV PHILLIP MOKOENA SC: Yes.

20 **MS BARBARA HOGAN:**

"He responds positively to change and embraces opportunities for advancement and challenge and ...[indistinct] bring in enthusiasm and energy. Mr Maseko's preferred style of problem solving is explorative and reflective when faced with an unfamiliar or new business environment or industry. This

indicates that in a new large organisation like Transnet he would benefit from an experienced mentor and coach who fully understands the complexity of the organisation. The industry is in the challenge and will fast track his learning and decision making."

And then he says all the relevant checks were done.

ADV PHILLIP MOKOENA SC: But this is important, because you know when you deal with other issues – I will be posing questions to you whether the subsequent boards when they were appointed did one have this checks, you know, that are referred to on
10 page 40 and what were the credentials of the different individuals that were appointed, subsequent to you having left your position as the Minister of Public Enterprise.

Now can you take us all through this citizen credit criminal qualification checks on page 40?

MS BARBARA HOGAN: Okay. All relevant suitability checks were done, criminal records, citizenship verification, credit financial asset record checks and qualification degree verifications.

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: Advocate may I just say one thing in relation to this?

ADV PHILLIP MOKOENA SC: Yes.

20 **MS BARBARA HOGAN:** It sounds very lyrical. Let me say that was other candidates, a lot of very good stuff was also written and important assessments. What made me believe that this was not just trying to pull wool over my eyes was in the assessments of the other candidates there were frank pointers to certain issues which indicated that this would not be the perfect candidate or the most candidate.

I also met with Mr Maseko twice to get my own understanding. Sometimes you can hear good stuff. I met with him twice and I must say he was very, very impressive and straightforward no nonsense about him.

ADV PHILLIP MOKOENA SC: Yes, so he was – you first Chair.

CHAIRPERSON: So this was the candidate that the board was recommending after following certain processes and it was a black candidate?

MS BARBARA HOGAN: Yes.

CHAIRPERSON: With the academic qualifications that we have been referred to and quite a lot of experience according to the board's letter.

10 **MS BARBARA HOGAN**: Yes.

CHAIRPERSON: Yes, thank you.

MS BARBARA HOGAN: In recommending this candidate I also liaised with my Deputy Minister Enoch Gordan Ngwana who is a Chair of the Economics Transformation Commission in the NEC of the ANC. He was fully behind this candidate and he had engaged very extensively, I asked him to concentrate. I also spoke to Deputy President Galima Motlanthle, because he was supposedly head of the employment committee at that time, and he said he knew him and he thought he was an excellent candidate. Okay.

CHAIRPERSON: Thank you.

20 **ADV PHILLIP MOKOENA SC**: Despite all that process and the recommendation of the board Mr Zuma was saying that Mr Ghama should be the one that must be appointed?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Now ...[intervenes]

MS BARBARA HOGAN: Ja, carry on.

ADV PHILLIP MOKOENA SC: You wanted to elaborate?

CHAIRPERSON: Go ahead Ms Hogan, you wanted to say something in response.

ADV PHILLIP MOKOENA SC: You may proceed.

MS BARBARA HOGAN: Yes, it actually shocked me. I, okay, you know he then said to me "you may not appoint anyone" to the board, because the board also had to have changes, until Mr Ghama's disciplinary was over, because I said to him we cannot appoint him until that disciplinary is over if that is the candidate that you are insisting on.

He said "until that disciplinary is over you will appoint no one".

CHAIRPERSON: Now when the former President said to you that he wanted
10 Mr Ghama to be appointed as the CEO did you furnish him with documentation such as this recommendation, for example from the ...[intervenes]

MS BARBARA HOGAN: Yes.

CHAIRPERSON: From the board so that he could familiarise himself with how the board had come to the decision to recommend this one as opposed to any other candidate?

MS BARBARA HOGAN: I did, and later on as the advocate will lead me, I gave him a more comprehensive document which included the chin grove and CATS opinions and an extensive document that outlined all of this, yes I did.

CHAIRPERSON: Do you know whether when he informed you for the first time that Mr
20 Ghama should be the one who should be appointed he had read or had had an opportunity to read the documentation you had given him?

MS BARBARA HOGAN: I could never give documentation ahead of a meeting. That was part of the problems with the way that office operated and in those early months it was pretty disorganised and remember this is a month into my job, ja, it was still disorganised, the President's office a lot of the staff had been redeployed into the

Deputy President's office to be staff members. So you know sending stuff in, it was confusing. So I took documents with me to the President, but I briefed him according to the documents.

CHAIRPERSON: Yes, okay, what I wanted to find out was whether at the time he expressed the view he had already had the benefit of reading them.

MS BARBARA HOGAN: No.

CHAIRPERSON: He had not?

MS BARBARA HOGAN: No, no.

CHAIRPERSON: But he had had the benefit of you briefing him in that meeting?

10 **MS BARBARA HOGAN**: Yes.

CHAIRPERSON: And did he express this view that Mr Ghama should be the one to be appointed at that same meeting where you briefed him or subsequently?

MS BARBARA HOGAN: No, at that same meeting. You know initially he wanted me to go ahead with the appointment of Mr Ghama. I said I cannot do that. The kind of compromise he then said, he said "alright, we will wait until the disciplinary process is over". I did not agree to that, but we then agreed that I would provide him with further information which I then did.

CHAIRPERSON: Yes, thank you.

20 **ADV PHILLIP MOKOENA SC**: Did the President, the ex-President provide you or the board with any reason why Mr Maseko was not supposed to be appointed, when he insisted Mr Ghama and Mr Ghama alone should be the one who should be appointed?

MS BARBARA HOGAN: He never raised objections about Mr Maseko. He never referred to Mr Maseko. It was just, this is my candidate and Mr Maseko was, you know, he never raised objections or reasons why he should not be appointed.

CHAIRPERSON: When he came up with Mr Ghama's name, as far as you know was that because in briefing him you had told him what the names of the other candidates who had been short listed were? Or do you know whether he might have had the name even before your meeting with him?

MS BARBARA HOGAN: I had the impression that he had the name before I met with him. He seemed to, you know, there were a lot of allegations going around and he seemed to be familiar with those allegations. They were wrongful allegations, but he was aware of them.

10 **CHAIRPERSON**: So, so whatever may have influenced him to make the choice that he made may have been what you said, maybe plus whatever else he might have known before the meeting?

MS BARBARA HOGAN: And also I am not sure, because I have no evidence thereof, but it came out in a month or two later that the ANC and a whole number of organisations were supporting Ghama completely as the candidate, and it might have been that these matters might have been discussed with him in his capacity as head of the ANC, and of course there were all sorts of allegations being made that Mr Ghama was being sidelined, because Mr Wells, a white man who was an Acting CEO had also applied for the job and it was a plot to marginalize a very competent black Manager.

20 Mr Wells had applied for the job in December 2008, but he withdrew his application three days later. So there was a lot of false allegations going around.

CHAIRPERSON: But at the time that Mr Maseko was recommended, Mr Wells had withdrawn his application already. He was no longer a candidate or ...[intervenes]

MS BARBARA HOGAN: He was no longer a candidate.

CHAIRPERSON: Yes.

MS BARBARA HOGAN: Not at all.

CHAIRPERSON: So for all intents and purposes to the extent that the former President or anyone of the organisations you referred to may have wanted Mr Ghama as far as the board was concerned and as far as you were concerned as Minister of Public Enterprises, they were wanting Mr Ghama over Mr Maseko?

MS BARBARA HOGAN: Correct.

CHAIRPERSON: And not over Mr Wells?

MS BARBARA HOGAN: No, over Mr Maseko.

CHAIRPERSON: And...[intervenes]

MS BARBARA HOGAN: But they were saying that Mr Wells, and this will come out
10 later, had conspired to marginalize Mr Ghama by instituting, and the board had instructed him to institute – by instituting an investigation into those misconduct charges.

CHAIRPERSON: But they never said anything as to why Mr Maseko was not good enough?

MS BARBARA HOGAN: No, it was just Ghama and that is it.

CHAIRPERSON: Yes, thank you. Mr Mokoena?

ADV PHILLIP MOKOENA SC: You – in your attempt or your attempts to persuade the ex-President Mr Zuma about the suitable candidate that must be appointed in having regard to the process that was undertaken, the board's resolution, you also dispatched
20 a comprehensive memorandum that you are talking about. If you can go to page 53?

MS BARBARA HOGAN: Yes, I have got it.

ADV PHILLIP MOKOENA SC: Are you there?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Is that the memorandum that you said that you dispatched to the ex-President Mr Zuma, and you also annexed to that memorandum the relevant opinions which you have received?

MS BARBARA HOGAN: Correct.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: I am sorry, Mr Mokoena. The meeting that you had with the former President where you briefed him, how did it end? So what was the basis on which you parted on that occasion?

ADV PHILLIP MOKOENA SC: He was insisting – firstly he insisted that I go ahead and
10 appoint Ghama. I said I could not. He was facing misconduct charges and he was not the preferred candidate. He then said that no appointment to translate must be made until the disciplinary case against Mr Ghama is concluded.

I was concerned about that and I said I would provide him with further evidence. I was already – remember I was only one month into that job, but I was already feeling that the President was exceeding his authority here, and I was truly shocked, you know. When you explained to the President that a person is facing misconduct charges you expect a certain response that says oh, well if that is the case let us look at the preferred candidate that the board is recommending.

Do you know what I mean? You are not going to encumber Transnet, that is
20 so important, with a candidate that is going to be involved in controversy and the fact that the President was absolutely insistent, Ghama will be appointed.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: Mr Chair, I see it is 13:00, is this an appropriate time to adjourn?

CHAIRPERSON: Yes, yes, thank you very much. We are going to take the lunch adjournment and we will resume at 14:00.

MS BARBARA HOGAN: Thank you.

CHAIRPERSON: We adjourn.

MEETING ADJOURNS FOR LUNCH

MEETING RESUMES AFTER LUNCH

CHAIRPERSON: We apologise about this delay. My protector and I was stuck in the lift for the past 25 minutes or so, so, but we are here now, there is a job to be done let us get on with it. Thank you.

10 **ADV PHILLIP MOKOENA SC**: Thank you, Mr Chair. Ms Hogan, just to recap and summarise on what we touched on before the lunch adjournment. When you testified about Mr Zuma saying that Mr Ghama is his choice, do you recall? When you nod the machine will not be able to take your answer.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Do you recall, yes?

MS BARBARA HOGAN: Yes, yes, ja.

ADV PHILLIP MOKOENA SC: Now during that interaction you said that Mr Zuma was aware that Mr Ghama was the subject of an investigation pertaining to serious procurement irregularities?

20 **MS BARBARA HOGAN**: Yes.

ADV PHILLIP MOKOENA SC: And you conveyed to the ex-President that the board had underwent a very professional selection process and that Mr Ghama was the choice of the board, but despite that he still insisted that it must be Mr Ghama and no one else?

MS BARBARA HOGAN: Yes.

CHAIRPERSON: I think, did you not say Mr Ghama instead of Mr Maseko?

ADV PHILLIP MOKOENA SC: Maseko, yes.

MS BARBARA HOGAN: Maseko, ja.

ADV PHILLIP MOKOENA SC: I beg yours, Mr Chair. Now what I wanted to know from you is that, when the candidacy of Mr Ghama was considered did the board only consider the question of the pending disciplinary – the pending investigation or were there other issues which made the board to persist that Mr Maseko was in fact the suitable candidate?

MS BARBARA HOGAN: In fact when the board received the report of its nomination
10 subcommittee it then discussed those matters and made its nomination and its recommendation of Mr Maseko. Ms Ramos then only introduced the update on the investigations of Mr Ghama after the board had made its decision. Now, Chair, the allegations of misconduct were initially centred on senior people, but not necessarily Mr Ghama at a certain point.

Mr Erwin had received a whistleblowers report and it referred it on...[intervenes]

CHAIRPERSON: And that was Mr Erwin being the former Minister?

MS BARBARA HOGAN: Minister, the former Minister.

CHAIRPERSON: Of Public ...[intervenes]

20 **MS BARBARA HOGAN**: And then forwarded it onto Eskom for investigation. That was related to the purchase of 50 locomotives. It was not immediately apparent that Mr Ghama who was the CEO of Transnet Freight Rail that was doing a purchase was implicated in anyway. And let me say now Mr Ghama was not ever found guilty of fraud, okay. However, there were other senior Managers who were found guilty of fraud and they were dismissed, okay.

So then another query had come up in the *interim* about a contract between General Ayanda Security Advisory Services and Transnet Freight Rail, a security contract that had been entered into that had certain anomalies and that was also further investigated and Mr Ghama's conduct in that matter also had to come under the spotlight.

But the board at that stage, as I understand it, was not completely oevey of how Mr Ghama was sensually affected, you know, as sensual player in this, and Ms Ramos had the day before requested Transnet internet audit to provide an update, and that update is what we have from Transnet internal audit which I think is C, is that
10 right?

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: We will be getting to it shortly, but I ...[intervenes]

MS BARBARA HOGAN: Which then starts to definitely identify Mr Ghama as one of the people who had to be investigated. So, yes, there was no sense at the time of the discussions that the reason why they were turning Mr Ghama down as the – as a recommendation was more on capabilities, and let me stress here as well. Mr Ghama received very fine assessments and he is considered as is his fellow senior Managers. They are considered all of them in terms of the assessments. Got very good reports,
20 but there were certain, there were just certain aspects which from the individual evaluations and whatever made them not suitable to be the recommended appointment at this moment in time.

ADV PHILLIP MOKOENA SC: So if I understand your evidence correctly you are saying to the, Chair, that a number of factors were considered in relation to various issues, which were also considered by the board in relation to Mr Ghama?

MS BARBARA HOGAN: That is correct, yes.

ADV PHILLIP MOKOENA SC: Now may I refer you to page 40? Just to round up this issue. You will see that on page 40 you have four unnumbered paragraphs. I need to direct your attention to the paragraph just before the heading citizenship, credit and – can you see that heading, can you see that paragraph?

MS BARBARA HOGAN: On page 40?

ADV PHILLIP MOKOENA SC: Yes, 4-0. The fourth paragraph.

MS BARBARA HOGAN: The fourth paragraph, yes I can.

ADV PHILLIP MOKOENA SC: The one that starts with, it says "Mr Maseko's preferred

10 ...[intervenes]

MS BARBARA HOGAN: Yes, yes.

ADV PHILLIP MOKOENA SC: Of problem solving is explorative and reflective when faced with unfamiliar or new business environment or industry. This indicates that in a new large organisation like Transnet he would benefit from an experienced mentor and coach who fully understand the complexity of the organisation. Now a question might be posed to say that, if indeed Mr Maseko was an excellent candidate, why would he still require a mentor when he is appointed at this large institution?

MS BARBARA HOGAN: Mr Maseko came not from within the ranks of Transnet, but from outside the ranks of Transnet. He had extensive experience in running a company
20 that deals primarily with infrastructure and logistics and the movement of goods, and Transnet is a very complex organisation and anyone who came in as CEO from the outside would need a proper induction process. And my understanding of that is that he would undergo a comprehensive induction process, but that his managerial capabilities and his ability to assimilate and his managerial qualities overweighed any

instance that he was, you know, he was just someone who would not know what to do when he arrived.

ADV PHILLIP MOKOENA SC: Yes. Now in paragraph 35 of your witness statement you refer to persons and organisations that were vocal that Mr Ghama was the candidate of their choice. Could you please provide the context and detail to the contents of this paragraph?

MS BARBARA HOGAN: Yes. During the course of all of these matters the media began to carry stories that Mr Ghama was being sidelined in favour of a white candidate Mr Wells and the Transnet Chair...[machine stopped] with me and asked if I
10 could assist with media statements to set the record straight.

There were other media reports that was saying that he was the preferred candidate or the second preferred candidate. The next on the list after Pravin Ghordan and they were dealing with, it was often in Sunday newspapers. Later on when Mr Ghama was suspended by Transnet, about a day before and in the following probably ten, 11, 12 days several organisations issued very very firm statements that Ghama would become the CEO and that he was being sidelined.

Should I continue with those, mentioning who they were?

ADV PHILLIP MOKOENA SC: Those media statements are the ones contained from page 95 to 113, am I correct? I intend to deal with them in due course.

20 **MS BARBARA HOGAN:** Sure.

ADV PHILLIP MOKOENA SC: But I just want you to confirm whether are you referring to those media statements?

MS BARBARA HOGAN: Okay, alright.

ADV PHILLIP MOKOENA SC: Are those the ones from page 95 ...[intervenes]

MS BARBARA HOGAN: It was those, it was in that order ...[intervenes]

ADV PHILLIP MOKOENA SC: And they go up until page 113?

MS BARBARA HOGAN: Yes, and then there was also two cabinet Ministers. Minister Sipiwe Nyanda and Minister Jeff Kgadebe, also made very very strong statements that Mr Ghama was being sidelined, that he would – that he would become the CEO and that he was being persecuted like Mr Zuma had been persecuted.

ADV PHILLIP MOKOENA SC: And those cabinet colleagues that you are referring to them are they the ones that you are testifying about on your statement on paragraph 35, when you say that the problem was that President Zuma, two of my cabinet colleagues ...[intervenes]

10 **MS BARBARA HOGAN:** Correct.

ADV PHILLIP MOKOENA SC: So you were referring to Minister Jeff Kgadebe and ...[intervenes]

MS BARBARA HOGAN: Sipiwe Nyanda, yes.

ADV PHILLIP MOKOENA SC: May I refer you to annexure C on page 46? Now annexed to that letter it is a document on the next page that is styled summary report by Transnet internal audit into allegations relating to Transnet Freight Rail. Now could you please ...[intervenes]

20 **CHAIRPERSON:** Before you proceed Mr Mokoena, is it more convenient for you to deal with those media statements later rather than now, saying that she has just mentioned names?

ADV PHILLIP MOKOENA SC: Yes, Mr Chair, there is a context to them.

CHAIRPERSON: There is a context?

ADV PHILLIP MOKOENA SC: In terms of chronology yes.

CHAIRPERSON: Okay, alright.

ADV PHILLIP MOKOENA SC: The two documents that I have referred to you on page 46 and 47, could you please tell to us what do they relate to?

MS BARBARA HOGAN: Okay. After having received the whistleblower reports at different times Transnet internal audit was asked to investigate these. The first tender which raised problems was the 50 like new locomotives. That was a decision made by Transnet management, which government really agreed with, that certain locomotives could be refurbished in the *interim* until we purchased new and the Transnet board in agreeing that this particular company should get that contract said that the refurbishment must take place in Transnet itself. At that stage it was called Trans Werk
10 or Transnet Rail Engineering. That is one of the divisions of Transnet, and Transnet wanted to up its ability to build, maintain, refurbish locomotives, instead of constantly trying to outsource.

Government's intention was also that government does not – and this was an initiative between Public Enterprises and Trade and Industry that we look very much at creating such a manufacturing capability in South Africa rather than importing rail stock from abroad. Also, South Africa also had that kind of rail manufacturing capability, Union Carriage Way, Downing Dunator was a private sector one and Transnet had it.

So the expenditure on refurbishing this was meant to advantage South Africa's manufacturing capability and to provide jobs. So Transnet board passed a resolution to
20 say that this contract, the work must be done in-house. Only to find out later that Mr Ghama had signed off the contract with no reference to – that it should be in-house, and only to find out later that the company which had an international component, an American component as I remember, with a local component, had started such a facility near to Pretoria and was already investing and building it up. And Transnet now had to now role that back and they had to go to the United States, there were a lot of things,

Transnet had to pay a penalty, all sorts of matters arose out of those kind of complications.

So that, what we have here is that this was a matter that Transnet internal audit was investigating and they say here that the contract that was signed did not take into account, and that is on page 48, and it is the third bullet from the bottom.

"The contract signed by Mr Ghama did not take into account
the resolution passed by the board of Directors."

ADV PHILLIP MOKOENA SC: Now if I may refer you to page 49 under the heading conclusions?

10 **MS BARBARA HOGAN:** Yes. On page?

ADV PHILLIP MOKOENA SC: 4-9.

MS BARBARA HOGAN: Yes, so the conclusion at that stage, 49, in terms of Transnet internal audit was that the signatories of the contract did not comply fully with the board or Directors' resolution and consequently disciplinary action must be taken against the relevant signatories to the agreement. The Presiding Officer of the disciplinary hearing should take into consideration the implications to Transnet, of the non-compliance and the resultant additional costs to Transnet in determining the appropriate sanction.

ADV PHILLIP MOKOENA SC: Yes and you are saying that Mr Gama was the one that also signed the contracts?

20 **ME BARBARA HOGAN:** Yes. Now Mr Gama was not in control of the Tender Board, you know. Transnet had a whole series of Boards from different divisions and whatever. But as the General Manager of Transnet Freight Rail, it was his job to sign off on the contract and he gave evidence that he had not – you know, he was under pressure and he quickly signed it. He had not really read it through, because he was more or less aware of the contents. Yes that was that one.

ADV PHILLIP MOKOENA SC: Now you also make reference in your statement to one Mr Wells.

CHAIRPERSON: I am sorry Mr Mokoena, so this – the time of this letter and your report from the Transnet Internal Audit Section, was happening in March 2009?

ME BARBARA HOGAN: Yes.

CHAIRPERSON: Before your time?

ME BARBARA HOGAN: Yes.

CHAIRPERSON: Thank you.

ME BARBARA HOGAN: Yes.

10 **ADV PHILLIP MOKOENA SC:** You also make reference to Mr Walsh in your statement Ms Hogan?

ME BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: How did he feature in this saga of Mr Gama?

ME BARBARA HOGAN: Mr Walsh was the Acting CEO and he was instructed by the Board to initiate proceedings and whatever. I am not exactly sure the details are here, but as I understand it, he then handed it over to the Head of Human Resources to manage and that was a process that then went ahead. Mr Walsh faced a tirade of insults, it was a fusillade of insults, raciest comments, accusations that he was trying to thwart the progress of a very good black manager.

20 As I have said before, partly because he wanted the job, it was alleged that he wanted the job himself which was not true. Those accusations never ever stopped. Even into the Disciplinary Hearing, the person who conducted the Arbitration Hearings at that point, listed the number of accusations that were laid against Mr Walsh that proved not to be true and they are very – they are not nice accusations. You know, our country has gone into a mode of destroying people in the public domain and it was that

kind of thing. In that very disciplinary hearing, Mr Gama was found guilty of the way that he criticised, the manner in which he criticised the Transnet Executives and Mr Walsh in particular and he said he would apologise.

ADV PHILLIP MOKOENA SC: Yes. May I ...[intervenes]

CHAIRPERSON: I am sorry Mr Mokoena. As at March 2009, when the Transnet Internal Audit Section made this report, Mr Walsh had actually withdrawn his candidature a few months before in December, is that right?

ME BARBARA HOGAN: Correct in December 2008.

10 **CHAIRPERSON:** So when Mr Gama was charged with allegations arising out of this investigation by the Transnet Internal Audit Section, he was no longer an interested party in terms of the position, Mr Walsh?

ME BARBARA HOGAN: Yes he was no longer an interested party.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: May I refer you to page 53 Annexure D, could you please identify that document for us?

20 **ME BARBARA HOGAN:** This was the document which I gave and went through with to the President. At the end of July 2009, as you would recall Chair, I had undertaken to come back with more information to the President relating to the appointment of Mr Maseko. As you will see in the document, I took quite extensive legal advice on this matter and a lot of research was done and this I gave to President Zuma and I went through it.

ADV PHILLIP MOKOENA SC: Before that Ms Hogan, you also set out the purpose of this document on paragraph 1.1 to 1.5.

ME BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: And I think that those issues are quite important which you conveyed to the President. Could you please read them into the record?

ME BARBARA HOGAN: Yes, yes.

ADV PHILLIP MOKOENA SC: Could you please read them into the record?

ME BARBARA HOGAN: If there was?

ADV PHILLIP MOKOENA SC: Could you please read the paragraph 1.1 to 1.5?

ME BARBARA HOGAN: Okay I will read it. It was brief the President on the following matters:

- 10 "1.1 The legal framework governing the appointment of a
 Group Chief Executive Officer for Transnet Limited.
- 1.2 The CEO and the recruitment and selection process
 undertaken by Transnet Board of Directors to employ a
 CEO.
- 1.3 Investigations into allegations of corruption at Transnet
 impacting one of the candidates for the position of a
 CEO.
- 1.4 Assessment of the recruitment and selection process by
 the Board.
- 1.5 The recommended process forward and the risks involved
20 in the appointment of the CEO."

That was the content of that.

ADV PHILLIP MOKOENA SC: So already in 2009 long before this Commission of Inquiry as per 1.3 there were already those issues pertaining to the allegations of corruption at Transnet as you have indicated in that paragraph?

ME BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Now what I want to know Ms Hogan, you then had a meeting with the ex-President and also provided him with this detailed memorandum?

ME BARBARA HOGAN: Yes I did.

ADV PHILLIP MOKOENA SC: Did you take the President through this document?

ME BARBARA HOGAN: Did I?

ADV PHILLIP MOKOENA SC: Did you take the President through this document?

ME BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: What was his reaction?

CHAIRPERSON: I am sorry before that. When was that meeting?

10 **ME BARBARA HOGAN:** It was towards the – this document is dated the 28 July. So it must have been within a week of that. You see I was approaching the President, because the process for appointing the CEO had been halted, we had to then postpone the AGM of Transnet and I was wanting the President – you know this documents comes with a recommendation that Sipho Maseko be appointed and so it must have been between the date of this document the 27 July and the 11 August when the Transnet AGM took place.

CHAIRPERSON: This meeting that you are talking about now between yourself and the President, where you took him through this document, this memorandum of 28 July 2009, that was then a second meeting that you had with the President on the
20 issue of the appointment of the CEO for Transnet?

ME BARBARA HOGAN: Correct.

CHAIRPERSON: The first one having been about a month or so after your appointment as Minister of Public Enterprises?

ME BARBARA HOGAN: Correct.

CHAIRPERSON: So a month or so would have been early June 2009, is that right, I

think you were appointed about 10 May?

ME BARBARA HOGAN: Yes.

CHAIRPERSON: Or 11 May.

ME BARBARA HOGAN: June yes.

CHAIRPERSON: Ja. So your first meeting with him in regard to this issue, would have been around early June towards mid-June?

ME BARBARA HOGAN: I think I give the date – yes it was towards – I say approximately a month after my appointment.

CHAIRPERSON: Yes.

10 **ME BARBARA HOGAN:** So June sometime ja.

CHAIRPERSON: So that would be somewhere in the first half of June?

ME BARBARA HOGAN: Yes.

CHAIRPERSON: Ja okay thank you.

ADV PHILLIP MOKOENA SC: To clarify the Chair's questions, if you can go to page 9 just to point in the chronology, paragraph 33 that is where you talk about the first meeting?

ME BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: And you will see that it is approximately a month after my appointment.

20 **ME BARBARA HOGAN:** Yes.

ADV PHILLIP MOKOENA SC: Ja. Now if we refer back to Annexure D page 53.

ME BARBARA HOGAN: Page?

ADV PHILLIP MOKOENA SC: Five three.

ME BARBARA HOGAN: Five three okay, yes.

ADV PHILLIP MOKOENA SC: You have outlined the topics which are dealt with in this

memorandum on paragraph 1.1 to 1.5.

ME BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: And I take it that from – if one peruse this document, one will find these issues being ventilated at great length?

ME BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: And this is what the President had in his possession when you were trying to convey to him the importance of appointing Mr Maseko?

ME BARBARA HOGAN: Correct.

10 **ADV PHILLIP MOKOENA SC:** Now just to clear one of the issues which – where there might be a lacuna in terms of your documents. Could you explain to the Chair whether at the time when you were preparing your statement, did you have all the necessary documents that you required?

ME BARBARA HOGAN: Yes I did.

ADV PHILLIP MOKOENA SC: You did?

ME BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Did you receive all the emails that you required from your previous office?

20 **ME BARBARA HOGAN:** I did, but there was a problem. I wrote an official letter to Minister Gordhan requesting access to my documents in order to prepare this statement.

CHAIRPERSON: Sorry to Minister?

ME BARBARA HOGAN: Gordhan, because he is the Minister of Public Enterprises now. So I requested access to documents in order to prepare. They were able to assist me and he assigned an advocate in his department to assist me and I signed off and they signed off that these were copies. But, it was evident that my papers had

been quite considerably tampered with and also we could find no record of my emails. It seemed that they had been deleted from my time and maybe a little later from the server of the Department of Public Enterprises. So I did have to reconstruct as best as I could some of these documents and my understanding, I spent a lot of time doing that, just to make sure that I – you know that it was solid.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Thank you, thank you.

ADV PHILLIP MOKOENA SC: Now we were still dealing with Annexure D on page 53.

ME BARBARA HOGAN: Yes.

10 **ADV PHILLIP MOKOENA SC:** You have also testified about your second meeting with the ex-President.

ME BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Now what I want to know is that after that meeting, or during that meeting, what was the reaction of the President?

CHAIRPERSON: Or maybe before that. Could you give me the main features of this document that you presented to the President?

ME BARBARA HOGAN: The main?

CHAIRPERSON: The main features.

ME BARBARA HOGAN: Features okay.

20 **CHAIRPERSON:** The main points.

ME BARBARA HOGAN: Okay.

CHAIRPERSON: In other words you do not need to say everything.

ME BARBARA HOGAN: Yes.

CHAIRPERSON: But what you consider were the main points that the memorandum contained, which obviously you probably mentioned to the former President.

ME BARBARA HOGAN: Ja. The main point was firstly the legal framework, regarding the appointment of a Group CEO for Transnet that is founded in the Transnet founding documents.

CHAIRPERSON: And that briefly was, just go ...[intervenes]

ME BARBARA HOGAN: Okay I will go through it here. I am talking to page 55 it says here, Transnet's articles of association do provide specifically for the appointment of the Board and the CEO. Article 69 and 71 vest the power to appoint the CEO with the shareholder, the Minister in a general meeting. Article 69 specifically addresses the appointment of Executive Directors that is the CEO the CFO, and any other Executive
10 Director while Article 71 deals with the non-executive Directors. So I was giving who has executive authority to appoint. That was one of the matters. Because I thought the President did not understand that kind of component or was not agreeing with it.

Then I went through the CEO recruitment and selection process. As I have done with you, how thorough, what it was about, what the competencies we needed.

CHAIRPERSON: Effectively in the same way you have explained it.

ME BARBARA HOGAN: I done it with yourself yes.

CHAIRPERSON: Ja, ja that you explained to him as well.

ME BARBARA HOGAN: Ja.

CHAIRPERSON: Ja.

20 **ME BARBARA HOGAN:** I also dealt with investigation into the issues of corruption and I gave him the details of both instances, the 50 like new and the security contract which had been given to Minister Nyanda's company. Let me say Minister Nyanda was no longer – when he became a Cabinet Minister, he then moved out of that company, but at the time he had been a member. So I gave the President details of all of that.

I also informed him of the legal onus on the Board to take action when such

instances of misconduct do occur and that it was not the Board's decision to make, to follow-up, it was actually a legal requirement. So that was followed up with him and then I repeated my recommendation that he notes the contents of this memorandum and approves the submission of a cabinet memorandum recommending the appointment.

Now I want to be very clear. I was not asking the President to approve Mr Maseko. I was asking him to approve a cabinet memorandum recommending the appointment. Now as I have said to you before, the cabinet memorandums go through a subcommittee of cabinet and then go to cabinet. When a Minister is under pressure
10 and it is an important issue, the Minister can write a letter to the President explaining why the Minister would prefer to bypass the subcommittee process because of certain exigencies and the President is then empowered to grant the Minister to place that on the agenda. That is what I was referring to. Because it was already getting very late for the Board.

CHAIRPERSON: So the approval that you were seeking the appointment was an approval of bypassing the subcommittee of cabinet in regard to this memorandum and going straight to cabinet?

ME BARBARA HOGAN: My recommendation says that. Well not, it just says, approves the submission of a cabinet memorandum. I did not go into details of which
20 process.

CHAIRPERSON: But what I mean is you – the approval you wanted related to the process to the procedure.

ME BARBARA HOGAN: Yes to procedures.

CHAIRPERSON: Ja okay.

ME BARBARA HOGAN: It was because Advocate Trengove had advised very strongly

and others as well that you should not be asking for approval, you should be consulting with.

CHAIRPERSON: Okay I think Mr Mokoena's question before mine was therefore, what the former President's reaction was to your recommendation at that meeting.

ADV PHILLIP MOKOENA SC: Yes.

ME BARBARA HOGAN: He said he would come back to me.

ADV PHILLIP MOKOENA SC: Now may I refer you to Annexure E page 94.

CHAIRPERSON: And maybe before you go there. At your first meeting with the former President on this issue, had you left him with documentation relating to the issue that
10 he could have looked at after your meeting, or not really?

ME BARBARA HOGAN: Yes I left him. The problem with meeting – in all – virtually every instance of meeting with the President, is that there was never an aid present. My experience with President Motlanthe, previously when I was Minister of Health is that, if there was something very important that you had to discuss, you know not just something quickly, but you could pass by him, you would request that meeting. On occasions the President's office would contact the DG or someone to say, what is this about and you know there would be various things. But in most instances, virtually all those instances when he was President there would be an aid taking a record of that decision. With President Zuma there was not that, you know, you met at his house. It
20 was, you know the housekeeper sometimes would organise the meetings. There was not a professionalism there.

ADV PHILLIP MOKOENA SC: I was referring you to Annexure E on page 94.

ME BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Now you had told the Chair that when you testified about Annexure D that you had a meeting with the ex-President Mr Zuma, you left him

with that document, you took him through that document and he said he will revert to you, am I correct?

ME BARBARA HOGAN: Yes correct.

ADV PHILLIP MOKOENA SC: Now can you tell us, identify for us Annexure E and tell us what was the purpose of you despatching this letter to the President?

ME BARBARA HOGAN: Okay. So having not heard from the President and knowing that I had to get within the cabinet's cycle, I then formally addressed a letter to the President, requesting permission for the late and direct submission of the cabinet memorandum and therefore to – for the appointment of Mr Maseko.

10 **ADV PHILLIP MOKOENA SC:** Now in terms of the dates, I know – I will give you the opportunity to proceed with that evidence. We know that Annexure D is dated the 28th July 2009, Annexure D.

ME BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: And Annexure E it is now dated the 25 August 2009, almost a period of a month has lapsed without you hearing from the ex-President.

ME BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Yes. You can now proceed dealing with Annexure E.

20 **ME BARBARA HOGAN:** Ja. I then request the President's permission, because I had not heard – I had requested that I put it before cabinet, I had not heard from him. So I did the formal request which you are supposed to do as a Minister and I think I spoke telephonically, I cannot remember. All I have is that this memo was then withdrawn from the cabinet's agenda and the President then said he wanted several names, not only for the CEO position, but he wanted several names for the Chairperson of Transnet.

ADV PHILLIP MOKOENA SC: Now do you know who withdrew the memorandum from

cabinet?

ME BARBARA HOGAN: This memo who wrote this?

ADV PHILLIP MOKOENA SC: No, no who withdrew the memorandum?

ME BARBARA HOGAN: The cabinet secretariat were instructed to withdraw the memorandum and they said the President had given that instruction.

ADV PHILLIP MOKOENA SC: Oh yes, and you said that the President wanted several names of what?

ME BARBARA HOGAN: For the Chairperson of the Board. I had not requested anything yet to put forward a memorandum on the Chairperson. But the President now
10 wanted three names for the Chairperson of the Board.

CHAIRPERSON: Would this have been around August now?

ME BARBARA HOGAN: 28th August. Oh yes, the formal request I put through was on the 28th August.

CHAIRPERSON: Had Mr Paswana left the Transnet Board at that stage?

ME BARBARA HOGAN: Yes he had left at the end of July.

CHAIRPERSON: Oh okay alright. But the point you make is that you had not yet approached the President about the feeling of that vacant position?

ME BARBARA HOGAN: Yes. I surmise that what I had said to him that it was important to have appointments is that there was now an Acting Chair, Acting CFO,
20 Acting Group CEO, Acting CEO of Freight Rail and that might have been the context. I cannot exactly remember, but he now wanted me to give him three names so he could decide.

ADV PHILLIP MOKOENA SC: Now you despatch Annexure E to the President, did he react to this letter?

ME BARBARA HOGAN: Well he did in a sense that the memo was withdrawn from

cabinet, it did not serve at cabinet, the recommendation.

ADV PHILLIP MOKOENA SC: Did you find any opportunity to address the cabinet on the issue of – the issues that you wanted to raise – that you have raised with the President?

ME BARBARA HOGAN: I could not raise that issue following on this until Mr Gama's disciplinary proceedings were completed and they were only finished in June when he was dismissed from Transnet in June 2010, it was almost a year later. So Transnet was left completely vulnerable with acting positions all the way through.

CHAIRPERSON: Now were you consulted in any way about the withdrawal of the memorandum from cabinet?

ME BARBARA HOGAN: No, no.

CHAIRPERSON: Yes.

ME BARBARA HOGAN: The President – what I surmise is that the President said, this is not going through, I want now you to add three more names for a Chairperson.

CHAIRPERSON: But as at the date when that happened, he had not come back to you on the documentation you had submitted to him in July?

ME BARBARA HOGAN: No he had not.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: Now on paragraph 44 page 12.

CHAIRPERSON: I am sorry Mr Mokoena. The three names that the former President was asking for, were those exclusively for the position of Chairperson of the Board, Transnet Board, or did he also mean he wanted other names for the position of CEO as well.

ME BARBARA HOGAN: No he was then talking about the Chairperson of the Board.

CHAIRPERSON: As at that time, what was your understanding of the President's

position on the issue of CEO, Group CEO for Transnet? Was it that he wanted the search for a CEO to be put in abeyance until the disciplinary process relating to Mr Gama was finished, at which stage then all the relevant candidates could be considered and the choice be made, or was - were your understanding that whatever happened, Mr Gama was the one to be appointed at the end of that process if he was not dismissed as a result of the process. What was your understanding.

MS BARBARA HOGAN: That Mr Ghama must be appointed.

CHAIRPERSON: And that – your understanding that that was his position did it ever change at any stage while you were Minister of Public Enterprises?

10 **MS BARBARA HOGAN**: No.

CHAIRPERSON: It did not?

MS BARBARA HOGAN: No.

CHAIRPERSON: Was there – was there any time when you did ask whether the former President had any problem with the candidate recommended by the board? In other words did you get a chance to say, Mr President, do you have any particular problem with this candidate who has been recommended by the board? And maybe if you did, what was the answer?

MS BARBARA HOGAN: The answer was that Mr Ghama is being persecuted.

CHAIRPERSON: So you did get a chance to ask ...[intervenes]

20 **MS BARBARA HOGAN**: Oh, yes, when I briefed him the first time and the second time.

CHAIRPERSON: Yes, yes.

MS BARBARA HOGAN: But he was not prepared to discuss the merits of Mr Maseko.

CHAIRPERSON: Yes.

MS BARBARA HOGAN: He simply wanted Mr Ghama appointed.

CHAIRPERSON: So he did not articulate any criticism of Mr Maseko's capabilities or experience or knowledge?

MS BARBARA HOGAN: No.

CHAIRPERSON: Okay.

MS BARBARA HOGAN: Mr Maseko then withdrew as a candidate in September.

CHAIRPERSON: Yes, thank you.

ADV PHILLIP MOKOENA SC: Ms Hogan, just for completeness so that we do not leave the, Chair, behind. May I refer you to page 10, paragraph 34? And in that paragraph you address the questions that were now put by the, Chair, in order to clarify
10 your evidence. You answer as follows: You are saying in your statement:

"I was shocked and disappointed when President Zuma informed me that he was adamant that Mr Ghama was his only choice for the group CEO. I informed him that that was not possible and that Mr Ghama was not the board's choice and I could not override the board as they had undergone a very professional selection process. I further informed President Zuma that Mr Ghama was the subject of an inquiry into procurement irregularities and it would be very messy to appoint a group CEO who could potentially be facing fairly
20 serious charges."

And fundamentally you say:

"President Zuma said that if that was my view no appointment whatsoever was to be made at Transnet until Mr Ghama's disciplinary process was over. We agreed that I would provide him more detailed information for him to further apply his

mind."

So there was no doubt in the ex-President's mind as to whom he wanted as the group CEO?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Despite everything else that you have conveyed to him?

MS BARBARA HOGAN: Yes.

CHAIRPERSON: Was there an appreciation on your part that if you were the appointing authority in respect of the CEO and there were a number of candidates and
10 the board had recommended a certain candidate that if you appointed another candidate you would as a matter of law be required to be able to justify why you chose a particular candidate and not another candidate? You had that appreciation?

MS BARBARA HOGAN: Exactly.

CHAIRPERSON: Yes, and that you would have – you would need to be able to defend your decision?

MS BARBARA HOGAN: Yes, I was aware of that, and for me it was really important that a board has confidence in a CEO, otherwise it is just not going to work. And, yes, you know, it was not for me now to go looking around for another candidate who they had said they would prefer not to appoint at that point in time.

20 **CHAIRPERSON**: Um.

MS BARBARA HOGAN: Sorry, ja?

CHAIRPERSON: No, no, no, continue.

MS BARBARA HOGAN: No, no, that is ...[intervenes]

CHAIRPERSON: From what you say it seems that you were not given anything even if you may have been open to appointing somebody else other than Mr Maseko, you were

not given any grounds as to why Mr Ghama was or would have been a better candidate than Mr Maseko.

MS BARBARA HOGAN: I was given no grounds and what I learned from this experience and from what the President had said is that I would not be able to put before cabinet any proposal relating to Transnet. Going forward apart from submitting a very dubious memorandum nominating three names for cabinet or the President to decide, which I was advised was usurping an executive authority, and I quite frankly had started to become alarmed at – and I did not understand it, what the underlying motives must be for all of this.

10 What was the interest in just one particular candidate and what was the interest in a Chair then? That seemed to go beyond just the interest of Transnet as a company.

CHAIRPERSON: Did you have – did you get to know whether the former President also had an appreciation that whoever was chosen as the CEO, that decision would need to be a decision that could be justifiable in terms of why choose this one and not that one? Did you get to know whether he appreciated that? That that was required?

MS BARBARA HOGAN: You know, no. I could not get a sense that he appreciated – that you have to be able to apply your mind and justify what decisions you make as an executive authority. It was almost like he still saw himself in the ANC as issuing
20 instructions to, you know, one of your executive members or, you know, that you are in charge of the show and you tell people what they must do. He almost had that approach.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: Ms Hogan, I was referring you to page 12 of your witness statement, with particular reference to paragraph 44. You say in paragraph 44:

"Mr Ghama was formally charged by Transnet and later suspended on 1 September 2009. Immediately before and in the days following his suspension Minister Jeff Radebe, Ghama, 'Ghama will become CEO', Minister Siphile Nyanda 'Ghama is being persecuted like Jacob Zuma and also ANC, the SACP, the South African Transport Union and ANC Youth League under Julius Malema at the time all issued strong and harsh statements in support of Ghama' accusing Transnet of persecuting him. This was reflected in numerous statements and reports in the media which I attach hereto marked F1 to F13."

I need to explore with you some of those media reports in order for us to be able to appreciate the influence and the pressure which you say was exerted upon you at the time in relation to this issue. May I then refer you to page 95?

CHAIRPERSON: What page? 95?

ADV PHILLIP MOKOENA SC: 9-5, Chair.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: Now let us start with the one on page 95 headed ANC backs suspended Transnet boss, dated 30 August 2009 from the Sunday Times and if you can read that article and you can react or comment on it?

MS BARBARA HOGAN: I will just read extracts. This was an article which appeared in the Sunday Times a day or two before Mr Ghama was suspended and all of these statements occurred as Mr Ghama was suspended. Minister Jeff Radebe described his suspension as a miscarriage of justice, that is the first paragraph.

ADV PHILLIP MOKOENA SC: Yes, and if you can also comment on the last paragraph

that says Ghama is believed?

MS BARBARA HOGAN: Yes, then various falsehoods were put out. Ghama is believed to be among at least three candidates short listed to take over as a permanent CEO. He was short listed, but you know, he was not the person recommended. So it is an innuendo rather than a blatant distortion.

ADV PHILLIP MOKOENA SC: And that must be viewed in the light of your evidence before the, Chair, today when you told us about the individuals that were short listed and you also commented on the credentials of Mr Maseko?

MS BARBARA HOGAN: Yes.

10 **ADV PHILLIP MOKOENA SC**: And the other issues that were taken into account in relation to Mr Ghama?

MS BARBARA HOGAN: Yes, yes, indeed.

ADV PHILLIP MOKOENA SC: Proceed.

MS BARBARA HOGAN: And then it says the Sunday Times can also reveal that the National Working Committee instructed Minister of Public Enterprises, Barbara Hogan about two months ago to appoint Ghama as Transnet CEO after the departure of the ...[indistinct] former head Maria Ramos had left, who had joined ABSA.

20 Now I had never received an instruction from ANC's National Working Committee. It is, you know, it is insightful to look at who was on that committee at that stage. Many of them were people who had backed President Zuma in his campaign to be President of the ANC. They were his firm supporters and backers with very few exceptions on that National Working Committee.

ADV PHILLIP MOKOENA SC: Now can you turn over to page 96? You can ignore the first portion, unless you want to comment on it, but I am much more interested in the second portion that appears in quotes, that, that says in other words. If you can read

and react to it?

MS BARBARA HOGAN: Yes, now this was a quote from Brian Sekotu who was the media's ANC spokesman and he was saying, you know, he was saying that Ghama was an executive who has been around Transnet. In other words we say he has a track record. I am not aware of discussions about him at the NWC or the MEC level, but there is nothing stopping members of the ANC from discussing succession within parastatals. Now you can discuss, do you instruct? Why are you discussing? Those are the questions that one needs answered.

ADV PHILLIP MOKOENA SC: And then the following that says speaking at the
10 University of KwaZulu-Natal on Thursday Radebe deny the Transnet board and described the decision to suspend Ghama as gross injustice. You have already testified about that.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Yes. Now if you go towards the bottom of the same page, starting with the words according to NWC insiders, Ghama was recommended by the parties deployment committee. Do you wish to comment on that?

MS BARBARA HOGAN: It may well have been, but that was never drawn to my attention that Ghama was recommended by the deployment committee.

ADV PHILLIP MOKOENA SC: Yes, turn over to page 97. You can read from where it
20 says both men and you can comment thereafter.

MS BARBARA HOGAN: Well this is misleading, because it says "both men were recommended". Only one person was recommended, not both men.

ADV PHILLIP MOKOENA SC: And this is in line with your testimony corroborated by the documents which I referred to today that there was only one recommendation?

MS BARBARA HOGAN: One recommended person all the way through.

ADV PHILLIP MOKOENA SC: May I refer you to page 98? Sorry, while you are still on page 97 the sixth line that starts with "an ANC deployment committee" if you can read there and comment? 97.

MS BARBARA HOGAN: 97? Sorry I thought it was 98.

ADV PHILLIP MOKOENA SC: 97, I think it is the sixth line.

MS BARBARA HOGAN: It was also, I do not know, I have no knowledge of who opposed Ghama, that person.

ADV PHILLIP MOKOENA SC: Yes. Now may I refer you to page 98? You can read the first and the last paragraphs and comment on them.

10 **MS BARBARA HOGAN:** This is now the ANC Youth League. So the first, well, one of the media statements is on the 30th, the ANC Youth League issues a statement on September the 11th saying:

20 "The African National Congress Youth League calls for the immediate appointment of Siyabonga Ghama as a group CEO of Transnet. There is evidently a concerted agenda by the predominantly white board of Directors and external role players to isolate Siyabonga Ghama from Transnet and deny him the position of group CEO of Transnet despite his credentials. Currently Africans are denied positions of responsibility in key and strategic sectors of the economy and we should never egg walk around this absolute reality."

And then it goes onto say:

"Siyabonga Ghama should be appointed as a group CEO and business go on as usual in Transnet. Any attempt to persecute and isolate him will be met with massive resistance from the

youth of South Africa."

ADV PHILLIP MOKOENA SC: And this is some of the pressure that you say it was exerted upon you at the time?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: And the board?

MS BARBARA HOGAN: And the board, yes.

ADV PHILLIP MOKOENA SC: Now may I refer you to page 101? You can identify that document, read it and you can also comment on it.

10 **MS BARBARA HOGAN:** Now this is the South African Communist party releasing a statement a couple of days before the ANC Youth League on 7 September saying, this is a statement:

"THE SACP has noted the recent developments within Transnet and the subsequent suspension of Siyabonga Ghama. We wish to express serious concerns about what appears to be an attempt by certain elements within and outside of Transnet to clearly frustrate the appointment of Mr Ghama as a CEO despite his illustrious career, commitment to public service and strong credentials."

ADV PHILLIP MOKOENA SC: Let us go to page 101.

20 **MS BARBARA HOGAN:** That is the same ...[intervenes]

ADV PHILLIP MOKOENA SC: That is the same thing, yes.

MS BARBARA HOGAN: A duplicate, ja, ja.

ADV PHILLIP MOKOENA SC: That is a duplicate. Page 108. It is headed Ghama being persecuted like Zuma, are you there?

MS BARBARA HOGAN: I am just allocating it. 107. This is on September the 13th in

the Sunday Times business page and the quote is:

"Ghama being persecuted like Zuma. Minister of Communications and ANC heavyweight, General Sphiwe Nyanda says suspended Transnet executive Siyabonga Ghama is being persecuted in the same manner as Jacob Zuma. He is a young man. Very few people are as capable or as suitable as he is. The challenge is that some people out there are really bent on insuring that he is destroyed. What happened to Jacob Zuma, to JZ is happening in this case.

10 People vilify and cast dispersions on you."

ADV PHILLIP MOKOENA SC: The last one on page 113.

MS BARBARA HOGAN: This is from South African Transport and Allied Workers Union. It is, it was issued by the General Secretary Randall Howard.

"SITAWU has become aware the suspension of Ghama effected on 1 September. SITAWU is convinced that the suspension is informed by a dirty tricks campaign ...[intervenes]"

ADV PHILLIP MOKOENA SC: You are reading the one on annexure G111, is it not?

MS BARBARA HOGAN: On 111.

20 **ADV PHILLIP MOKOENA SC:** Yes, okay, proceed.

MS BARBARA HOGAN: Yes, ja.

"...is a dirty campaign to discredit him publicly, rule him out as the most suitable candidate. We also question the timing of the charges."

And then it goes on:

"SITAWU is reliably informed that the Carlton Centre Kabal..."

And how often are we hearing that word Kabal?

"...that the Carlton Centre Kabal led by the acting GCEO Chris Wells with a direct link to former GCEO Maria Ramos is hell bent on insuring that Ghama does not get the job."

It goes on and on, SITAWU and then at the end here, the last paragraph:

"SITAWU will ensure that no puppet appointment takes place until the disciplinary process of Ghama is completed. Even though at the cost of keeping an untransformed Kabal in place a little longer."

10

And you know that is the tone of it. Might I just say that COSATU as a federation never once engaged publicly on this matter. I had briefed Zwelinzima Vavi and he concurred with me that there were, you know, this issue was problematic. So although the transport union who, you know, have members in Transnet issued a statement. COSATU was the one part of the ...[indistinct] alliance that did not follow suit as the others had done.

ADV PHILLIP MOKOENA SC: And we have also annexure H on 113. This also captures the history, and it has captured, it is headed meddling with Transnet matters.

MS BARBARA HOGAN: Yes, this is an editorial.

20 **ADV PHILLIP MOKOENA SC:** Yes.

MS BARBARA HOGAN: Of a City Press of September the 13th, 2009, headed as you say meddling with Transnet matters. It starts off with saying:

"The level of political interference at Transnet does not bode well for the effective management of parastatals. At last count the presidency the ANC headquarters Minister Jeff Radebe, the

ANC Youth League and the Trade Union Federation..."

And that was incorrect, it was just SITAWU.

"...had all insisted that the Transnet board appoints suspended executive Siyabonga Ghama as the Chief Executive. It is an unprecedented level of political pressure exercised on what is supposed to be a board appointed by government, but which operates with autonomy and respect for its professionalism and its expertise."

And then it starts to speculate what is at stake here. Obviously certain
10 business associations with Minister Radebe, whatever, I will not go into those, but it ends off by saying and that is the third paragraph from the bottom:

"The question of who is right or wrong is really not for the ANC to determine, neither is it terribly good practice to level the race card at the board and the executive team at Transnet. The board is diverse and its non-executive Directors include Christine Ramon, Nunu Ntshingila and Peter Moyle. Their reputations are being sullied and it will be little surprise if they walk in the next week. Also in a tight spot is Public Enterprises Minister Barbara Hogan who has to make the nomination of the
20 Transnet Chief Executive to cabinet. Caught between her party and the board she is damned if she does and damned if she does not."

ADV PHILLIP MOKOENA SC: Do you wish to comment on that?

MS BARBARA HOGAN: Very true. I have not included how in later times during this period, the kind of newspaper articles that were produced, allegedly quoting insiders,

people in the know, all of those. Besides myself, Mr Wells was also targeted, the Transnet board. As regards to myself there were often headline stories in particular Sunday newspaper, which said I did not have the confidence of the cabinet, that I must go, that I am going to be taken out, and it was, you know, nothing related to what I – what my experience was, but how I experienced that was an enormous amount of pressure being put on me publicly to exceed to what – whoever was doing this to exceed to their demands.

There was a point at which I was informed that a senior, that certain members of a senior black management of Transnet would walk out if Mr Ghama was appointed.

10 Now, Chair, you know this is a company. This is not a two bit little show. This is a company that is extremely important for the country. I counted no less 18 times in six months that the Transnet board tried to engage government, myself, my predecessors. They even went to President Motlanthe, Deputy President Motlanthe to make a decision about the board and the CEO.

Would any shareholder withhold and postpone and not appoint a board for over – you know, not appoint these critical positions for over a year? No. How are we treating senior professional people who we have appointed to a board and treat them as though they are part of a conspiracy to do whatever is evil and wrong and against transformation? That board, majority was black. Very fine people, and yet they were

20 castigated. Yet, and you can see here that some of them are already talking to the media and say this is ruining me, my reputation, I will have to move on, and in fact four did resign. And to the credit of others they stayed on, and to the credit of the people who were in the acting positions who often had to be in the firing line non-stop they stayed on.

It is unacceptable, and that is why I do feel that this Commission does need to

look at the issues of how boards are appointed? What level autonomy, what level of professionalism is engaged and how we respect people? But is not only boards. There is a person like Sipho Maseko. He is already running a major parastatal, the share price has shot up since he took over.

What are we saying to Sipho Maseko? A completely competent Manager who has come flying through the tests, that he is not good enough, because for some reason the ANC does not see him as one of them. Not that he is, you know, I am not saying as one of them as a member, but somehow refuses to respect him as a person. And this went on time and time again.

10 This notion that there is an in-house and there is an out-house and the way to pursue your career is to beat, is to walk a beaten path to Luthuli House and ingratiate yourself with the party. And I do think that we need to look at that relationship between the state and the party and the way that people are being mobilised to spread falsehoods and deformation.

CHAIRPERSON: To your knowledge, as at that time, had it ever happened that in regard to the appointment of a CEO of a parastatal SOE members of cabinet should go out publicly and make the kinds of statements that I understand were made by some of your cabinet colleagues in regard to another colleague's portfolio?

20 **MS BARBARA HOGAN:** You know it is unheard of that you would implicitly attack another cabinet colleague, insist on the decision that, that – you can criticise a cabinet colleague and say, well, you know, there is within bounds, but you know, I do not agree or whatever or I have reservations. But to say this cabinet colleague will appoint Ghama, appoint someone.

In fact the matter was taken to the Public Protector at the time. The Public Protector ruled in the case of Minister Nyanda that he had contravened the Executive

Ethics Act in that he had leveraged his position as a Minister to benefit people who were close or whatever. And the President was told that he had to reprimand Minister Nyanda and when asked in Parliament whether he had reprimanded Minister Nyanda, he simply said yes, I have reprimanded him.

Yes, it is, you know I remember several cabinet Ministers coming to me and saying they were shocked at the way that fellow cabinet Ministers were going out into the public domain, neither of them ever, ever spoke to me, but went into the public domain and were, you know lobbying, and that is the only word that you can say, lobbying for a candidate.

- 10 **CHAIRPERSON**: Do you know whether those cabinet colleagues of yours as well as all the other organisations or people who are referred to in the newspaper articles that you have referred to, whether they were aware that there was a selection process that had to be followed? That had been followed by the board. A board as you say that was – and the majority of whom were black, and that there was a black candidate who had been recommended? Do you know if they were all aware of this or were there just some stories told that it was either Mr Ghama and a white candidate? Not necessarily white ...[intervenes]

MS BARBARA HOGAN: You know, I am not a party to the knowledge ...[intervenes]

- CHAIRPERSON**: Not necessarily meaning that if it was a white candidate it would be
20 justified, but I am just looking at some of the things that I have read which some of the people seem to use to justify why they said it should be Mr Ghama.

MS BARBARA HOGAN: The Deputy Minister Ina Gordan Ngwana often had to be at the Luthuli House, because he was chairing the Economics Transformation Subcommittee and would engage there, you know in an informal basis. He was of the same view as I held. We both met with the Secretary General of the ANC. We wanted

to know why he was insisting on Ghama. We explained all of this and he was absolutely adamant that Ghama was being persecuted and that they would not accept anyone else but Ghama.

Whereas ...[intervenes]

CHAIRPERSON: Even after you had told him about Maseko ...[intervenes]

MS BARBARA HOGAN: Even after I explained.

CHAIRPERSON: And his credentials and so on?

MS BARBARA HOGAN: Yes, O, yes, O, yes. As I say I had spoken to Deputy President Motlanthe and he agreed with me and I had also briefed Zwelinzima
10 Vavi as part of the ...[indistinct] Alliance and he also agreed with me, but from within the ANC it was absolutely Ghama or no one else. And I know, you know, I must take into consideration that perhaps they did genuinely believe that he was being persecuted, but then when presented with, not evidence, but the full story, you should then at least realise that there is a bigger story here. And I was disappointed that they did not realise that.

CHAIRPERSON: I can understand an attitude that says there is a certain candidate who is being unfairly excluded from the process. An attitude that says something must be done to make sure that there is a fair process, which allows everyone who is eligible to compete. That is obviously different from saying it does not matter what process is
20 followed, it should be so and so. That is different.

MS BARBARA HOGAN: Yes.

CHAIRPERSON: But I would – it would be surprising if people in senior positions, whether in government or in organisations in a process which by law is required to be fair were to basically say we do not care about the merits or demerits of other candidates, it should be so and so. Because from what you say it seems to me that,

that is the effect of what you are saying it was the former President's attitude and you must tell me if I am wrong, that seems to be the effect of what you are saying was the then Secretary General's attitude as well? Am I understanding you correctly?

MS BARBARA HOGAN: Yes, look the Secretary General would endorse a fair process of a disciplinary process, but it was my impression that he believed that Siyabonga Ghama would be – prove himself completely innocent in this.

CHAIRPERSON: Okay, I think it is important to appreciate nuances here. You might be bringing in new ones that is important. It was your understanding that as far as the Secretary General was concerned, he wanted there to be a fair process that would
10 include Ghama, but that if Ghama was appointed he should be appointed through a fair process when other people compete?

MS BARBARA HOGAN: No, that he is – that the disciplinary process would be a fair process.

CHAIRPERSON: O, okay.

MS BARBARA HOGAN: Yes, you know. So do not appoint anyone until that disciplinary process is over.

CHAIRPERSON: Yes, but after that disciplinary process where your understanding was that he was saying that Ghama should be appointed?

MS BARBARA HOGAN: Yes.

20 **CHAIRPERSON**: Not that there must still be competition?

MS BARBARA HOGAN: No, no, Ghama must then be the candidate, yes.

CHAIRPERSON: And like the former President he also did not have any criticism for Mr Maseko's credentials?

MS BARBARA HOGAN: No, no.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: Ms Hogan I have referred you to a number of media articles and you have commented on them. Can I find out from you whether did you react at all to all these statements that were – that I have actually taken you through, did you have a chance to comment on them?

MS BARBARA HOGAN: I did not comment. You know, I felt a lot of this was fake news. It was clearly a lobby and it would have been undignified and counterproductive to go out in a public domain and have a public slinging matches with people.

ADV PHILLIP MOKOENA SC: Now those media articles or reports are attributed to a number of individuals and organisations, you know, who – some of them were Ministers
10 at the time, Mr Jeff Radebe, Nyanda and it refers to the ANC's league and the list goes on. Do you know whether those individuals or the entities did they ever deny what was attributed to them in those articles?

MS BARBARA HOGAN: Not to my knowledge. To the President's, you know, when the President – can I just say one thing?

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: When the President was questioned by reporters at one stage, journalists, whether it was correct that Sipiwe, that other Ministers get involved in this, the President said no, they should not be involving themselves in this. So he also appreciated ...[intervenes]

20 **CHAIRPERSON:** Yes.

MS BARBARA HOGAN: That they have gone out of their mandate.

CHAIRPERSON: So you must have been under enormous pressure to appoint Mr Ghama at the end of his disciplinary process. Maybe the outcome made things a little bit easier for you.

MS BARBARA HOGAN: Yes.

CHAIRPERSON: But you must have been under extreme pressure?

MS BARBARA HOGAN: I was under extreme pressure. I had to attend National Executive Committee meetings, not National Executive Committee, but meetings, yes NEC's and meetings of the ...[indistinct] Alliance. And some people were very, very nasty to me at those meetings. Not that I cannot take that. And what really offended me was that I was cast as an anti-transformation racist who did not appreciate the necessity for transformation in this country.

And that really offended me. I expected better from my colleagues. Colleagues who knew my history. Jeff Radebe was the General Secretary of the ANC I
10 think the Southern Natal region when I was General Secretary of Gauteng. People knew my engagement and my involvement, and I saw the lengths then to which people will go in their ambitions for whatever, to destroy other people and today we see it in full force in our public domain. That we will destroy people to get our own way.

And I expected the President to protect me in as much as you know, you saw President Mandela, President Mbeki in particular, even though it was a Minister that no one agreed with, the Minister of Health, he defended her. He defended Minister Manuel when he was under fire, but in these instances the President hung me out to dry.

CHAIRPERSON: Between the time when you said to the former President in a meeting with him in effect that – or when you refused to appoint Mr Ghama and then he said let
20 us wait for the disciplinary process, your refusal, your attitude then did it obtain right throughout as long as Mr Maseko was a candidate or did it ever change?

MS BARBARA HOGAN: No, you know, I did await the outcome of a disciplinary hearing, but once that outcome, you know once he was found guilty on three counts and was dismissed on all three counts, the Deputy Minister and myself initiated a process to appoint a new Transnet board. And that was – that was then a year after all

of this happened and it was then towards July/August 2010.

And my thinking then was that you do not go and appoint a CEO when this board is already, you know it is time for it, you know, for the certain recycling to take place and then let the board initiate a new search and a new process and let us go ahead. So I never went to appointing someone else or anything like that, no.

CHAIRPERSON: Okay, I see the time Mr Mokoena and I am sure you wanted to draw that to my attention sometime back already. We lost about 20 minutes earlier. If it is convenient to the witness and to everybody I would like us to see if we can carry on until 16:30 to make up for that time. So let me start with Ms Hogan, would that be
10 convenient to you?

MS BARBARA HOGAN: That is convenient.

CHAIRPERSON: Thank you. Mr Mokoena?

ADV PHILLIP MOKOENA SC: There are some murmurings, Chair, because always after 16:00 we have other witnesses that we have to engage with in preparation for other sittings.

CHAIRPERSON: Well, other members of the legal team can be excused who might need that. Do you have to be there before 16:30?

ADV PHILLIP MOKOENA SC: There is an application that we have to speak about with Mr Maleka that is supposed to be argued for tomorrow.

20 **CHAIRPERSON**: O.

ADV PHILLIP MOKOENA SC: You would recall, so if I could divide myself into two, Mr Chair. I am told that we will deal with it at 22:00 with Mr Maleka. So we can proceed for now, Mr Chair, yes.

CHAIRPERSON: Okay, no thank you, thank you to everybody. Let us continue until 16:30, thank you Ms Hogan.

ADV PHILLIP MOKOENA SC: Ms Hogan I posed a question to you earlier on whether were you able to react to those public or to those media reports?

MS BARBARA HOGAN: No.

ADV PHILLIP MOKOENA SC: And you said no. May I refer you to page 102, because there seems to be an article which is attributed to you, that is pointing to what was happening at the time, so that we can be able to clear up the issue. Page 102.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: If you look on the second column towards the middle it says when Ghama was suspended, can you see that?

10 **MS BARBARA HOGAN:** Yes.

ADV PHILLIP MOKOENA SC:

"When Ghama was suspended on September, 1, Hogan said the Transnet board would run the disciplinary process and inform the shareholder, the government of the outcome and any decision to be taken."

Does this quote you correctly?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: So you did actually react to that one?

MS BARBARA HOGAN: Yes, it was not in response to ...[intervenes]

20 **ADV PHILLIP MOKOENA SC:** To these?

MS BARBARA HOGAN: Ja, ja.

ADV PHILLIP MOKOENA SC: Okay. Now while you are on that page 102, let us go back to page 102 and I want you to comment on that. It says that:

"The Public Enterprise Minister Barbara Hogan faces crunch time tomorrow after being called to appear before Parliament to

explain her handling of the succession process at Transnet and the suggestion of Siyabonga Ghama of Transnet Freight Rail division."

Do you wish to comment about that?

MS BARBARA HOGAN: Yes. [Indistinct] who was a Chairperson then of the Parliamentary Committee on Public Enterprises summoned me to Parliament to please explain why I was not appointing – you know, to explain what was happening with the appointment process. So I went to Parliament.

ADV PHILLIP MOKOENA SC: Are you at liberty to share with us as to what was the
10 outcome of that session?

MS BARBARA HOGAN: Well the ANC members of that committee and other members from other parties were of the view that this was a matter that if not *sub judice* this was an internal matter within Transnet and it should be allowed to continue its processes. So I was not really engaged on that matter.

ADV PHILLIP MOKOENA SC: Alright, we know that Mr Ghama did challenge his suspension before the High Court?

MS BARBARA HOGAN: Yes, Mr Ghama then challenged his suspension in the High Court and he lost. He wanted his suspension set aside and he lost that in the High Court.

20 **ADV PHILLIP MOKOENA SC:** May I refer you to page 114?

MS BARBARA HOGAN: 110?

ADV PHILLIP MOKOENA SC: 114.

MS BARBARA HOGAN: 114, sorry, yes, that was a letter, ja.

ADV PHILLIP MOKOENA SC: And we know also that he brought the challenge that you are talking about is the one on page – starting from page 114 and it goes on up

until page 161.

MS BARBARA HOGAN: Correct.

ADV PHILLIP MOKOENA SC: And if you go to page 114, Mr Chair, I am referring the witness back to page 114 and paragraph 2 captures some of the essence of the application. It says that:

10 "On 1 September 2009 Mr Maharaj who is the group Executive
Human Resources of Transnet Ltd took the decision to institute
disciplinary proceedings against Mr Ghama and to suspend
him on full pay until either the disciplinary process was
finalised or until the suspension was lifted."

So is that correct that, that was the decision of Mr Maharaj at the time? Ms Hogan, yes?

MS BARBARA HOGAN: Well Mr Mantasha was ...[intervenes]

ADV PHILLIP MOKOENA SC: Maharaj.

MS BARBARA HOGAN: Was concerned that he had been suspended.

ADV PHILLIP MOKOENA SC: Yes, but I am referring to paragraph 2.

MS BARBARA HOGAN: Maharaj, O, yes.

ADV PHILLIP MOKOENA SC: Are you on page 114? Yes, I am saying that in relation to ...[intervenes]

20 **MS BARBARA HOGAN**: Yes.

ADV PHILLIP MOKOENA SC: Paragraph 2.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: That decision to suspend and to discipline Mr Ghama was the decision which was made at the time by Mr Maharaj according to the papers?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Now if ...[intervenes]

CHAIRPERSON: Mr, sorry, so Mr Ghama had not been suspended by the board? The decision to suspend him had been taken by Mr Maharaj? Or is it something that you would not have known?

MS BARBARA HOGAN: Let me just remember this.

CHAIRPERSON: This judgment of the High Court by Judge Spilg suggest that in terms of the papers that were placed before the High Court ...[intervenes]

MS BARBARA HOGAN: Yes.

CHAIRPERSON: That decision seems to have been taken by Mr Maharaj?

10 **MS BARBARA HOGAN:** Yes, there was a whole, Mr Ghama contested the authority of Mr Maharaj to conduct a disciplinary process, although the board had appointed Mr Wells to follow up and Mr Wells in turn had conferred the authority to conduct the process onto Mr Maharaj, given the controversies that were out in the public domain about Mr Wells, and that was one of the issues about the process that Mr Ghama was contesting.

ADV PHILLIP MOKOENA SC: And it was also dealing with the delegated powers?

MS BARBARA HOGAN: Yes, where ...[intervenes]

ADV PHILLIP MOKOENA SC: Whether were they correctly delegated?

MS BARBARA HOGAN: And he did have it, ja.

20 **ADV PHILLIP MOKOENA SC:** And one can see that from paragraph 3 of the judgment, Mr Chair, page 115 which provides that Mr Maharaj decision are challenged in proceedings brought by way of application before this court. They are challenged on the grounds that the current acting group Chief Executive of Transnet Mr Wells could not delegated his admitted authority in such matters to Mr Maharaj, and the applicant contends that only the full board of Transnet could take the decision to bring

disciplinary proceedings against him or authorise his suspension. And those were the issues which were crystallised before the High Court.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: And, Mr Chair, for completeness you can also see that from paragraph 5 on page 116, which provides that the factual basis underpinning the legal challenge is that Mr Wells was precluded from delegating the decision making power to bring disciplinary proceedings against Mr Ghama or to suspend him by reason of Mr Ghama's own accusations against Mr Wells and that Mr Wells alleged involvement in the process continued to have an influence over the board and did
10 assert itself over one of the board's appointed subcommittees. In short Mr Wells involvement in the process, however, rendered the entire process tainted.

That was the essence of the application.

MS BARBARA HOGAN: Yes, that was the essence of the application.

ADV PHILLIP MOKOENA SC: And reference is also made on paragraph 6 to the extract of the replying affidavit of Mr Ghama in order to ventilate the challenge that was before the High Court, am I correct?

MS BARBARA HOGAN: Correct.

ADV PHILLIP MOKOENA SC: Yes, now this matter was fully ventilated before the High Court and may I refer you to page 161, the concluded paragraph starts from page
20 160, by the Judge, by the honourable Judge, can you see? Ms Hogan? Are you still with me?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: If you can speak into the mike.

MS BARBARA HOGAN: Yes, yes, I can.

ADV PHILLIP MOKOENA SC: When you answer, that will help.

CHAIRPERSON: It has been a long day.

ADV PHILLIP MOKOENA SC: We are just about to finalise Ms Hogan for the day. So page 160 paragraph 118 to paragraph 120 summarises the conclusions of the Judge, and ultimately the order that was made, this we find on page 161 paragraph 121 and it reads as follows:

10 "Accordingly make the following order. I accordingly make the following order. The application is dismissed with cost, including the cost of the first to the third respondent and of the fourth to the 13th respondents excluding the 10th and the 11th respondents. Such costs to include the cost of two counsel."

Something which we like to hear as counsel when we win. So that is correct?

MS BARBARA HOGAN: Correct.

ADV PHILLIP MOKOENA SC: Yes, now we know that flowing from there the challenge by Mr Ghama did not succeed before the High Court.

MS BARBARA HOGAN: Yes and the High Court also found no evidence of bias against Mr Gama.

ADV PHILLIP MOKOENA SC: Yes. Now may I refer you to – I just want to follow the note. Yes Mr Gama was ultimately dismissed by Transnet subsequent to a disciplinary process that was undertaken.

20 **MS BARBARA HOGAN:** Correct.

ADV PHILLIP MOKOENA SC: May I refer you to Annexure J.

MS BARBARA HOGAN: Page?

CHAIRPERSON: What page?

ADV PHILLIP MOKOENA SC: Page 162.

MS BARBARA HOGAN: 162 yes I am there.

ADV PHILLIP MOKOENA SC: These are the findings in the disciplinary hearing against Mr Gama, Ms Hogan?

MS BARBARA HOGAN: Correct. It was an arbitration process according to the – you know their thing, it was an arbitration process ja.

ADV PHILLIP MOKOENA SC: May I refer you to page 359.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: That is where you will find the conclusions and the summary of the findings by Advocate DM Antrobus SC who was the Chair of the disciplinary inquiry.

10 **MS BARBARA HOGAN:** Correct.

ADV PHILLIP MOKOENA SC: At paragraph 435 he says that:

"I understand that these findings are in the nature of a recommendation to Transnet in summary and for reasons fully set out above, I find Gama guilty of misconduct on charges 1, 2 and 4."

And this is in line with what you have testified that he was found guilty on three charges.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: On paragraph 436 he says that:

20 "These findings have dealt only with the merits of the misconduct charges. The issue of what sanction ought to be imposed in consequence of the findings of misconduct, which have now been made is to be considered under Transnet Disciplinary Code and Procedure in a separate proceedings, as was the arrangement which was made with the parties at the close of the previous hearings."

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Now what was the ultimate sanction?

MS BARBARA HOGAN: The sanction, there was a separate hearing on sanction. They did not – the findings on that sanction, the sanction is imposed was on the basis of negligence that Mr Gama had not applied his mind to locomotive – to the two, to the contracts. He was dismissed on each of the three charges. They said each charge would have warranted a dismissal.

ADV PHILLIP MOKOENA SC: Ms Hogan I am posing the following questions out of my sheer ignorance and for your guidance. Now the Mr Gama that you are referring to in your testimony?

MS BARBARA HOGAN: Yes?

10 **ADV PHILLIP MOKOENA SC:** Who you say was fired from a Transnet on the 28th June 2010 as per paragraph, I think 51 of your witness statement. Is it the same Mr Gama who was reemployed by Transnet as a Group CEO and recently fired by Transnet?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Is it the same person?

MS BARBARA HOGAN: It is the same person.

CHAIRPERSON: Well he was dismissed around June 2010 is that right? The sanction of dismissal was it imposed by the – or decided upon by the Board or by an independent person in the same way as the findings of guilt had been decided by an
20 independent advocate?

MS BARBARA HOGAN: It was an independent process.

CHAIRPERSON: Do you know whether it was the same advocate who had dealt with?

MS BARBARA HOGAN: No it was a different advocate.

CHAIRPERSON: It was a different advocate?

MS BARBARA HOGAN: That dealt with the arbitration ja.

CHAIRPERSON: Yes, yes. From the answer you gave to Mr Mokoena just now, he was later on appointed, that is Mr Gama as Group CEO of Transnet?

MS BARBARA HOGAN: Well Mr Gama was fired at the end of 2010. I was fired by the President at the end of October 2010.

CHAIRPERSON: Ja. You said end of 2010 for Mr Gama, is it not around June 2010?

MS BARBARA HOGAN: Mr Gama was fired on June 2010, I was then fired.

CHAIRPERSON: Ja.

MS BARBARA HOGAN: In October, end of October 2010.

CHAIRPERSON: Yes.

10 **MS BARBARA HOGAN:** Mr Brian Molefe was then appointed as the CEO of Transnet.

CHAIRPERSON: Yes.

MS BARBARA HOGAN: I think it was in January or so.

CHAIRPERSON: Ja.

MS BARBARA HOGAN: Then Mr Gama was reappointed as the CEO of Transnet Freight Rail, it was a couple of months later. On the grounds that they had reviewed the sanction and that they had an independent review, I do not quite know what that was about and that the Board felt that the sanction that had been applied was too harsh.

20 **CHAIRPERSON:** This was now a different Board from the one that was in existence during your time?

MS BARBARA HOGAN: Yes. This was the Board that had been appointed by Minister Gigaba who succeeded me.

CHAIRPERSON: In effect overturning a decision to dismiss Mr Gama that had been taken by an independent party?

MS BARBARA HOGAN: Yes and he was out of the organisation and then reappointed.

CHAIRPERSON: Yes thank you.

ADV PHILLIP MOKOENA SC: You have actually testified on this issue, or it is recorded also on page 13 (one three) may I refer you to page 13 at paragraph 51, are you there?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: You say on paragraph 51:

"After Mr Gama had been found guilty, a separate independent hearing on what sanction should be applied, found that the charges were serious enough to warrant dismissal on each charge. Accordingly, on the 28th June 2010, Mr Gama was fired from

10 Transnet."

MS BARBARA HOGAN: Correct.

ADV PHILLIP MOKOENA SC: Do you confirm that?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Now may I refer you to Annexure K on page 360 Mr Chair.

MS BARBARA HOGAN: I am with you.

ADV PHILLIP MOKOENA SC: Now who prepared this memorandum?

MS BARBARA HOGAN: This memorandum was prepared by my department. It was a submission to cabinet for the appointment of a new Board to Transnet.

20 **ADV PHILLIP MOKOENA SC:** I see that on page 365 if you can go there?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: You signed that memorandum on the 27th October 2010?

MS BARBARA HOGAN: Yes, ja.

ADV PHILLIP MOKOENA SC: What was the purpose of this memorandum?

MS BARBARA HOGAN: The memorandum was to appoint non-executive directors to the Transnet Board.

ADV PHILLIP MOKOENA SC: What happened to this memorandum ultimately to Annexure K?

MS BARBARA HOGAN: Well ...[intervenes]

ADV PHILLIP MOKOENA SC: Was it ever discussed by cabinet?

MS BARBARA HOGAN: Well once again the cabinet secretariat, when I put this into the process the 27th was not the first date. The cabinet secretariat said the President wants to speak to you about this. So we had a telephonic conversation about that. He
10 wanted the name of two Chairpersons, not one and he wanted the CVs.

CHAIRPERSON: I am sorry, I think I missed something, who is "he"?

MS BARBARA HOGAN: The President.

CHAIRPERSON: Okay.

MS BARBARA HOGAN: So the cabinet secretariat, when I was processing this memo for the appointment of Transnet Directors ...[intervenes]

CHAIRPERSON: This is connecting with your earlier evidence that around July the President had asked you to – the then President had asked you to give him three names. So this is connecting with that?

MS BARBARA HOGAN: Well no this is the following year.

20 **CHAIRPERSON:** Oh.

MS BARBARA HOGAN: It is one year later.

CHAIRPERSON: Okay.

MS BARBARA HOGAN: So now the President has said, I cannot go ahead until Gama is dismissed, Gama is dismissed. I sent the details of the judgment, the entire judgment to the President and started processing a cabinet memorandum for the

appointment of a new Transnet Board.

ADV PHILLIP MOKOENA SC: Now this is now post Mr Gama being dismissed?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: A new cabinet memorandum. Once again the cabinet secretariat contacts me and says the President would like to discuss this with you. A telephonic conversation takes place and he wants to see the CV's, he wants the names of two Chairpersons and he also wants to see the CV's. I was also processing a cabinet memorandum for the appointment of directors to the Board of SAFCOL the
10 Forestry Company and he wanted to see the CV of the person that I was recommending for the Chairperson of SAFCOL. Accordingly, I sent him those CV's and once again heard nothing and so on September – and you know I pointed out again the centrality of Transnet. I once again on the 10th September and on the 11th I sent reminders that I needed to meet with the President, I sent reminders to his office, heard nothing.

ADV PHILLIP MOKOENA SC: May I refer you to page 366 Annexure N?

MS BARBARA HOGAN: 367?

ADV PHILLIP MOKOENA SC: 366.

MS BARBARA HOGAN: 366 yes.

20 **ADV PHILLIP MOKOENA SC:** So just to follow on your chronology. You sent the memorandum that you have now spoken about and subsequent to that there was no reaction from the President, then you went on to send what you term to be a reminder. Is this the one on page 366?

MS BARBARA HOGAN: Yes. This is a letter that I sent to the President after our conversation stressing in ...[intervenes]

ADV PHILLIP MOKOENA SC: And in this letter, you are raising serious issues on Governance within the Transnet, do you agree?

MS BARBARA HOGAN: Ja. Transnet – that Transnet needs, the AGM is coming up again. The AGM were not able to appoint anyone, we cannot go secondly now without appointing. I point out the importance of Transnet to the company and I say there, then to confirm in respect of the position of a Chairperson, where he had asked for several names. I raised two candidates and I gave him the names.

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: And both of their CV's are attached.

10 **ADV PHILLIP MOKOENA SC:** Ms Hogan may you answer just you know, because there are quite important issues which you have stated in this letter. May I suggest that you read these paragraphs?

MS BARBARA HOGAN: Okay.

ADV PHILLIP MOKOENA SC: In order for one to appreciate the serious issues that you are conveying to the President at the time.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: And the importance of appointing the Board at the time.

MS BARBARA HOGAN: Ja.

20 **ADV PHILLIP MOKOENA SC:** Having regard to your evidence that it was now over a year that no appointments were made in appropriate positions.

MS BARBARA HOGAN: Yes I conveyed that to the President.

ADV PHILLIP MOKOENA SC: Can you please read this one?

MS BARBARA HOGAN: Okay.

CHAIRPERSON: I am sorry, I am sorry, I am sorry. Mr Mokoena it is at about 16:30, if we are going to go into tomorrow, I am hoping you are still available Ms Hogan?

MS BARBARA HOGAN: Yes, ja.

CHAIRPERSON: I am quite amenable if that is an important point that we adjourn and we start with that point tomorrow.

MS BARBARA HOGAN: Okay.

ADV PHILLIP MOKOENA SC: Yes Chair.

CHAIRPERSON: Is that fine?

ADV PHILLIP MOKOENA SC: That is appropriate, we may adjourn.

CHAIRPERSON: Because otherwise we go beyond 16:30. Alright then we are going to adjourn at this stage and we will resume tomorrow morning at 10:00, so if you will be
10 here again tomorrow.

MS BARBARA HOGAN: Thank you.

CHAIRPERSON: Thank you. We adjourn.

HEARING ADJOURNS TO 13 NOVEMBER 2018