

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

14 NOVEMBER 2018

DAY 23

FINAL

20

PROCEEDINGS HELD ON 14 NOVEMBER 2018

CHAIRPERSON: Good morning everybody. Yes?

MR PIET LOUW SC: Justice Zondo, we appear – me together with Mr Joubert on the instructions of the firm van der Merwe & van der Merwe for Mr Duduzane Zuma.

CHAIRPERSON: Yes.

MR PIET LOUW SC: He has been called to be here today, firstly by way of a subpoena, and I am quickly going to sketch the background, in order to be available to lead evidence today. But also, secondly and that is the important point for today, to cross-examine Mr Jonas.

CHAIRPERSON: Yes.

MR PIET LOUW SC: We were instructed for that job of work, namely the cross-examination only, only to find out effectively yesterday afternoon after close of business that Mr Jonas on his application will not testify today, or will not be available for cross-examination and that a date has been arranged.

MS BARBARA HOGAN: Yes.

MR PIET LOUW SC: Now Mr Chair, I am only here to raise grievance of course, the horse has bolted, there is nothing that we can do about it and it is also not what we are here for to ask that – or to say that we would have opposed the application in any form. But, simply to recognise the fact that our client has interest and this severely prejudicial for him that the matter be postponed today, or that the hearing does not continue today. He has travelled from abroad to be here. He has appointed attorneys and advocates to go through the record and so forth and to be ready to proceed with the cross-examination today. And, most importantly, his wife is expecting a baby by the end of this month and his presence is elsewhere required after today.

So it is important to recognise that whilst these are of course inquisitorial

proceedings and we do not have rights as such. There is an element of an accusatorial process that comes in when you recognise, as you have in this case that our client is implicated by Mr Jonas's evidence and therefore entitled to cross-examine Mr Jonas and then he does everything that he possibly can to be prepared for that specific event and day and then it does not happen.

Now what we want to ask is simply this, that there be some form of convention between the Legal Team who assist you, or the Secretariat, I am not sure who it must be and perhaps to make it clear to parties who bring applications that in terms of Regulation 11 – I apologise Rule 11.4, not Regulation 11, but Rule 11.4. Any party who brings an application must firstly cite everyone whose rights may be adversely affected, and importantly, secondly serve the application on such a party. Now that did not happen here. Hence, the embarrassment. If we knew a week ago when the application was first brought, we understand, we can see from the dates on the notice of motion it was dated for the – indeed the 6th of November last week, more than a week ago. If we knew on that day that there might have been a problem with today, we would not have gone to the expense and trouble to prepare and be here.

That of course has a knock on effect, because preparation has now been done at a great expense and Mr Zuma would probably wish to retain his present Legal Team to proceed with the cross-examination and not re-educate another team. Therefore Mr Chair all we come here to do is raise a grievance, not claim a right, but simply ask that there be some form of convention going forward between the various Legal Teams, so that this embarrassment, embarrassment for us and for the Commission as such can be avoided in future.

CHAIRPERSON: No thank you. It is a pity that the Mr Jonas application for a postponement was not served on your side. It should have been served, but also it is a

pity that nobody picked up that it had not been served before it was dealt with. I think going forward, the Commission's Legal Team when they receive such an application must just check that those who are bringing such an application have served all the relevant parties before the application can be heard. So I know the Legal Team is here they are noting that. Just so that in the future we do not have this situation. So I regret that there was this inconvenience caused.

We – I postponed the hearing of Mr Jonas evidence to the 26th of November. I understand from what you have told me in chambers that on that day you are not available. I have suggested that the three Legal Teams, that is yourselves, the Commission's Legal Team and Mr Jonas lawyers should have conversations with regard to what should happen. The 26th will remain for now, but the order that I made was to the effect that Mr Jonas would remain available after the 26th for insofar as he may be needed and his lawyers indicated that that was fine. But we did not indicate for how long. So the assumption was we would continue if necessary the following day and I am sure the day after as well. But I am not sure how long. So I think there should just be some discussion and then at the relevant time – at the right time I will informed of the discussions and whatever may be provisionally agreed between – among the parties would be given to me for my final approval.

MR PIET LOUW SC: Thank you.

CHAIRPERSON: Then I would indicate if I am happy.

MR PIET LOUW SC: Indeed Chair that is all that we ask for.

CHAIRPERSON: *Ja.*

MR PIET LOUW SC: So if we – on the understanding then that we can have a dialogue with our colleagues from the Legal Team as well as those of Mr Jonas, could we then be excused?

CHAIRPERSON: Yes you are excused. I just mention this for what it is worth, I believe that I previously provisionally indicated how much time I had in mind, I would grant the parties, including yourselves for cross-examination and I was expecting submissions to be made as to whether counsel for various implicated persons, which would have included yourself were happy with that provisional allocation of time. I have not received anything, so I do not know whether will there still be some dispute about the time. I seem to think I have heard that most seem to be – to have no problem with the time contemplated. But I think is important that we have some certainty going forward. So I mention that so that you can give it your attention.

MR PIET LOUW SC: Shall do so.

CHAIRPERSON: Yes. Okay thank you very much.

MR PIET LOUW SC: Thank Chair if we may then be excused.

CHAIRPERSON: Thank you, you are excused. What is happening?

MR VINCENT MALEKA SC: Chair good morning.

CHAIRPERSON: Good morning.

MR VINCENT MALEKA SC: There is one issue relating to Mr Manyi. On the timetable that was conveyed to you, his evidence is schedule for hearing on the 23rd of November. However, there was some communication that was sent to him that there is an opening today to fit his evidence. We are not ready to deal with his evidence today and he is here, having responded to the letter conveyed – that was sent to him. So we would ask you to issue a direction that the original timetable stand and that his evidence be scheduled for hearing on the 23rd of November. That is in order Chair, because there are several topics that he has to deal with. The letter sent to him invited to deal with one of the number of topics that he has to deal with.

I say these things to you and invite you to issue a direction, because Mr Manyi

is here in the expectation that his evidence would be heard today.

CHAIRPERSON: Well I do not think it may really be necessary to issue a direction, other than just to clarify. I am aware of the arrangements for him to be brought in today, but from what you are telling me and you have told me in chambers, it seems to me that those arrangements were erroneously made. Because if he is supposed to cover a number of issues on the 23rd, but can only cover one issue if he gives evidence today, then he should rather not give evidence today on one issue and come back on the 23rd, he should rather give evidence on everything on the 23rd. I think that there must have been some misunderstanding somewhere about whether he – there would be matters that he would not be able to cover today. I am assuming that that is the case.

So I think that what I should simply confirm is that the original programme that he is aware of that he should come to give evidence on the 23rd stands. It is regrettable that he was called to come today and then he came and now he cannot give evidence, it is most regrettable. So I think we should simply say, the original programme for him to give evidence on the 23rd stands and if there is any change, he would be informed, but any change would be made after looking at issues properly.

MR VINCENT MALEKA SC: Yes thank you very Chair.

CHAIRPERSON: So to the extent that it is necessary, Mr Manyi is excused for today and should return on the 23rd.

MR VINCENT MALEKA SC: Thank you Chair.

CHAIRPERSON: Thank you. Yes Mr Mokoena.

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

CHAIRPERSON: Okay alright.

MR PHILLIP MOKOENA SC: It is now the third day Chair.

CHAIRPERSON: Sorry?

MR PHILLIP MOKOENA SC: It is now the third day.

MS BARBARA HOGAN: I was saying to the advocate Chair that this is taking longer than my treason trial.

CHAIRPERSON: I am sure the atmosphere is more friendlier.

MS BARBARA HOGAN: Much friendlier.

CHAIRPERSON: Thank you, you may proceed.

MR PHILLIP MOKOENA SC: Ms Hogan, yesterday we sought to record what we thought it might have actually not being captured in your evidence. You recall that shortly after the tea adjournment, unfortunately we do not have the services of the transcribers, so we were able to detect that the evidence that might be missing from the record is in relation to page 17 paragraph 73 and 74. You did testify at length on those issues. Merely to save time, could you please read into the record paragraph 73 and 74?

MS BARBARA HOGAN: Sure. The Chairperson of Eskom – this is paragraph 73:

"The Chairperson of Eskom announced the resignation of Mr Maroga to a large gathering of senior managers at Eskom on the morning of Thursday the 5th of November 2009. Whilst this was happening, I was in my office and received a call from an enraged President Zuma, asking me bluntly what did I think I was doing. He was briefly in the country en route to Mozambique. He furiously instructed to tell Bobby Godsell to stop immediately. I warned President Zuma of the dire consequences this would have, but he would not listen. He said he would speak to me again once he was in

Mozambique in an hour or so, but he did not take my repeated calls thereafter. I informed Acting President Motlanthe and said that much against my better judgment, the President had issued me with an instruction which I was bound to obey, it made me deeply unhappy."

Paragraph 74:

"As a consequence of President Zuma's instruction, Bobby Godsell was forced to cancel the media briefing scheduled to announce Mr Maroga's resignation, after Mr Godsell had finished briefing the staff. The media were already sitting waiting. This really put the cat amongst the pigeons. The media's speculation about where Mr Maroga was or was not, whether Mr Maroga was or was not the CEO of Eskom reached crescendo, hitting headlines, news cast and talk shows. There was a great consternation in the country. This was not at all good for Eskom's reputation, given its financial and operational problems. Neither I, nor the Board were in a position to provide any clarity whatsoever and the President was simply unavailable. I was lambasted for my silence."

MR PHILLIP MOKOENA SC: Yes. Now you also testified yesterday at great length about Mr Maroga up until the time when he left the offices of Eskom, you recall?

MS BARBARA HOGAN: Yes.

MR PHILLIP MOKOENA SC: Now Mr Maroga has filed an affidavit where he takes issue with one or two of your paragraphs. May I refer you to Exhibit L with particular reference Mr Chair to page 635, just to complete that evidence.

MS BARBARA HOGAN: Okay.

MR PHILLIP MOKOENA SC: It should be on the second file of Exhibit L.

MS BARBARA HOGAN: Yes.

MR PHILLIP MOKOENA SC: While you are still searching for it. Mr Chair, Mr Maroga clearly indicate that according to him he is not implicated by Ms Hogan. He only sought to clarify one or two paragraphs of Ms Hogan's witness statement and that is the reason I am affording Ms Hogan to react on that affidavit. It is page ...(intervenues).

CHAIRPERSON: What page did you say?

MR PHILLIP MOKOENA SC: 635.

CHAIRPERSON: Page?

MR PHILLIP MOKOENA SC: 635 it should be on the second file.

CHAIRPERSON: Oh okay.

MR PHILLIP MOKOENA SC: 636, I am told.

CHAIRPERSON: It cannot be 636.

MR PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Registrar the second file goes to 300 and something, or 400 and something is it? Does it go through to 600?

MR PHILLIP MOKOENA SC: It does Chair.

CHAIRPERSON: Oh.

MR PHILLIP MOKOENA SC: The second file.

CHAIRPERSON: So it is 636?

MR PHILLIP MOKOENA SC: 636.

MS BARBARA HOGAN: 635, I have got here.

MR PHILLIP MOKOENA SC: You have got 635?

MS BARBARA HOGAN: Yes, 635. Do you want me to clarify?

CHAIRPERSON: What I have ...(intervenues).

MR PHILLIP MOKOENA SC: No, no we want the Chair to find ...(intervenues).

CHAIRPERSON: What I have at 636.

MR PHILLIP MOKOENA SC: 636.

CHAIRPERSON: *Ja* what I have at page 636 is a Gmail where Shaik threatened Maroga and talks, that is what I have at 636, Shaik threatened Maroga and talks and before that 635 is an email I guess from Mr Maroga to Doctor de Wee.

MR PHILLIP MOKOENA SC: And if you go at the bottom it says, RE: Notice in terms of Rule 3.3 Statement of Ms Barbara Hogan.

CHAIRPERSON: *Ja*.

MR PHILLIP MOKOENA SC: That is how you file – we do not take issue in the way it was filed, but I think that is what I wanted to convey.

CHAIRPERSON: Oh that is what we should look at now?

MS BARBARA HOGAN: Yes.

CHAIRPERSON: Okay.

MR PHILLIP MOKOENA SC: And you would see Ms Hogan on paragraph 7, Mr Maroga states the following, he says:

"I wish to point only to the material contradiction in paragraph 83 of Ms Hogan's statement, wherein she indicates that "I requested Yunus Sheik at the time the Labour Advisor of DPE to meet with Mr Maroga to negotiate his terms of departure."

And paragraph 8 he says:

"The statement of Ms Hogan contradicts her affidavit to the South Gauteng High Court in 2010, wherein she claimed that Mr Yunus Sheik was appointed by President Zuma and not by herself. Referred to attached Article of 27 February 2010 entitled "Sheik threatened Maroga in talks."

It says it conveys what I have read. What is your reaction to what Mr Maroga is saying in relation to your paragraph 83?

MS BARBARA HOGAN: Chair, Mr Maroga is right to raise this issue. If you will recall, in the evidence that I gave there was a three-way communication which was between the President's office, myself and Eskom.

CHAIRPERSON: Just hang on, one second, I must check whether everybody can hear you. Okay I think the people at the back indicate that they do. Okay thank you, you may proceed.

MS BARBARA HOGAN: Okay, alright. I was – in the evidence that I gave, I mentioned that there was a three-way communication happening. It was between myself, the President's office and Eskom and I mentioned that Mr Sheik was – had acted as the Labour Advisor to the Department of Public Enterprises and had been called in by the DG when this whole matter at Eskom arose. So Mr Sheik went to that meeting with the Chair of Eskom, in my understanding, in the knowledge of the President because he reported back to the President. But in terms of actually issuing an instruction, where he issued the instruction, because he was in our books and so it was very much – so I can understand that Mr Maroga has a right to say that and that an explanation was needed. That is the explanation.

MR PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: I think that what is important is to check as to – what your stance is as to who had appointed him. Because from what he says it looks like in previous proceedings in the High Court he says you said he had been appointed by the President. Maybe you just need to say, well as to appointment, is it the Department that had appointed him and I do not know whether that might be – there might be a general appointment that he had been appointed by the Presidency for certain things,

but in regard to this specific one, it was the Department of Enterprise that appointed him to be involved. So do you want to just clarify it in those terms, in terms of appointment?

MS BARBARA HOGAN: Yes. Do you want me to go ahead *ja*?

CHAIRPERSON: Yes.

MS BARBARA HOGAN: Okay.

CHAIRPERSON: I just want you to be able to say, were you mistaken when you may have said in previous High Court proceedings he was appointed by the President, or maybe you were not mistaken in terms of general appointment he was appointed by the President, but for this specific matter he was appointed by the Department. I just want you to clarify it with reference to appointment, because Mr Maroga is saying, previously you said he was appointed by the President, but you now seem to suggest he was appointed by the Department.

MS BARBARA HOGAN: Yes. I take that Mr Maroga is correct, I have not checked myself that the point that I made was that he was appointed by the President. My understanding is that Mr Sheik had been liaising with the President for some time around this matter and had been reporting to him and that he went to that meeting as a Labour Advisor and he was also reporting to me. People who do work for a Department are registered on the Department's books and I would have been very surprised at that stage that Mr Sheik was registered on the President's books. So I assume what happened is that we technically maybe appointed him, but it was on the full understanding of the President and that is confirmed in my evidence that Mr Sheik was reporting to the President after that meeting.

MR PHILLIP MOKOENA SC: That is the only paragraph that he takes issue with. We can now move to SAFCOL ultimately.

MS BARBARA HOGAN: Please lights stay on (laughter) yes okay.

MR PHILLIP MOKOENA SC: You have testified about what you referred to as the improper and irregular interferences in relation to the Boards and the CEO of the SOE's. Now from page 20 of your statement paragraph 88 to page 21 paragraph 92, you are dealing with another entity called SAFCOL. Could you please take us through and explain to us how does it fit in within the theme that we have explored with you thus far?

MS BARBARA HOGAN: Okay. Chair the South African Forestry Company is probably the smallest company in the portfolio that DPE had stewardship over. Their AGM was coming up and there had to be a review of the Chair and the Board and the AGM was on the 28th of September 2010. I had put in process a motion to put my recommendations and a Cabinet memorandum to the subcommittee and I was informed and requested to hold back until I had spoken to the President, because he wishes to speak to me about it. In Annexure – could you assist me. I spoke to him telephonically, it was the time that I also spoke to him about the Transnet Chair and he wanted – the issue that he wanted to raise with me was the Chair and he wanted more details about the Chair, he wanted a CV. So I said I would send – I sent on the CV of the Transnet candidates for Chair and this SAFCOL Chair and he said he would speak to me thereafter and you know clarify whether we should – I can now go ahead. I sent it on and I sent two reminders via my office that we were requesting an urgent meeting with him in this regard and I never got a reply.

MR PHILLIP MOKOENA SC: May I refer you to page 371 of Exhibit L, it should be on the first file.

MS BARBARA HOGAN: 371 yes.

MR PHILLIP MOKOENA SC: Is that the document that you were referring to as having

despatched to the President?

MS BARBARA HOGAN: Yes.

MR PHILLIP MOKOENA SC: By yourself?

MS BARBARA HOGAN: Correct.

MR PHILLIP MOKOENA SC: You can talk to the Chairperson about that document.

CHAIRPERSON: What page is that again?

MR PHILLIP MOKOENA SC: 371.

CHAIRPERSON: 371.

MR PHILLIP MOKOENA SC: On the first file Mr Chair, file number 1. You may proceed Ms Hogan.

MS BARBARA HOGAN: So it is a letter addressed from myself to the President dated the 8th of September and it reads:

"Dear President Zuma. Re SAFCOL Chairperson. Thank you for taking the time to speak to me about this matter last night. As discussed with you in order for us to have a more meaningful opportunity to discuss this position before taking it to Cabinet, early yesterday I withdrew the item from the agenda of today's Eastside Committee meeting."

Chair, Eastside is the name of the subcommittee of Cabinet that deals with economic matters. So the President had requested me to withdraw that memorandum which I then did, he wanted to speak to me.

"However, given the urgency of the matter as a result of the AGM for SAFCOL which is scheduled for the 28th, that was three weeks away, new appointments to the Board that have to be made and parliamentary and other legislative reporting requirements. I trust

then that you will revert to me with your views on the proposed candidate for Chairperson quite soon and before the next Cabinet meeting. Kindly note that I have written to your office for permission to submit the memo to the next Cabinet meeting. I am available to meet with you at any time once you have an opportunity to peruse the said CV. I trust that this is in order and look forward to hearing from your offices shortly."

ADV PHILLIP MOKOENA SC: And what happened after you have dispersed this to the President? Did he react to this letter?

MS BARBARA HOGAN: No, we twice sent reminders, but I was unable to get a meeting with the President.

ADV PHILLIP MOKOENA SC: Do you know why was the President interested in obtaining the CV's and in knowing who was going to be the Chairperson of SAFCOL?

MS BARBARA HOGAN: I do not.

ADV PHILLIP MOKOENA SC: You have told the Chair yesterday and previously that the same – you experienced the same conduct when it related to Eskom and Transnet memorandum that had to be submitted to deal with governance issues where there were no responses to the detriment of those SOE's.

MS BARBARA HOGAN: Yes, and this one even became a little bit more difficult for me to understand what was going on, because I did forward the special request. Remember you as a Minister if it is an urgent matter you can forward the request, so when I did not hear from the President I formally requested if I could put it on the agenda.

It appeared on the agenda of Cabinet and I then presumed that the President must have okayed that, because it was on the agenda of Cabinet. When I went to

Cabinet and this matter was on the Cabinet agenda, I received a note in Cabinet itself from the Minister in the Presidency, the late Collins Chabane, and he requested me, he said the President was requesting that I remove this item from the agenda.

And I then – I do not know what my reply was, I must have said look we have been trying now for nearly a month now to get a discussion going. I have supplied all the information. The AGM is coming up, you know, this did appear on the agenda. I presume it was in a result of the letter of request that I sent. Mr Chabane then replied and I have that communication, it is on Cabinet notepads, and he said:

"In light of what you have said I have advised the President that you should go ahead."

And I did so in Cabinet approved those appointments.

ADV PHILLIP MOKOENA SC: Now can we move on to deal with the SA to Mumbai route?

CHAIRPERSON: I am sorry. I may have missed something. What you have just said now relates to SAFCOL?

MS BARBARA HOGAN: Yes.

CHAIRPERSON: So the appointments you are talking about include the appointment of the Chairperson?

MS BARBARA HOGAN: Yes.

CHAIRPERSON: Yes.

MS BARBARA HOGAN: And change to the Board...(intervenes).

CHAIRPERSON: And other board board members?

MS BARBARA HOGAN: Yes.

CHAIRPERSON: And the person that was then appointed as Chairperson was it the person whose CV you had sent to the President?

MS BARBARA HOGAN: Correct.

CHAIRPERSON: Okay, alright, thank you.

MS BARBARA HOGAN: She is a black woman with a very fine reputation and ability.

ADV PHILLIP MOKOENA SC: Ms Hogan you had raised the issues dealing with the SA to Mumbai route from your official visit to India during June 2010.

CHAIRPERSON: I am sorry, again. Just to summarise with regard to SAFCOL, is it correct that – would it be correct to say it is only relevant for our purposes to the extent that the President showed interest in who would be Chairperson and asked for the CV?

MS BARBARA HOGAN: I cannot say. I know recently and this is only based on media speculation that the Gupta family apparently exhibited an interest in SAFCOL, but I was not aware of that at that time.

CHAIRPERSON: Okay, thank you.

ADV PHILLIP MOKOENA SC: Can you now deal with what happened in relation to the SA to Mumbai route?

MS BARBARA HOGAN: In early June 2010 I was part of an official South African Ministerial Delegation that was a state visit to India. I accompanied the President and whilst I was there I was informed by my special advisor, Mr Fatima Hassin that she had received information that South African Airways intended to terminate its South Africa/Mumbai route.

Now I was a little bit taken aback by that, because South African Airways had specifically opened up that route. Not only to service a rapidly growing business relationship – business and tourist relationship between South Africa and India, but furthermore, South African Airways was one of the few airlines that was flying from Southern Africa or from most of Africa onto South America.

And so the understanding was that one would attract even more passengers, because you had the added benefit of, you know, businessmen being able and business people being able to come from India to South Africa and onto South America depending whether they wanted to go straight to South America or whatever.

I was also aware that a lot of the SA routes, international routes, were lost – were recording losses, but the Mumbai route was the least loss making route and I repeat that, it was really the least loss making route. So when I heard that South African Airways was going to terminate its route to Mumbai I was, you know, confused and so I immediately sent a SMS to the Chair of SAA Ms Cheryl Carolus, and I will read what I sent.

ADV PHILLIP MOKOENA SC: Yes, may I refer you to Annexure P. Mr Chair, it is on page 373.

MS BARBARA HOGAN: 373?

ADV PHILLIP MOKOENA SC: 373, yes.

MS BARBARA HOGAN: Yes, 373.

ADV PHILLIP MOKOENA SC: Is that the screenshot of your SMS from your phone?

MS BARBARA HOGAN: Yes. Chair, you will see there is firstly an irrelevant communication for these purposes which is the first one from Cheryl Carolus. The second which is marked the 2nd of June, which is from myself it says:

"Cheryl, I am in India with the President now. Is there any truth to the rumour that South African Airways is going to terminate its route to Mumbai? There is a rumour here and we need clarity."

Cheryl immediately responded on the same day and she said:

"No, we will not be terminating Mumbai. It must be Jet Airways still lobbying for this. We remain on the route with four frequencies. All

the best for India."

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: Okay.

ADV PHILLIP MOKOENA SC: And what then happened after this SMS communication between yourself and the then Chairperson of SAA?

MS BARBARA HOGAN: Correct.

ADV PHILLIP MOKOENA SC: What happened?

MS BARBARA HOGAN: Then my assistant – my advisor Fatima Hassin began to point out to me that at a lot of the – not a lot, I cannot really say how many, you know, but it was apparent that – and I saw this on at least one occasion that at the offsite meetings that I was having with various people based in India, as you do as a Minister when you are there, that Mr Naresh Goyal who was the Chair CEO of Eskom was like pushing himself – of Jet Airways was like pushing himself into those meetings.

And I was a little concerned about that, you know, he had not been invited, but she just pointed it out to me and I said, look I am not going to meet with Mr Goyal, you know. From what I had heard from the Chair of SAA I would need to be properly briefed and I did not want to give a proper – I did not want to engage on this matter.

It became almost desperate. We had to attend a fashion show, yes you do those when you are on a ministerial visit. It was a fashion show by the Indian fashion industry and as I was leaving Mr Goyal literally jumped over the Chairs, knocking them over and creating a huge performance, and stood in front of me and stopped me almost and said Minister I need to see you.

And I said to him before you meet with me I think you should meet with the Board and with the CEO of SAA and I have nothing to say to you now ...(intervenes).

ADV PHILLIP MOKOENA SC: Did he tell you at that stage as to why he wanted to see you?

MS BARBARA HOGAN: No. Yes.

ADV PHILLIP MOKOENA SC: Yes, you may proceed.

MS BARBARA HOGAN: And then on paragraph 97 on the 30th of August, Chair you will remember this all took place early June, but on the 30th of August 2010 Ms Carolus sent me another text message stating as follows ...(intervenes).

ADV PHILLIP MOKOENA SC: Mr Chair, you can find that communication from page 374 if you may turn to page 374, Ms Hogan.

MS BARBARA HOGAN: I have got it on 374.

ADV PHILLIP MOKOENA SC: Yes, 374.

MS BARBARA HOGAN: *Ja.* Chair it is on page 374 and it is dated the 30th of August from the Chair of SAA.

"Hi, B. For your information South African Airways is at SCOPA tomorrow."

That is a standing committee on public accounts.

"Also note that CEO Chairman from Jet Airways India will be in South Africa for the India/South Africa meeting. He is lobbying hard for SAA to end its Mumbai flight. We reject this. Please let me know if he is trying to meet with you so that we can brief. I apologised for the meeting and said he should talk to Caesar who was the CEO of SAA.

Regards Cheryl."

And then I just confirmed that he had not try to meet with me.

ADV PHILLIP MOKOENA SC: Yes, did you know at the time as to whether Jet Airways had any links with any other families in South Africa?

MS BARBARA HOGAN: No, I did not.

ADV PHILLIP MOKOENA SC: You did not?

MS BARBARA HOGAN: Ja.

ADV PHILLIP MOKOENA SC: But you can only testify about this persistence and lobbying that was made for SAA to cancel its route to Mumbai, to India?

MS BARBARA HOGAN: Yes, there were the rumours going around, yes.

ADV PHILLIP MOKOENA SC: Yes. Now from paragraph 99 to 101 of your statement you are referring to rumours which included Ms Vytjie Mentor, are you there?

MS BARBARA HOGAN: Correct.

ADV PHILLIP MOKOENA SC: Can you please in your own words tell the Chair about those rumours?

MS BARBARA HOGAN: Chair, on the – let me say I found that for quite a long time in 2010 there were endless rumours about a reshuffle. Not only myself, but other Ministers and endless speculation. You know how things go. And my special advisor Ms Hassin would just inform me, you know it was interesting how things changed over time and who was going to be and what in a zoo.

And on the 7th of June that would be Annexure R, am I right?

ADV PHILLIP MOKOENA SC: Are you referring to Annexure P?

CHAIRPERSON: Are you at paragraph 99 of your statement?

MS BARBARA HOGAN: Yes, paragraph 99, and it is reflected in Annexure R on page 375. And my advisor just says that you heard the rumours that are going around. The Deputy Minister and that she was referring to Enoch Godongwana becomes the Minister, I become the Deputy Minister for Health, Vytjie Mentor the Deputy Minister for DPE.

That, you know, that is one of several stories that I was hearing all the time.

ADV PHILLIP MOKOENA SC: Yes, now Ms Vytjie Mentor did testify before the Chair. She also testified about the events of October 2010 including the SAA India route to – the India route. Mr Chair, just to link that evidence I will be referring Ms Hogan to Exhibit D1. If you may – we have prepared extracts of that evidence. And if you may go to page – to paragraph 60 to paragraph 61, are you there?

MS BARBARA HOGAN: 60 and 61?

ADV PHILLIP MOKOENA SC: Paragraphs, yes.

MS BARBARA HOGAN: Okay.

ADV PHILLIP MOKOENA SC: Ms Mentor told the Commission that on paragraph 60 she said that:

"I had communicated with Mr Lakela Kaunda who at the time I thought was Mr Zuma's personal assistant in order to secure a meeting with Mr Zuma on one Sunday evening in or around October 2010."

If I may pause there, Ms Hogan? You were removed around that time, around October 2010?

MS BARBARA HOGAN: I was still the Minister.

ADV PHILLIP MOKOENA SC: Yes, when were you removed?

MS BARBARA HOGAN: The 31st of October.

ADV PHILLIP MOKOENA SC: Of October, yes.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: So she is also testifying about the events of October 2010, she says that a week – about a week or so before the Cabinet reshuffle:

"I received a telephone call from Ms Kaunda to say that the President could see me the following day. I think Ms Kaunda was his PA

although it could have been a different position, but she definitely appeared to be from the President's office. Ms Kaunda informed me that Mr Zuma would be available to meet with me the next day, being the Monday."

And she testified that when she met with the Guptas at their compound then she was offered a position around the same period that you were also talking about the rumours.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Now she also testified, if I may refer you to page 26, paragraph 89 to 90, she testified about the SAA – the SA to India route which there were speculations or lobbying that the SAA must terminate. On paragraph 89 she says:

"Ajay Gupta went on to talk about the turnarounds strategy of SAA and that it was not yielding results. He commented that the SAA route to India was not profitable and it was costing the country a lot of money."

If I may pause there Ms Hogan, we know now from your – from the SMS communication between yourself and the then Chairperson, the Chairperson said that there was no intention of SAA terminating that route, am I correct?

MS BARBARA HOGAN: Correct.

CHAIRPERSON: And Ms Mentor proceeded to say that I pointed to the bilateral relation between India and South Africa. Today you have also touched, Ms Hogan to that evidence in a way that to explain to the Chair that that route was important for trade reasons.

MS BARBARA HOGAN: Extremely important.

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: Particularly in the light of BRICS as well.

ADV PHILLIP MOKOENA SC: That is what Ms Mentor told the Chair, she proceed to say that:

"I pointed to the bilateral relation between India and South Africa and the fact that passengers and goods are transported via the India route on a daily basis. I asked him what would happen to those passengers and goods if the airline route was cancelled. He told me not to worry as they were in a partnership with an airline that could take over this route."

Paragraph 90 it says:

"Immediately after his statement about SAA's India route, Ajay Gupta then very casually and much to my astonishment proceeded to offer me the position of the Minister of Public Enterprises if I would agree to facilitate the closure of SAA's India route when I became the Minister. Ajay Gupta said there would be a Cabinet reshuffle in the next week and so – and he said he had an offer for me. He said that I could be the next Minister of Public Enterprises if I agreed to facilitate the closure of the route."

And you have testified about two important incidents. The first one was your evidence, were your visit to India where the Chairperson of Jet Airways sought a meeting with you and also that there were rumours about the pending Cabinet reshuffling.

MS BARBARA HOGAN: Correct, yes.

ADV PHILLIP MOKOENA SC: Ms Hogan I now need to deal with certain issues that do not appear in your witness statement, but which are relevant for the terms of

reference of this Commission and also in order to clarify certain aspects from your evidence thus far.

You were interviewed by the Public Protector in terms – in relation to some of the issues that are relevant to the terms of reference of this Commission.

MS BARBARA HOGAN: Correct.

ADV PHILLIP MOKOENA SC: Yes, may I refer you to page 400? Are you there?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: You will see that ... (intervenes).

CHAIRPERSON: I am sorry Mr Mokoena, that is now long after her dismissal when she is interviewed by the Public Protector. I just want us to go back and tie the evidence properly with regard to the dismissal. The issue of Eskom and Mr Maroga and his ultimate departure, that took place I think you said around September/October 2009?

MS BARBARA HOGAN: Late October, early November 2009.

CHAIRPERSON: Yes, and as you indicated there was active involvement in regard to that issue by yourself, by the President and the Board and Mr Maroga?

MS BARBARA HOGAN: Correct.

CHAIRPERSON: Yes. And then there was the Transnet issue. In terms of timelines you dealt with that from when to when?

MS BARBARA HOGAN: Okay, the Transnet issue was immediately before me when I became a Minister of Public Enterprises, that was in May and formally when Mr Phaswana the Chair of Transnet met with me in June and handed me the recommendation for Mr Maseko, you know, with all the accompanying documentation.

So the Transnet issue took place between 2009 – I would say June 2009.

CHAIRPERSON: From immediately after you became Minister?

MS BARBARA HOGAN: Yes, yes.

CHAIRPERSON: Yes.

MS BARBARA HOGAN: Right through – it was only resolved in the following year in June 2010 when Mr Gama was dismissed by Transnet.

CHAIRPERSON: Yes, and then after he had been dismissed you were still engaged with it insofar as there was a need to still fill the position of CEO for Transnet, is it not?

MS BARBARA HOGAN: It is correct. The candidate Mr Maseko had already in September 2009 withdrawn his candidature and the President would not allow in Cabinet any memo that then dealt with the CEO of Transnet until such time that the disciplinary process was finalised of Mr Gama. So once that was finalised and Mr Gama was dismissed the Deputy Minister and I were of the view that Transnet Board of Directors, their tenure had to be twice renewed, because we were not in a position to add or move Directors around and four had resigned fairly earlier on.

And to their credit they had stayed on in the job, but the AGM was now coming up and we had to make a – we had to now put a new board in place. Retaining some and others and it would be that board that would then initiate a new CEO process. It would have been problematic if the old board initiated the CEO process then left and then a new board comes in.

So we were of the view that the incoming board would then conduct a professional CEO search.

CHAIRPERSON: So as at the time that Mr Gama was dismissed the position of group CEO for Transnet remained vacant and it had been vacant for many months?

MS BARBARA HOGAN: Of the full time CEO there was an Acting CEO, Mr Wales, who had been acting since end of February beginning of March 2009.

CHAIRPERSON: Yes, it was vacant in terms of permanent appointment, but there was an Acting CEO?

MS BARBARA HOGAN: Correct.

CHAIRPERSON: And as at the time that Mr Gama was dismissed there was already a vacancy for Chairperson of the Transnet Board, or not yet?

MS BARBARA HOGAN: There was an acting person for the Chairperson of Transnet. In relation to that Chair you would recall that I had proposed two names at the President's request and I had sent him a letter attaching the CV's. I had withdrawn the memo from the economic subcommittee cluster and sent him the CV's as he requested, but I never got an answer to him.

So I then later, once again requested that the President permit me to place a proposal for Transnet Board straight onto the agenda of Cabinet, in that it was urgent, there was an AGM coming up.

CHAIRPERSON: So the other four members of the Transnet Board that you said resigned, resigned around which month, if you are able to recall?

MS BARBARA HOGAN: I cannot be exact about it and they might have resigned at different times but some of them resigned shortly after the recommendation of Mr Maseko and all the problems that emerged after that.

CHAIRPERSON: Was the resignation in any way connected with the non-acceptance of their recommendation or was it something else?

MS BARBARA HOGAN: I never got any formal – they had had, you know they had just said they would move on now.

CHAIRPERSON: Had the number of members of the Transnet Board was what? Was it about six? Normally the full complement would have been more or less what?

MS BARBARA HOGAN: Yes, at times with Boards, at times you do not make a full

appointment to a Board because weaknesses in the Board or ... (intervenes).

CHAIRPERSON: If it is difficult to find do not worry about it, *ja*.

MS BARBARA HOGAN: Yes, no, there was. The Board, as I recall, and I could be corrected, the Board at that time was not the full quota but it was still quorate and when I put through a Cabinet memo it was then virtually a full component. I think it was just one or two absences from it.

CHAIRPERSON: So when you were dismissed, the vacancies in the Board had not been filled yet?

MS BARBARA HOGAN: No.

CHAIRPERSON: And they were subsequently filled in December or so, after you had left.

MS BARBARA HOGAN: November it was. What I had done, there was a Cabinet memorandum which I put through proposing a new Board and Chair for Transnet, and that Cabinet memorandum was dated the 27th of October 2010. And Chair, you will recall that I was then dismissed by President Zuma on the 31st of October, four days later, and then Mr Gigaba was appointed Minister and I think it was – and then the Cabinet meeting that immediately followed, my Cabinet memorandum was not on that agenda, it had been removed. And then Mr Gigaba put through a new proposal. He did retain some of the people I had proposed but he also had new appointments.

CHAIRPERSON: So in terms of events that may have entailed sharp differences between yourself and the President, am I right to say there does not appear to have been any events, close to your dismissal?

MS BARBARA HOGAN: No, there were no sharp differences of opinion, it was just the battle that I was continuing having with the President.

CHAIRPERSON: Yes.

MS BARBARA HOGAN: To have anything – a Cabinet memorandum submitted to Cabinet.

CHAIRPERSON: Yes, yes.

MS BARBARA HOGAN: He was thwarting that but there were no sharp differences of view.

CHAIRPERSON: Yes, yes.

MS BARBARA HOGAN: There was one instance in September 2009, and my apologies, I do not have this as part of my affidavit but I think it was in September 2009 that Cabinet appointed an Inter-Ministerial Committee consisting of myself and Minister Gordhan, who was the Minister of Finance at the time, and our job was – part of it was to look at the state of the SOE's and to look at the funding model and to make recommendations thereon. Because both Mr Gordhan and I were aware that the SOE's were heading for real financial problems and we needed to work on a proper – and that was towards September or so, 2009, and at his budget speech or close, not his budget speech, the President's State of the Nation address or close thereto the following year the President announced, and he had not spoken to myself or Mr Gordhan, he announced that he had set up a Commission of Inquiry into State Owned Enterprises headed by Ria Phiyega, and there was a lot of confusion that was only really resolved about six months later, as to whether the Inter-Ministerial Committee set up by Cabinet would still go on with its work or would not, and at the time it seemed that the President's office was saying the two processes would run parallel. But finally Mr Chabane late – towards late 2010 clarified that the Inter-Ministerial Process would be cancelled. The President had called me in. I cannot remember the exact date, and this was sometime after he announced that Commission, and informed me that I may not make any major

decision about any State Owned Enterprise until that Commission had reported.

CHAIRPERSON: Was the Ria Phiyega that you say was to be involved in that Commission, the same Ria Phiyega who became National Commissioner of Police, is that something you know or you do not know?

MS BARBARA HOGAN: Yes that is correct.

CHAIRPERSON: It is the same person?

MS BARBARA HOGAN: It is the same person.

CHAIRPERSON: Okay, and as far as you know was that a formal Commission of Inquiry? You know sometimes people talk about a Commission of Inquiry whereas it was a formal Commission of Inquiry.

MS BARBARA HOGAN: My apologies to the Evidence Leader on this matter.

CHAIRPERSON: Yes.

MS BARBARA HOGAN: It was a formal Commission of Inquiry, it had difficulties getting up and running but I have – and it reported after I was finished being a Minister and I thought some of the recommendations were good recommendations. I am not certain to what extent they were implemented.

CHAIRPERSON: Yes. Now I know that you said that the President did not, at the meeting he had with you, together with Mr Mantashe on the 31st of October did not tell you what the reasons were, why you were being removed from the position of Minister of Public Enterprises. But are you able on an analysis of issues and what happened, are you able to say what you believe the reason was or are you not able to say?

MS BARBARA HOGAN: Chair, I can only speculate but when you look at events that followed my disappointment.

CHAIRPERSON: That preceded your dismissal.

MS BARBARA HOGAN: My dismissal but not my disappointment. When I ... (intervenes).

CHAIRPERSON: Was the dismissal not your disappointment too?

MS BARBARA HOGAN: Well that I do not want to speculate publically. It just became apparent, you know it will be very apparent in all of my testimony that the Gupta family or any of those who have been mentioned as being part of a State Capture Process, it really does not feature in my submission. But when I look at some of the appointments that were made subsequent to my dismissal, for instance on Transnet Iqbal Sharma, who had worked in trade and industry, was appointed by Mr Gigaba to the Transnet Board, and we know that he then headed an Acquisitions And Procurement Subcommittee and that that has been heavily involved in whatever transpired thereafter.

Mr Mokwana was, as Chair of Eskom, was several months later after Mr Gigaba, or sometime after was just immediately removed and Mr Ngubane came in. What really – Ben Ngubane sorry, what worried me is that I was fired in October 2010, Mr Molefe, Brian Molefe, was then appointed as the CEO early 2011 and Mr Gama was brought, reappointed into Transnet must, as the CEO of Transnet Freight Rail, the position he had been dismissed from, he was reappointed in, it must have been about June, July 2011 and then of course as we know when Mr Molefe was then transferred to Eskom as the CEO there, Mr Gama was then appointed the group CEO.

So those things in retrospect probably have given me more insight into might what had been happening is just pure speculation. At the time my sense is that the President and I have very, very different views on governance, on Constitutional and legislative requirements of those in office. And that the President

felt that I was a hindrance to him in that respect, that I did not enjoy his confidence.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: Mr Chair just to complete the picture, those issues are covered in Ms Hogan's witness statement from page 15, paragraph 58 to paragraph 62.

CHAIRPERSON: Thank you.

MS BARBARA HOGAN: Do you want me to ... (intervenes).

ADV PHILLIP MOKOENA SC: We will deal with them after the tea adjournment which I am quite presumptuous that we will be taking now subject to the Chairperson's ... (intervenes).

CHAIRPERSON: Well we can take it now or we can take it at 11:30, depending on whether you are starting on something new.

ADV PHILLIP MOKOENA SC: No, we may proceed Chair, I just – we may proceed.

CHAIRPERSON: Okay, okay, alright.

ADV PHILLIP MOKOENA SC: If you can go to page 15, it seems to complete the discussion between yourself and the Chair, 15.

MS BARBARA HOGAN: Page?

ADV PHILLIP MOKOENA SC: 15.

MS BARBARA HOGAN: 15, okay. Yes.

ADV PHILLIP MOKOENA SC: And from paragraph 59, and I would simply read them and you can talk to those issues thereafter. You said – you say that mister, my Transnet Cabinet memo 10/2010 appeared three days later as an agenda item on the Cabinet ESEID subcommittee of 3rd November 2010 and was withdrawn. This confirms what you have been saying to the Chair.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: This meeting took place three days after President Zuma dismissed me, 16;

"On 8th December 2010 Cabinet approved Mr Gigaba's recommendation of the Board at Transnet, Iqbal Sharma, a former business partner of Gupta associate Salim Isa was on that list and was later appointed as head of the Procurement Committee at Transnet."

And you confirmed that it is in line with what you were discussing with the Chair.

MS BARBARA HOGAN: Correct.

ADV PHILLIP MOKOENA SC: And you say on paragraph 61:

"On the 16th February 2013 Cabinet approved the appointment of Brian Molefe as group CEO Transnet and a little while later Mr Gama was reappointed as CEO of TFR on the grounds that his misconduct had not been serious enough to warrant his dismissal."

You conclude by saying that:

"On the 16th of March 2011 the Transnet Board approved the reappointment of Mr Gama as CEO of TFR, justifying it on the ground that the finding did not – the findings in his disciplinary hearing had not warranted a dismissal."

Do you confirm?

MS BARBARA HOGAN: Confirmed.

ADV PHILLIP MOKOENA SC: That those are the issues that you were discussing with the Chair but there at least you are putting also the dates on when these issues occurred.

MS BARBARA HOGAN: Yes that is correct, thank you.

ADV PHILLIP MOKOENA SC: Yes, Mr Chair, I am now moving to a new topic that I want to canvass with Ms Hogan, pertaining to her interview with the Public Protector.

CHAIRPERSON: Okay thank you, let us take the tea adjournment and we will resume at 11:45.

MS BARBARA HOGAN: Thank you.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

COMMISSION ADJOURNS

COMMISSION RESUMES

CHAIRPERSON: Yes Mr Mokoena?

ADV PHILLIP MOKOENA SC: Thank you Mr Chair. Ms Hogan, as stated before the tea adjournment, I intend now to deal with issues which are not in your statement but relevant to the Commission's terms of reference. I want to do that by firstly referring you to the Public Protector's report, you will find it on page 400 of Exhibit L1. You will see it runs from page 400 until page 449. Firstly do you confirm that you were interviewed by the Public Protector?

MS BARBARA HOGAN: Yes, by officials from her department.

ADV PHILLIP MOKOENA SC: Yes, from officials from her department yes.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: And that transcript that I have directed you, captures what was discussed between yourself and the officials of the Public Protector.

MS BARBARA HOGAN: Correct.

ADV PHILLIP MOKOENA SC: May I then refer you to page 405, with particular reference to line number 6 up until line 13, to save time I will just read it to you very

quickly.

MS BARBARA HOGAN: Sorry what is the page number again? I think I have ... (intervenes).

ADV PHILLIP MOKOENA SC: 405.

MS BARBARA HOGAN: 405?

ADV PHILLIP MOKOENA SC: Yes, 405.

MS BARBARA HOGAN: Oh I am sorry.

ADV PHILLIP MOKOENA SC: Page 405.

MS BARBARA HOGAN: Okay, yes I have got it, sorry. Page – line?

ADV PHILLIP MOKOENA SC: Line 6 to line 13, and I will just read it to you, read it on the record very quickly. That is where you are being asked:

"Okay, alright, we were saying what happened when you left."

You answer:

"Well what happened when I left is that the reason why, well the President removed me."

Line 10:

"Yes."

"Yeah and what happened?"

And importantly on line 13 you say:

"I do not know why he removed me so it is difficult to say."

Before the Public Protector that is what you indicated. Now I just need you to clarify that aspect in line with your evidence before the Chair, where you seemed to be furnishing reasons as to what might have led to the President removing you.

MS BARBARA HOGAN: Chair, I have no knowledge of why the President removed me but I have my own speculation, and that is what I meant. I do not have

knowledge.

ADV PHILLIP MOKOENA SC: Thanks. Now may I refer you to page 415?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: You will see on line 9, the following, it is recorded as part of your answer, you say:

"There was a whole lot of them. The Board accepted the President's proposal that Maroga come back and a Commission of Inquiry be done and then lo and behold Maroga visited the President and said he is not accepting it."

And we know that in this – in your evidence before this Commission you did not really talk about the Commission of Inquiry and that evidence becomes quite ambiguous. Do you wish to clarify that?

MS BARBARA HOGAN: The Commission of Inquiry, it is correct that there is ambiguity there, it is given capital letters. What I really meant was that there would be an inquiry, which would run under my supervision.

CHAIRPERSON: What you meant by inquiry – are you saying what you meant by inquiry was the role that you were contemplated to play in terms of the President's proposal?

MS BARBARA HOGAN: Correct.

CHAIRPERSON: Yes okay, alright.

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: I am not a lawyer so these things are ... (intervenes).

CHAIRPERSON: *Ja, ja.*

ADV PHILLIP MOKOENA SC: Yes, that is why ... (intervenes).

CHAIRPERSON: Well it might well have entailed an inquiry but it might not have

entailed so it just depends.

MS BARBARA HOGAN: Yes. Correct, correct.

CHAIRPERSON: You might not be wrong.

ADV PHILLIP MOKOENA SC: And may I then refer you to page 444?

CHAIRPERSON: Well before you go there Mr Mokoena, just going back to the issue of the reasons for dismissal, you have been asked in relation to page 405, you do not have to go back to that page but you may as well also clarify a paragraph that I think is somewhere towards the end of your statement. I think it is paragraph 108. Do you want to just read that paragraph into the record?

MS BARBARA HOGAN:

"It is my firm belief, it is not my firm knowledge, it is my firm belief that my resistance to the strong views of President Zuma in relation to the appointment of certain preferred candidates to the positions of CEO and members of Board Directors including the CEO and Chairperson of Transnet, at the time that I was Minister, led him to the conclusion that I would not do his bidding and behave improperly and unlawfully. I believe it was for that reason I was dismissed by President Zuma."

Yes.

CHAIRPERSON: Now different words might mean different things to different people, I think that when one reads that paragraph it seems to reflect your belief as to why you were removed from the position of Minister of Public Enterprises.

MS BARBARA HOGAN: Yes.

CHAIRPERSON: And yet in the passage that Mr Mokoena referred you to in the transcript before the Public Protector, you say you do not know why you were removed and in – and earlier on you did in fairness say you can only speculate.

MS BARBARA HOGAN: Sure.

CHAIRPERSON: So I think that you may need to try and make us understand these different things. You may be meaning one and the same thing using different words. You may be meaning different things but I think when one reads paragraph 108, one seems to get that you do have a belief as to why you were dismissed.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: You are not saying that is what you were told but it is your own belief.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: But my own impression is that a belief might be different from speculation but I may be wrong. You might be thinking it is the same thing. For me a speculation seems to be much lighter than a belief, but you are not a lawyer and ... (intervenes).

MS BARBARA HOGAN: *Ja*.

CHAIRPERSON: So – but I just think that it would be fair for you to apply your mind and to be able to explain that.

MS BARBARA HOGAN: Okay. In terms of the interview with the Public Protector's office, when I look at the context and whatever, they are asking me what happened you know, and then what happened. If someone had to come to me immediately thereafter and said why did the President remove you, I would say I do not know, because no explanation was given. So I have no absolute – I was given no reason. But when I was able to reflect, and when I was able to look at what subsequent events took place, as Mr Gordhan often said connect the dots, it appeared to me that there might have been further reasons why I – there might have been stronger reasons than just disliking me or seeing me as soughting me from my position. But

that is speculation.

But I must say that in light of all that has surfaced I would say I do believe that that was part of his reasons, that particularly when I look at the Siyabonga Gama issue, that the President removed me. I believe it. I cannot state it as a fact.

CHAIRPERSON: Yes thank you.

MS BARBARA HOGAN: Thank you.

ADV PHILLIP MOKOENA SC: Then lastly in relation to the Public Protector's transcript may I refer you to page 444?

MS BARBARA HOGAN: Sorry?

ADV PHILLIP MOKOENA SC: 444.

MS BARBARA HOGAN: 444.

ADV PHILLIP MOKOENA SC: With particular reference to line 19, to page 445, line 4. Are you there?

MS BARBARA HOGAN: Page, line?

ADV PHILLIP MOKOENA SC: 444, line 19.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: I will read it to you up until page 445, line 4. The following is recorded in that passage:

"They were, the Board of Eskom, was replaced that was a sad story.

Mpho Makwana, who I think is one of our most superb ..."

And the question is posed:

"The one you heard that you appointed to Chair?"

Your answer is:

"I appointed and then he remained as Chair, and Brian whatever was appointed. Damas was appointed as CEO. They were all removed.

The Eskom Board, all my Boards were removed, and he was just removed just like that by Malusi Gigaba. I saw him afterwards and he said "Barbara, you will not believe what happened to me, Malusi just removed me like that, then a couple of weeks later I get a call from the President, who calls me in and then says you know, I must apologise, Malusi did that without me knowing."

Some of that evidence was not clearly captured in your evidence before this Commission and it appears to be some of the important facts that you related to the Public Protector or her Officials, could you please you know, ventilate on those issues.

MS BARBARA HOGAN: Okay. When we talk about Boards being replaced and whatever, I am now talking that immediately when Minister Gigaba was in, the next months all the Boards were removed. That is incorrect. And that ambiguity I accept is probably there but there was, at that time, as things progressed, that people were removed from Boards.

The most unfortunate situation happened at – the most unfortunate of which I think was SAA, I had appointed an SAA Board very early on in June 2009 I think it was, and it was a very good Board, and that is not for my own but it was very good quality, high calibre people. And I know that the President afterwards came to me and said he was very upset that a Cabinet memo on SAA went to the Board and – went to Cabinet and he was not present at Cabinet. That was the first indication I ever had.

But anyway after I was – after I left the Board's tenure still was one or two years. I cannot remember the exact dates, and of course a Board, in anticipation of an AGM would want to know of a Minister what is the position you know, these

people want to move on. These – you know the Board assists the Minister about who is wanting to go on, who would stay if recommended by the Minister, you know what shortages we have, and they never got an answer from Mr Gigaba. And finally their term of office expired without their term being extended by the Minister, and so they all had to resign on mass.

CHAIRPERSON: One sec Ms Hogan. Mr Mokoena of course in an inquiry such as this certain amount of hearsay is permissible but it must really be necessary you know.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: It does not look like this, some of these things are things that the witness has personal knowledge of.

ADV PHILLIP MOKOENA SC: Ms Hogan, that last paragraph on page 445, were you recording to the Public Protector your conversation that you had with Mr Damas?

MS BARBARA HOGAN: Mr Kwana, Slakwana.

ADV PHILLIP MOKOENA SC: Mr Makwana yes.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Yes, yes.

MS BARBARA HOGAN: Yes, that is correct but it is hearsay what he told me.

ADV PHILLIP MOKOENA SC: Yes, okay. But in relation to the Boards that were removed, that is what you experienced and you are able to talk about before this Commission?

MS BARBARA HOGAN: You know it would require a fair amount of just going back and respect – you know, of just tabling the details because there are 17, 18 people on a Board, who stayed on, who moved on. You know it is a matter of detail *ja*.

ADV PHILLIP MOKOENA SC: Yes that is fair. Now can we move onto another –

some of the issues which I needed to – that I need to canvas with you, have you either in your official capacity or non-official capacity encountered or met with the Gupta's family?

MS BARBARA HOGAN: Chair, in 2004 Essop Pahad, who – in whose home Mr Kathrada, my partner – Mr Kathrada, well spent a lot of time as a young child, because he had to come to school in Johannesburg. Essop Pahad phoned Kathi and I and said would we come to dinner – for a luncheon with some friends of his. And so we went to this luncheon, this was in holiday time and in Constantia, and there were other people there but apparently the Guptas were there. It was the first time I had ever known of them or met them. We had nothing to say to them really. We were talking to other people and that was that. That was in 2004. Do you want me to go onto – and then there was an occasion ... (intervenes).

ADV PHILLIP MOKOENA SC: Maybe let us stick to that occasion in 2004, were there any discussions that you held with the Guptas? Were there any offers that were made to you or to Kathi as you as you call him?

MS BARBARA HOGAN: We had lunch and then we left. We did not stay on an extended stay there, yes.

ADV PHILLIP MOKOENA SC: And then the next occasion?

MS BARBARA HOGAN: The next occasion was sometime after that. It was after I was a Minister.

ADV PHILLIP MOKOENA SC: After you have now left from ... (intervenes).

MS BARBARA HOGAN: After I was finished as a Minister the High Commission of India invited Mr Kathrada and as I recall some of the Pahad family and some members of the Kathrada Foundation for a luncheon to meet with the Minister of – a Minister – a Cabinet Minister from India who also happened to be an anti apartheid

activist in India during that time and knew both Kathy and myself and we had lunch there and about two thirds through the lunch Ajay Gupta arrived, but he went and sat by a table by himself and he was – appeared to be in a very filthy mood. Spoke to no one and just glared at all of us.

ADV PHILLIP MOKOENA SC: So there were never any other offers or engagement with Mr Gupta?

MS BARBARA HOGAN: No.

ADV PHILLIP MOKOENA SC: Ajay Gupta at the time?

MS BARBARA HOGAN: No.

ADV PHILLIP MOKOENA SC: Now I need to move on also to deal with the Gupta leaked e-mails with reference to an allegation that you might have been a beneficiary of a trip that was sponsored by the Guptas and I do so by referring you to pages 376 to page 381.

MS BARBARA HOGAN: Chair I got the shock of my life a while back about six months ago. I cannot remember exactly, when I got a telephone call from one of the journalists who had been investigating the Gupta leaks and said "tell me about the trip that the Guptas sponsored for you and Mr Kathrada" and I was like stunned and so I then went into the records that are held by the Kathrada Foundation of Mr Kathrada's travel and this documentation that is here before us is exactly what the Kathrada Foundation had.

Now in – this was after I was a Minister. This was in – well the – Mr Kathrada was invited by the South African High Commission in India and several other agencies. One was the Ghandi Peace Foundation, the United Nations Information Centre ...(intervenes).

ADV PHILLIP MOKOENA SC: You may turn ...(intervenes).

MS BARBARA HOGAN: The Indian International Centre.

ADV PHILLIP MOKOENA SC: You may turn to page 381.

MS BARBARA HOGAN: That is 381.

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: That is on page 381. It is just the last paragraph before I sign off on the letter. This is my response to the journalist which were Poplak who queried this letter. So let me start at the beginning with that letter.

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: It is confirmed by the evidence. So we were invited by the International Centre, the Ghandi Peace Foundation, the South African High Commission, United Nations Information Centre and the Working Group on International Strategies and they invited Mr Kathrada to come and address various bodies particularly schools and university students to commemorate the birthday of President Mandela and to speak of Mr Mandela and the struggle and whatever.

Mr Kathrada was oftentimes asked to do that and he was often requested by President Mandela to take on certain matters. So we were invited and that was our understanding and our understanding was that the initiative of the Indian – of the South African High Commission. So I mean we flew late on the 15th of July. We got into Mumbai on the 16th the following morning early and then we travelled on to Delhi. We were there for two days. Mr Kathrada spoke to a number of schools. There is a press report on it on page 382 where it was 18 schools that he had spoken to and we flew back on the 19th. The day after. So we were there for a day or two.

The Indian High Commission had informed the Kathrada Foundation that they were organising the trip and they sent on the flight reservations and we sent a

request to them if the flight reservation's timing could not be changed, because it was very exhausting for Mr Kathrada to fly to Dubai then fly on to, you know, as a just stop there in the airport, fly on to Mumbai and then fly on to Delhi, you know? It is a very long night for him and the answer we got from the Indian High Commission is on ...(intervenes).

ADV PHILLIP MOKOENA SC: Page 385, is that page 385?

MS BARBARA HOGAN: Page 385.

ADV PHILLIP MOKOENA SC: Is that the one?

MS BARBARA HOGAN: Page 385 and it is to Zohra Aerington who was Mr Kathrada's PA and his niece who managed all Mr Kathrada's logistical and whatever and the High Commission writes to Zohra and says;

"Dear Zohra, below is a reservation for Doctor Kathrada and Ms Hogan. As I discussed with them on the telephone the mission had stipulated that we would prefer a more time friendly routing and that they should depart on Friday evening, however, the company that was assisting with this reservation indicated that this was the best they can do. We requested for the e-tickets and will mail it to you upon receipt."

ADV PHILLIP MOKOENA SC: And the name of the company it is not indicated?

MS BARBARA HOGAN: The name of the company was not indicated, you know, we just thought the Commission does what the Commission usually does. So they then e-mailed the e-tickets and their travel agency is a travel agency in Mayfair called Fly Well Travel and it has the details of our journey.

ADV PHILLIP MOKOENA SC: You may turn to page 377.

MS BARBARA HOGAN: 377? That is ...(intervenes).

ADV PHILLIP MOKOENA SC: Is that the ...(intervenues).

MS BARBARA HOGAN: Yes. So, you know we did not think to question anything further. Mr Kathrada was not keen for us to pressure any further the travel arrangements. In fact, he was a little bit put out that I had actually requested a different timing through, you know, his PA, because being a gentleman that he was he would say to be "Barbara you do not look a gift horse in the mouth." You know? "You do not get invited and you say yes we will come, but, you know, we do not like the arrangements that you made." He just thought that was impolite and of course he is correct. So we left it at that, but when I looked at the travel arrangements it was Jet Airways and I thought oh my gosh are we going to be captured on flight and me be forced to retrospectively sign off and the only indication, which we would not have known at the time that this had anything to do with the Gupta family is in the small forwarding e-mail the record of who was copied in and there it says from Nafisa from the travel agent to Ashu and it says ashu@sahara.co.za. Now ...(intervenues).

ADV PHILLIP MOKOENA SC: Are you referring now to page ...(intervenues).

MS BARBARA HOGAN: Page 377 ...(intervenues).

ADV PHILLIP MOKOENA SC: 377.

MS BARBARA HOGAN: If you just look at those – that e-mail – the passage of the e-mail it says ashu@sahara.co.za. Now we were not looking at who was being e-mailed by the travel agency. In retrospect it was – it is obviously Ashu Chawla and that is what the – it was Daily Maverick the journalist, the investigative journalist wanted an explanation from us. So I forwarded all of this to them and explained that we did not know at the time, but this was the situation and he then replied ...(intervenues).

ADV PHILLIP MOKOENA SC: May I refer you to page 386...(intervenes).

MS BARBARA HOGAN: 386 and he said;

"Thank you Barbara. We have all agreed that this is not a story worth pursuing. That said I think it is interesting and I want to thank you for following up on it. I will let you know if you and Kathy pop up in any e-mails or documents as small stuff becomes searchable."

You know I was worried that Kathy – people would try to compromise Kathy. So I just said "please let me know if anything else and we can investigate and give an honest answer." So it is a surprising twist to a long saga that Jet Airways managed to fly us to Mumbai and – but that was the extent of our involvement there.

ADV PHILLIP MOKOENA SC: Other than this reference here did you get to know of anything that may have reflected that there was some connection between Jet Airways and maybe the Gupta family or their companies?

MS BARBARA HOGAN: No.

ADV PHILLIP MOKOENA SC: No?

MS BARBARA HOGAN: No. I had not heard the evidence of Vytjie Mentor with the Guptas claiming that they were in a partnership with this company. You know that only came out now recently. So I did not know that. Yes.

ADV PHILLIP MOKOENA SC: Well the ...(intervenes).

MS BARBARA HOGAN: There is also, sorry, sorry ...(intervenes).

ADV PHILLIP MOKOENA SC: Yes, no just add what you want to add.

MS BARBARA HOGAN: There is also a major company in India, a huge company unrelated to the Guptas that is called Sahara and there is an airline called Sahara.

ADV PHILLIP MOKOENA SC: Well the interesting thing is that while Ms Mentor said in her evidence that at the meeting that she says she had with Mr Ajay Gupta in

October 2010. She says Mr Ajay Gupta talked about Jet Airways and seemed to be – said something that suggested that there was a connection between him or the family with Jet Airways in an affidavit that he has signed in support of his application for leave to cross-examine Ms Mentor he has said that there is absolutely no connection as far as I can recall his affidavit between or there was at the time no connection between Jet Airways and the Gupta family.

MS BARBARA HOGAN: I cannot comment. I do not know.

ADV PHILLIP MOKOENA SC: Of course you would not be able to comment on it.

MS BARBARA HOGAN: Comment, no.

ADV PHILLIP MOKOENA SC: Yes. Okay, all right.

MS BARBARA HOGAN: There would have to be an investigation to see, yes.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Do you know who paid for the trip?

MS BARBARA HOGAN: Well I do not know who paid for everything. The evidence here although it is not clear who paid, because there is nothing that says this person paid, but certainly in the e-mail string Ashu Chawla from Sahara South Africa, the Gupta's company is copied in or forwarded this thing.

ADV PHILLIP MOKOENA SC: Now Ms Hogan at the end of this Commission the Chairperson will have to make certain recommendations and your evidence and other evidence of other witnesses I am sure will be taken into account in order to guide the Chair as to the recommendation that should be made in order to avoid the issues that we have canvassed with you and with other witnesses. You have made a request before we deal with further recommendations that you be permitted to read and with the indulgence from the Chair your conclusion paragraphs, starting from page 2 – page 22 paragraph 102 to page 24 paragraph 109.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Is that still your request?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Mr Chair with your indulgence.

CHAIRPERSON: Yes you may do so.

MS BARBARA HOGAN: Okay. So the conclusion of my evidence before you Chair is that the legal framework for the appointment of Boards of SOE's and hence CEO's of SOE's is comprehensively set out in the opinion of Michael Katz of Edward Nathan Sonnenberg as well as Advocate Wim Trengove. Suffice to say that this information was conveyed to President Zuma on a number of occasions including in my memorandum to President Zuma on the 28th of July wherein I stated the following in paragraph 3.1.8:

"This was also confirmed by senior counsel's advice which is attached as Annexure A."

This is Annexure A to the report that I gave to the President.

"Counsel advised that the Minister is a functionary who holds the shares and exercises the rights on behalf of the state. The Minister's exercise of the shareholder rights is part of an exercise of the State's executive powers. If Cabinet has formulated policy relating to such exercise then the Minister should exercise the powers within the parameters of such policy. The Minister is not obliged to consult Cabinet in the exercise of his or her power but may choose to do so as a matter of personal discretion or any protocol or custom developed in this regard. Counsel advised that the Minister's exercise of her shareholder powers on behalf of the state remain

valid in law even if the Minister does not adhere to any Cabinet policy developed on this issue."

Paragraph 103.

"The facts set out above bear testimony to my repeated and unsuccessful attempts to appoint a CEO at Transnet over one and a half years as well as appointments to those of the Board which attempts by the Board to appoint a CEO of Transnet had commenced sometime prior to appointment as a Minister. The conduct of President Zuma and certain members of his Cabinet in relationship to Transnet and Eskom was not only negligent it was reckless and designed to frustrate the sincere attempts of the Boards of those State Owned Entities to exercise their fiduciary duties as Directors and the exercise of sound corporate governance in their respective State Owned Entities. The above course of conduct by President Zuma in relationship to Transnet and Eskom was improper and irregular. His conduct revealed at best a fundamental misunderstanding and misconception of his role as President of South Africa and the exercise of his presidential duties and functions. His actions not only undermined me as a Minister responsible for Public Enterprises, but undermined the efforts of the Boards of Transnet and Eskom and many of their senior management who attempted to carry out their responsibilities and duties in a professional manner under very, very trying circumstances. It is not for me to speculate as to what the motives of President Zuma were in unduly and improperly influencing the appointment of CEO's

and board Directors in certain of the State Owned Entities referred to above. Suffice to say in my view the actions set out above resulted in severe and extremely detrimental consequences for Transnet and Eskom which consequences undermined and broke the morale of board staff and management and also resulted in severe reputational damages to these entities and negative consequences for their efficient functioning. It is submitted that the nature of the interventions described by me in Transnet and Eskom manifest at the beginnings of the President and certain members of his Cabinet unduly influencing the appointments of key executives and board members in State Owned Enterprises. We now know that this course of conduct escalated over the years and has resulted in a litany of maladministration, abuse of resources and theft from State Owned Entities in South Africa. The consequences of such actions are public knowledge as are the disastrous economic effects on the state of the South African economy. They are the reason for this Commission of Inquiry. Once there is collusion, collusion between a CEO of a State Owned Entity and the Chairperson of the Board of that State Owned Entity in order to influence the conduct of business of that entity particularly the allocation of contracts and tenders the decline and effects thereof will be felt for years to come. It is my firm belief that my resistance to the strong views of President Zuma in relation to the appointment of certain preferred candidates to the positions of CEO and members of Boards of Directors including the CEO and Chairperson of Transnet at the time that I was Minister led him to the

conclusion that I would not do his bidding and behave improperly and unlawfully. I believe it was for that reason I was dismissed by President Zuma as Minister of Public Enterprises on the 31st of October 2010. I would like to place it on record that while my resistance to the attempts of President Zuma to improperly influence the appointments of CEO's and Boards of Directors at SOE's may have had a significant negative effect on my own career what I deeply regret is that the actions of President Zuma and others during the course of the Transnet and Eskom sagas as set out in detail above also had a significant negative impact on the careers and reputations of a number of fine South Africans who were only attempting to fulfil their responsibilities in terms of their appointments in the entities referred to above."

ADV PHILLIP MOKOENA SC: And these are some of the considerations that you seek the Chair to take into consideration when preparing his recommendations?

MS BARBARA HOGAN: Correct.

ADV PHILLIP MOKOENA SC: Now while we are still dealing with the recommendations and the experiences that you may – the lesson that you may gain from your experiences could you clarify you know for me as to when the candidates of the Boards are appointed or when the CEO is appointed do we know if at all times a conflict of interest is conducted?

MS BARBARA HOGAN: I cannot say for sure on that.

ADV PHILLIP MOKOENA SC: And the second one whether do you know whether a lifestyle audit is conducted?

MS BARBARA HOGAN: No.

ADV PHILLIP MOKOENA SC: On those candidates?

MS BARBARA HOGAN: Not in my experience. There was never a lifestyle audit.

ADV PHILLIP MOKOENA SC: And in instances whereby there might be declarations made by the Board members would that be sufficient in instances whereby the companies where they hold interest tendering would it be sufficient for them to simply declare or something more must be done?

MS BARBARA HOGAN: You know I think the appointment of Directors need to go through a far more rigorous process. The process was fairly rigorous in DPE but when I look in retrospect and I look at the advice given in the handbook for the appointment of persons to Boards of State Controlled Enterprises that was approved by Cabinet in 2008 and other international literature the kind of scrutiny which is envisaged these days for the appointments to important State Owned Enterprises is very, very – is very strong that scrutiny.

It goes from – it extends to even setting up a Nominations Committee that is independent that would interview potential candidates, would investigate any possibilities of conflicts of interest, of histories of the person etcetera, but also look at the suitability of the candidate for the position, but not only the suitability of an individual candidate but for the requirements of the Board, and somehow we do need to insulate the process of appointing Directors from undue interferences from business quarters, from political party quarters, from anyone who tries to influence with malfeasance and so there needs to be a very rigorous process in which the public has confidence and we need to up our game in this regard.

I also think that the Board as the Board that might be outgoing or some of them might be outgoing do have an advisory role to play here unless someone – there is strong evidence that the Board has not performed or there is some reason to believe

that the Board is not acting in the best interest of the company but I do believe that the Board plays an advisory role.

They know. They have had the experience. We cannot afford to lose the institutional knowledge but the Board should not be the single advisory or play the single most important role in future board appointments. Some bodies even recommend that specialist agencies, representatives from specialist agencies might be requested when you assemble that board that investigates might be requested to do so.

Chair, we can put in a lot more and the literature is abundant on this matter but there is one issue. We can put in a lot of guidelines. We can put in a lot of rules, procedural and those are good in a way that the King report still remains not enforceable by law but the standing that it has means that every company consults that report as a guidance on good corporate governance and we all know that South Africa's companies receive glowing reports on the whole, listed on the Stock Exchange on their adherence to corporate governance, but at the end of the day any Nominations Committee do need to interrogate the values and the ethics and motives for any person who is nominated and put forward to sit on a board because if a person does not have a set of values which understands that the primary responsibility of a board member is the health of the company, the company will suffer and South Africa will suffer.

So there must be a role for a measured Nominations Committee to probe those aspects in a person's history, in a person's approach now, motivation, whatever. So yes I do think one, the rigorous selection of board members. I do think board evaluations – we know that we are supposed to do self evaluations when we sit on a board. That is one of King's – one of the major proposals.

I do not think we have developed a rigorous enough framework for SOE's. SOE's are in a difficult situation. They do not have the freedom to operate as a public

company would. You know they are obliged to take government's objectives into account and I think an honest appraisal – that we need to research ways – not research but also ask assistance for the ways that boards evaluate themselves and the way that a Minister or whoever is the shareholder how they can effectively monitor a board and the performance of a company.

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: Now that is one of the issues Chair the evaluation of the performance of a company. We were diligent. We had quarterly reporting from each company. We would look at the results but bear in mind you are asking a single department to have within its ranks professional expertise who cannot easily have the wool drawn over their eyes, professional expertise that cover Energy, Transport, Airlines, Telecommunications, Forestry, Nuclear Energy.

I mean it is a wider range of skills and I do think government needs to look at the shareholder role. Who is best placed to play that role? Is it a single department? It was almost a default that the Public Enterprises were set up in a handover from the Nationalist Party government to the ANC government. It was all of these entities that were corporatized and you know it was all put into one department.

Finally I would like to say the insulation from political interference is extremely important. The international literature mentions that one of the greatest risks that State Owned Enterprises face is political interference in the execution of their duties and I must say that in my experience when I saw what happened to executives who found themselves on the receiving end of power plays by different groupings in the ruling party who would receive – who would be – have a different Minister bestowed, you know, every two years or so with different, differing mandates and whatever the level of disillusionment and demoralisation is huge.

When you are the shareholder you have to be the shareholder that acts with consistency, fairness and firmness. The shareholders compact needs to be an instrument that we need to up, you know? Is that the only mechanism that there – that we have at our disposal for the relationship between government and a State Owned Enterprise and then there are other stakeholders who seldom have a voice in all of this. I think particularly of PRASA which was not under my domain, but it provides passenger rail service and it is one of the most painful things for all of us to see how badly serviced and how risky passenger rail is becoming now. Some countries recommend that a member of the union sits on the Board or something like that. I am not entirely in favour, because often what happens then is that worker representative can become captured on the Board or mistrusted, because that person has got to go along with unpopular board decisions, but I think for major stakeholders there must be an avenue for opinions to be heard.

So I could say a lot more, but I know that the evidence leader that there are two documents in particular, which I think would be enormously helpful to yourselves and sorry just finally one of the things is actually establishing once and for all what is the authority of the President, what is the authority of Cabinet, what is the authority of a Minister etcetera, etcetera in relationship to board appointments and stewardship of State Owned Enterprises.

I could find no recognisable practice or understanding and it was a matter of legal opinion only that I could rely on. There should no longer be a legal opinion. It should, you know, if we disagree with that legal opinion that is fine, but we have to, have to set up a far better understanding of the powers and the limits of authority in that regard. Thank you.

CHAIRPERSON: You said you could say more. I would like you to be able to ensure

that the Commission has got all that you may not have said, which you consider important. There are two ways in which this may be done. One might be to allow you more time to speak more, but I do want to say that it may be that I should give you an opportunity, if it is something you would like to do, to prepare a written document that captures what you would put up as your suggestions ...(intervenes).

MS BARBARA HOGAN: Okay ...(intervenes).

CHAIRPERSON: To be considered for recommendations by the Commission. Take your time, do something as comprehensive as you want. I do intend in due course to make an announcement in terms of which I would like to have various organisations including political parties and civic organisations and maybe churches, a lot of organisations and formations within the country where I would invite them to begin, if they are interested, to do whatever work may be necessary for them to later on closer to the end of the work of the Commission submit their recommendations on a number of things or their suggestions on what recommendations the Commission should consider in relation to a number of things including the issue of state capture, including the issue of what should be done to try and minimise the levels of corruption in the country, because I consider that this Commission is a special opportunity for all South Africans to make a contribution so that the Commission could come up with recommendations that are the product of the collective wisdom of South Africans who would like these issues not to arise again in the future if possible or at least if they rise to be at a minimal level. So I am thinking reading your body language it looks like you are – you might prefer the idea of putting up a document.

MS BARBARA HOGAN: Chair that – I am very honoured that you ask that of me. I certainly will try and assist in every way. I will not put this Commission through another seven days hearing of my voice. Yes.

CHAIRPERSON: Yes. So do that and just remain in touch with the Commission's Legal Team or the Secretariat so that once you are ready to send it you can send it to the Commission.

MS BARBARA HOGAN: Sure.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: Ms Hogan in line with what you were testifying on the recommendations should we not also learn from what is happening today? I mean we know that today the interviews of the NDDP, for the NDDP position are being held publicly and they are subject to public scrutiny. Would that not assist when it comes to the appointments of boards? Also the appointments of CEO?

MS BARBARA HOGAN: Yes. You know the question of public hearings transparency is also very good and I would not say immediately yes it should be transparent, but I tend towards that, but there can be other arguments. I did learn one thing in Parliament. I was in a process with – we were processing a Municipal Finance Management Act and in that Act as a committee we were proposing a clause that councillors and mayors not be involved at all in procurement matters and I received a huge backlash from a whole number of mayors and they came down in a delegation and wanted to meet with me about why that was outrageous that I should suggest that. So I said to them "no I am not going to meet with you privately. What I want you to do is to come to Parliament tomorrow and state your case before the South African public, because at that stage those meetings were on television, and state your case and argue your case so that we can all as South Africans understand it." Not a single mayor came forward and so transparency often can be a means of rooting out people with – and I am not saying they had bad motivations they probably were looking at, you know, at other matters, but I do think transparency is important.

One thing that I have not included is the question of whistleblowers. Probably the most damaging of people most damaged are whistleblowers and Chair we put in – I think it was in the Public Financial Management Act a clause that said if a civil servant is instructed by a Minister to do something illegal and that civil servant must then write back and it must be in writing why that civil servant finds that he cannot do it, it is illegal, but must then inform the Auditor-General and I think our whistleblowers need considerable assistance. It has been painful to see what has been happening to our whistleblowers, you know, or people who are trying to stand firm and who are being badgered and then of course the big discussion is within the business community. How are they conducting themselves? It is not just government. It is those in business. All these practices that come out and the notion that you can get a fee just because you introduce someone to the Minister. I mean where does that come from?

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: Okay.

ADV PHILLIP MOKOENA SC: Now if I have heard you correctly, you know, from your evidence at some point you did also refer us to the Constitution and you also read one of the clauses in the Constitution and I want to understand your evidence whether how one would be able to make the recommendation in line with the Constitution? Is it not important to also have, you know, the values? The basic values and principles governing the public administration that is captured in Section 195 of the Constitution and you also have Section 96 of the Constitution. I want to read it to you. It is a very short Section and tell me how do you think it will assist.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Section 96 says that;

"(1)(a) Members of Cabinet and Deputy Ministers must act in

accordance with a code of ethics prescribed by national legislation.

- (2) Members of the Cabinet and Deputy Ministers may not;
- (a) Undertake any other paid work.
 - (b) Act in any way that is inconsistent with their office or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interest.
 - (c) Use their position or any information entrusted to them to enrich themselves or improperly benefit any other person."

MS BARBARA HOGAN: Those are very good – extremely good guidelines from a – not guidelines – well clauses from the Constitution. My worry is, is that the Executive Ethics Act at the moment is not strong enough to reflect I think what the Constitution envisaged, but certainly the sentiments expressed there are what we all would subscribe to in the Constitution.

ADV PHILLIP MOKOENA SC: Yes and in Annexure D of your witness statement, it is to be found on page 53, you do not have to go there I will summarise what it says. That is the memorandum which you sent to the ex-President dated the 28th July 2009 on paragraph – on page 57 paragraph 3.12 you make reference to the handbook on the appointment of person to serve on the Boards of State Controlled Institution and would that be of one of the documents which the Chair must take cognisance to when he makes recommendation?

MS BARBARA HOGAN: Absolutely. This handbook when I reread it now it is probably one of the most interesting and thoughtful and well-structured handbooks that is on corporate on the appointment of persons and I only received a summarised version as a Minister. I never received the full version and when I see the full version now I wish that I had had it at that time.

ADV PHILLIP MOKOENA SC: And that handbook, Mr Chair, is to be found on the second file page 450 to page 510. You also referred to literature in your statement to say that it is international literature on SOE's and you attach also to your statement from page 511 and that document runs up until page 624.

It is a document by the OECD. Can you please tell the Chair what is your encounter with that international organisation OECD, link it with the time when you were still the Minister of Public Enterprises.

MS BARBARA HOGAN: Chair, the OECD runs very useful training courses on corporate governance, also in State Owned Enterprises and during my tenure as Minister two of my staff members, one who is very senior in the Legal Department, attended those and their advice subsequent to going to those courses were invaluable and the OECD issued this document which you have referred to on Boards of Directors of State Owned Enterprises.

I think they issued it in 2013 or so and it really it is almost like a King report you know but for international and it provides I think thoroughly useful in as far as I have been able to peruse it in detail, extremely useful guidelines and in other countries and that is probably what the Commission would also want to look at is how is this done in other countries. What have been their experiences?

ADV PHILLIP MOKOENA SC: May I refer you to page 515 of the document and in order to appreciate the importance of the document and your testimony on that can you please read the foreword of the document?

MS BARBARA HOGAN: "This report provides practical guidance on board practices for Directors of State Owned Enterprises and identifies a number of good practices based on national experiences of a large number of participating countries. It extends the guidance provided

by Chapter 6 of the OECD guidelines on corporate governance on State Owned Enterprises on – and this is on the responsibilities of boards of State Owned Enterprises. The report draws information from a questionnaire based exercise as well as previous publications and background papers Commissioned by the OECD. The report is an outcome of the OECD working party on state ownership and privatisation practices project called enhancing the role of the Boards of Directors of State Owned Enterprises. It was given final approval and declassified by the WPSOPP, (I do not understand who those are) in December 2012. The draft report was prepared by Sally Shelton and Hans Christiansen of the Corporate Affairs division of the OECD Directorate for Financial and Enterprise Affairs. Substantive input was also provided by Jim Colvin acting as an external consultant to the OECD. The development of the report has also benefited from comprehensive consultations with the Business and Industry Advisory Committee, the Trade Union Advisory Committee, Civil Society Academia and OECD partner economies."

ADV PHILLIP MOKOENA SC: So this is quite a useful document to get?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Now you mentioned the date. If you can look at – on page 514?

MS BARBARA HOGAN: Yes?

ADV PHILLIP MOKOENA SC: And then it provides you with the date of 2013.

MS BARBARA HOGAN: Yes right at the bottom.

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: OECD 2013 yes.

ADV PHILLIP MOKOENA SC: Now lastly and this is lastly now concluding on your evidence. I need to refer you to link your evidence with the evidence of Doctor Hellmann and Doctor Kaufmann who have testified before the Commission and if you may refer to a document – their evidence, Mr Chair, was Exhibit GL. You do not have to go there. I will for convenience ask Ms Hogan to read only three paragraphs on page 41. Are you there? It must be written on top Doctor Hellmann, Kaufmann and it is page 41.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: And paragraph 4 thereof it is headed State Owned Enterprise Reform. If you may as a parting shot to this Commission simply read in paragraph 40, 41 and 42 and comment whether do you agree with what they are saying in those paragraphs?

MS BARBARA HOGAN: Yes, I do agree. You want me to read it?

ADV PHILLIP MOKOENA SC: Read them first yes.

MS BARBARA HOGAN: Huh?

ADV PHILLIP MOKOENA SC: Read them first into the record.

MS BARBARA HOGAN: Okay. Paragraph 40:

"State Owned Enterprises can be used to cement the ties between politicians and private actors. As such they are often the critical transmission mechanisms through which State Capture occurs. Though traditionally State Owned Enterprises are often seen as potential vehicles for fostering the state's interests there are also risks that powerful state owned firms use their close relationships to state actors to shape laws, policies and regulations in their own

interest. Moreover the murky boundaries between the ownership and control rights in State Owned Enterprises can give leeway to managers to manipulate their ties to the state for their own interests. As a result to prevent State Capture emanating from State Owned Enterprises there needs to be a clear separation of the management of state owned companies and politics and this particularly important in key sectors such as Energy, Extractives and Finance. Government's nominations of professional management should be subject to independent high level Commissions driven by meritocratic and professional objectives and also considered by the parliament to ensure its independence from external pressure."

ADV PHILLIP MOKOENA SC: Is that in line with what you were informing the Chair?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Proceed then.

MS BARBARA HOGAN: I – the question of parliament's role I think is not clear here and I think that role also needs to be clarified.

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: With that reservation yes.

ADV PHILLIP MOKOENA SC: Paragraph 42.

MS BARBARA HOGAN: "While exhaustive recommendations to address capture in State Owned Enterprises is not our objective here related measures to illustrate the need for reforms include the empowerment of professional independent boards (as I said) which should also be selected through a meritocratic process emphasising technical expertise over political patronage. Further ensuring transparency

and oversight by a disclose of revenues cost, revenue flow between State Owned Enterprises and the state disclosing data on production, plans, trading activity as well as *quasi* fiscal activities. Independent financial audits and an effective level of legislative oversight are also very important. Well we do have an independent audit function at times."

ADV PHILLIP MOKOENA SC: You do...(intervenens).

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Agree to the sentiments echoed by the experts in those paragraphs?

MS BARBARA HOGAN: Yes. Yes.

ADV PHILLIP MOKOENA SC: Mr Chair, that concludes the evidence of Ms Hogan unless there are further questions from the Chair?

CHAIRPERSON: No, thank you very much. I have asked my questions as we were going along. Thank you, Mr Mokoena. Ms Hogan, thank you very much for once again for coming forward to assist the Commission.

MS BARBARA HOGAN: Thank you.

CHAIRPERSON: We really appreciate it and thank you also for remaining for three days instead of one that was envisaged.

MS BARBARA HOGAN: Yes.

CHAIRPERSON: Thank you for all your evidence and the further work that you are going to do. When it is ready you will send it to the Commission and it would be taken into account together with any other suggestions and ideas that will come from various organisations and South Africans towards the end of the work of the Commission but thank you very much once again and you are excused.

MS BARBARA HOGAN: Thank you, Chair. Chair can I thank you for the way that you have presided over this with fairness and insight and to the Team, the Evidence Leader Advocate Mokoena who has been so meticulous and thoughtful in helping me to present my evidence and of course my Legal Team sitting there.

Chair, I just want to say one thing. You know when I joined the ANC and in all the years that I have been there I have always felt that it has been a great privilege to be such – to be a participant in the great movements of history and to be associated at time with an organisation that embodied fine values.

I do not have it here with me but I think of the quotation that Mr Kathrada is always quoted on, on his experience on Robben Island and how he thought we should look upon it and he said it really is a triumph over punishment. It is a triumph. They release – their whole response was it was a triumph over small minds. It was a triumph over evil and that we move forward on that and those are the values of the ANC not only because he was my husband but in many ways he embodied and a lot of other people still do embodied the values.

I am not talking about just an organisation. I am talking about the values we're starved for the truth. This country is really hungry, thirsting for justice and this Commission is probably giving us – will in history be seen as a turning point in which we will be enormously proud as in a way that so many South Africans did not allow all of this to just run away and take its own course.

That under incredible conditions we have been able to start turning it around and this Commission I think is playing such an important role in allowing South Africans to believe once again that there can be hope and to believe that things can come right and I have no doubt and I wish the Commission and everybody who has been putting all their energies here the best of wishes and thank you's from the people of South

Africa for the work that you are doing and I am sure the personal sacrifices that it has meant. Thank you.

CHAIRPERSON: Thank you very much Ms Hogan for those words and I thank you on behalf of everybody in the Commission who all of whom appreciate your words. I also – I have no doubt from the interactions that I receive from ordinary South Africans every day whether I am in a mall or in any public space and for many South Africans who happen to have a way of sending messages to me.

The messages that I get from them are amazing. The sentiments that you have expressed about the Commission I can assure you that they are shared by very, very many ordinary South Africans. Of course a very great number of the South African population is Christian so there are lots of people who say we are praying for you but there are a lot of other people who express support for the Commission and all of these messages give us the courage to go on with the work of the Commission. I just hope that all South Africans including organisations of different types will appreciate that the work of this Commission may entail or actually does entail that certain truths be told and that we as South Africans tell and seek and tell certain truths about what has been happening and what is happening in our country, because if we do not allow people to come forward and tell the truth, tell what they know and without fear of victimisation, without fear of being marginalised, if when we allow people to do that we give this Commission a better chance to do a good job and if this Commission is able to do a good job because people are allowed to come without fear to tell the truth, to tell what they believe is the truth and they do not fear that they will be marginalised in any way by Sections of society, by certain organisations and they know that they will be seen as doing their best for their country to make a contribution to the finding of solutions to some of the problems in our country. If

everybody was given that space to know that they will be viewed in that way then the work of this Commission would be much more easier and so I hope as we move forward that more and more people who come forward will be viewed by South Africans as genuinely wanting to contribute to the work of the Commission and to the work of the country and that if they might say things that other people might not like. What they say must be viewed as their own honest way of making a contribution to the country finding solutions to its problems. Thank you very much.

MS BARBARA HOGAN: Thank you Chair.

CHAIRPERSON: Thank you. You are excused.

MS BARBARA HOGAN: Thank you.

WITNESS EXCUSED

CHAIRPERSON: Yes the Legal Team Mr Paul Pretorius?

ADV PAUL PRETORIUS SC: Before we adjourn Chair ...(intervenes).

CHAIRPERSON: Ms Hogan if you like you can move to sit elsewhere so that, yes, okay all right, but if you are going to, you are still comfortable you can sit because we will not be too long. It is up to you.

ADV PAUL PRETORIUS SC: There are a few matters that need to be dealt with. The first is to place on record that there were two witnesses who had been contemplated as being the next witnesses, but the persons responsible for leading those witnesses have requested that they be not called at this stage pending further investigations. In relation to Ms Mentor who was due to return on Friday again we have been requested to put before you and it has been discussed with you that she will not come on Friday there are further investigations that need to be completed in order to allow her witness statement and her evidence to be finalised once and for all on her return. In relation to the application which is before you ...(intervenes).

CHAIRPERSON: Just on Ms Mentor is – are the lawyers for implicated persons have they – are they aware of what is contemplated?

ADV PAUL PRETORIUS SC: As soon as you make a ruling they will be notified immediately. I discussed it with the Commission's attorney and he is ready to do so.

CHAIRPERSON: Well is the proper thing not to have that discussion with them before a ruling is made?

ADV PAUL PRETORIUS SC: Well DCJ as I understood our arrangement in chambers the arrangement was that the evidence would be deferred to later in the month and implicated parties would be determined.

CHAIRPERSON: Yes, no that certainly is what is contemplated but I understood and I thought I said I want – we should not have a situation where we have another complaint that somebody was ready to come here and the evidence of miss – a decision was taken that Ms Mentor should not be here on Friday without them knowing ...(intervenes).

ADV PAUL PRETORIUS SC: Well then perhaps we should reconvene tomorrow so that that notice could be given.

CHAIRPERSON: Yes, yes let rather do it that way. I think that is the better way.

ADV PAUL PRETORIUS SC: And there is I believe Mr Manyi wishes to address you, but before that Chair can we as also contemplated in chambers deal with the application before you made on behalf of Mr Nene?

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: Now this application is not brought by the Evidence Leaders. It is brought by the legal representatives of Mr Nene and Mr Nene himself. If, again, Chair it was contemplated that given the contents of the application it would be brought in chambers and then you would announce your decision for public

consumption. Again I am quite prepared to arrange for the legal representative of Mr Nene to attend to tomorrow morning. They are available, I have checked, otherwise as suggested in chambers we might just deal with the application now.

CHAIRPERSON: Well if we are going to come in any way tomorrow morning for the other one and Mr Nene's lawyers are not here but can be here tomorrow morning maybe we should just deal with both tomorrow morning. What do you say?

ADV PAUL PRETORIUS SC: That is a change of course, but that is entirely possible and in case that was your decision arrangements have been made for them to be available tomorrow.

CHAIRPERSON: Well I guess one can deal with it I am just thinking you are not Mr Nene's lawyer.

ADV PAUL PRETORIUS SC: No, sure.

CHAIRPERSON: And they are – the application is brought by Mr Nene.

ADV PAUL PRETORIUS SC: Perhaps that is more appropriate.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: If Chair you feel that they should be here to speak to any ...(intervenes).

CHAIRPERSON: Tomorrow morning ...(intervenes).

ADV PAUL PRETORIUS SC: Issue that you may wish to raise.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: It is more appropriate that that be done.

CHAIRPERSON: Yes, yes. Okay I think let us deal with it tomorrow morning and then they can be here. I do not think that it should take much time.

ADV PAUL PRETORIUS SC: No it will not.

CHAIRPERSON: Yes, yes. Okay, all right. So this matter will be dealt with

tomorrow at 10:00 then. Thank you. Mr Manyi wants to say something. Mr Manyi please come forward.

MR MZWANELE JIMMY MANYI: Morning Chairperson.

CHAIRPERSON: Yes Mr Manyi.

MR MZWANELE JIMMY MANYI: Yes, no Chairperson I just feel that I am not getting a fair treatment in that yes on the 23rd was a scheduled date and I got correspondence to say there is a gap today and then I must come in today and so I am here today and I am very ready to table my version. Now the input that Mr Maleka gave to the Chair for the Chair to decide what the Chair has decided I think it gave a wrong impression in this way. What Mr Maleka said when he was tabling the situation he gave the impression as if I speak today I will say something less than what I should have said on the 23rd when in fact that is not the case. I am here Chair on two issues. I am here to respond from a subpoena on a text I sent to Ms Williams and I am also here to respond to put my version on her testimony. So those are the two matters that I need to be responding to.

The impression I am getting from Mr Maleka when we had a discussion here is that he has further questions and so on. I am not understanding Chairperson what those questions should be, because I did not apply to cross-examine Ms Williams so therefore I am not expecting any cross-examination. So I am – all I am asking is the opportunity to place my version. I will not be any wiser from my side on the 23rd that I am today. So what I am asking for today is to table what I would have tabled on the 23rd. I am ready.

CHAIRPERSON: Well Mr Manyi let me just say this that it is regrettable that at a time when an existing arrangement had been made in terms of which you were going to come and give evidence on the 23rd you were contacted to say come today. I

think that is what has given the problem because until you were contacted or until today you knew that you were required on the 23rd and I assume you were ready to come on the 23rd, but you were asked to come today on the basis that there is some space you could come in and you readily came and then suddenly you are told you cannot give evidence. I understand completely why you should feel that you are not being treated fairly. You probably dropped other things that you wanted to do, you know, because the Commission said there is a space could you come.

I have expressed my concern to the Leaders of the Legal Team of the Commission in regard to the fact that you were called for today – you were called to come in today. It would appear that there may have been some misunderstanding within the Legal Team and there is a feeling that the issues that you would cover today maybe it is issue not issues. You have said it is two. I think Mr Maleka may have said his understanding was that you would cover only one issue today, but when he said that I do not necessarily mean he thought you would not yourself be ready to cover whatever else. I think he may have been meaning that from the Legal Team of the Commission they may not yet be ready to canvas certain issues with you that they were planning to canvas on the 23rd. So my understanding is that from your side you may or may not be ready to deal with everything that they have in mind. You certainly are ready to deal with everything that you have in mind should be dealt with, but apparently they are not ready to lead your evidence and deal with your evidence as of today. So if – my understanding is that there seems not to have been sufficient communication within the Legal Team and that is why what happened,happened and so the problem is the result is that there is some inconvenience to you for which I suppose that the Legal Team would apologise. So, so there is a problem with hearing your evidence today, because of that and I think it

is no fault on your part. Do you want to say something?

MR MZWANELE JIMMY MANYI: Yes Chair. Can I propose a compromise position Chair? I think if the state of readiness of the Legal Team is not at a level of engaging with my input cannot arrive at a compromise where at least they should be in a state of readiness to listen. I think Chair in fact on the 23rd I can come again on the 23rd. On the 23rd they will be better informed of my version, because I would have put not only the written version but also my oral submission. I think they will be better informed. If they cannot be informed, if what has been written to them has sparked questions and so on which they want to ask and whatever I am saying Chair there is a chance that if I put my oral version by default I could deal with some of the issues that they are not clear about and I am still saying I am also availing myself again on the 23rd should there be any outstanding matter, but Chair I think let us also just understand that to prepare to come to a session like this is not something that you just wake up and do and, you know, you do not do. There is a psychological preparedness that you do, which I have and I do not think it is fair that I prepare myself to come and deliver at the request of the Commission.

By the way Chair I did this to accommodate the Commission, because the Commission thought they had a gap and I think you still have a gap Chair, because Mcebisi Jonas is not here. So what are we doing after lunch? So I could come back after lunch and deal with my presentation.

CHAIRPERSON: So you, I think maybe what I should do is take the lunch adjournment that may allow some discussion between yourself and the Legal Team to see what can be done in the light of your suggestion. Your suggestion is that maybe your evidence-in-chief be heard and I am not privy to what various issues are – that the Legal Team is – I know there was a mention of a certain number of issues which is certainly more than

two, the two that you have discussed.

Maybe we should – I should stand the matter down unless Mr Maleka you have another suggestion? I should stand the matter down and then maybe after lunch hear whether the discussions between the Legal Team and Mr Manyi has resulted in anything. Let me hear what Mr Maleka has to say. Thank you.

ADV VINCENT MALEKA SC: Chair, my starting point is that whenever a witness is expressing a willingness to testify before you whatever the circumstances that witness should be afforded an opportunity to do so. Mr Manyi tells you today that he is prepared to tell his story and maybe you should afford him an opportunity to do so.

But as and when he tells his story to you we would like to test that story by asking him questions not only on the matters that have been set out in his various statements but all of those matters where his name and engagement in improper behaviour and conduct has been mentioned. You know that his name has come up from a number of testimony given by a number of witnesses and so for example to give you some perspective, Mr Maseko came here to testify and he mentioned how he was transferred from GCIS to the Department of Public Works and how Mr Manyi was cross transferred to become a head of GCIS.

That is vital a question that we would like to explore with him because it raises a number of inappropriate or improper behaviour. You heard Ms Williams who gave you chapter and verse about state regulation on appointment of Directors and what legal processes must take place, transfer of Directors and what legal processes must take place. We would like to explore the evidence of Mr Manyi in that regard to see whether his cross transfer met those legal requirements.

There was evidence placed before you Chair about the extent of inappropriate procurement in GCIS to him permissibly favour TNA. The Commission has managed to

gather information through its own investigation about the conduct of Mr Manyi in relation to those procurement.

It is only fair that he should be given enough opportunity to prepare himself on that issue but if he is willing to take the risk to testify without any preparation on that regard we would explore that issue with him. You have also received evidence about the extent of revenue and payments that were made by a number of state institutions for the benefit of TNA. We would like to explore the knowledge of Mr Manyi in that regard whether or not he has contributed anything in relation to the growth of the business of TNA.

You would recall I think it was Mr Nene who gave evidence about the premise of the discussion he has had with Mr A J Gupta that the starting point of their discussion was that they did not do at that point in time any business with government. It is important to explore that issue with Mr Manyi to see whether or not he took part in the contribution of the growth of the business of TNA from government business.

We would also like to explore with him what he experienced when the TNA and ANN7 business were sold to him. We would like to explore the business model of the business he purchased and what happened to that business when it no longer enjoyed government support because at the end of the day if the questions we were going to explore with him in that regard show that TNA was vitally supported by government business and when it failed because it no longer enjoyed the support of government business all of the improper and inappropriate activities relating to its procurement of business vitally contributed to state capture and those are fundamentally important questions which we would not like to explore on an ad-hoc and piecemeal basis.

They are vitally important in fairness to him that he should prepare himself on

those issues but Chair it is up to him. If he want to explore those issues we will trudge along. We will limp along and we will deal with them. So it is important for us Chair not to give the impression that we are not ready. We are ready but we believe that he too should be ready to the extent that we are going to explore this issue because he has now made himself available by virtue of the fact that Mr Mabunda contacted him about a gap.

We would want to make sure that you have proper documentation before you which we are going to explore as and when we ask him questions in that regard. There is just a note which has just been given to me by my colleague Ms Norman. Can I read it and if it is important I may have to convey its message to you.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Chair, the note says that another issue that we would like to explore with him is his involvement in the Inter-Ministerial Committee that was constituted to deal with the allegation that the banks had inappropriately dealt with the bank closure of the Gupta related accounts.

You have heard evidence of a number of witnesses in that regard including Mr Sinton and it is an issue that we would like to explore with him.

CHAIRPERSON: I will give you a chance Mr Manyi. Okay, all right. Mr Manyi, what I understand Mr Maleka to be saying is that one of the benefits of leaving the arrangements as they were namely that you come on the 23rd to give evidence is one of the benefits is that you would become aware of all the issues they want to ask you on and therefore you would be better prepared to deal with them but if you say you are ready on anything that they might have wanted to ask you about on the 23rd there is no problem.

So their stance seems to be well if you feel that you would like to take the

witness stand today you so to speak waive any right to an opportunity to look at whatever issues, other issues they want to ask you about then from their side then that is fine.

MR MZWANELE JIMMY MANYI: Thank you, Chairperson. Chairperson, I think this Committee has made public how it operates and what Mr Maleka and the rest of the team here are doing I think is at odds with what has been communicated in terms of the operations of this Committee – of this Commission.

It cannot be that when a person is on the witness stand then that is an omnibus of anything that comes and so on. A person comes here either on invitation, on subpoena to respond to a specific issue or a person comes here on his own version or submission or what have you and you get questioned on that.

The reason I am here, Chairperson, is to respond to the issues that are directly facing me and the one is a subpoena in terms of the text I sent to Phumla, and the other is to respond to the other issues that Phumla raised. That is what I am here for.

If there is anything else for instance on the Standard Bank matter I have – my response is on record in terms of that. I have not applied to ...(intervenes).

CHAIRPERSON: To cross-examine.

MR MZWANELE JIMMY MANYI: To cross-examine anybody.

CHAIRPERSON: Yes.

MR MZWANELE JIMMY MANYI: Now to be put on the witness stand to be cross-examined when I have not – there is no permission to cross-examine me because I have not applied to cross-examine anyone. I am now being denied an opportunity to present my version on something that has been presented both in an affidavit and orally and I am supposed to – I am here to respond to that.

Now I am told that no not only that whilst you are here just do this. Whilst you are here just do this. It cannot be fair. This is an unfair process, Chair. I think I should be allowed to table my version and only questions that should be – I should be answering are the questions directed at what I am here to respond to but it cannot – I am not running away Chairperson.

I am in this country. I have got roots here. If I have to be subpoenaed for anything else that Mr Maleka wants to subpoena me for I am here for that. I am ready.

CHAIRPERSON: Yes.

MR MZWANELE JIMMY MANYI: But I should be given the opportunity to table my version and I am ready to answer any question related to what is on the table.

CHAIRPERSON: Yes maybe what we should do is the following. It is quite some time back that Ms Williams gave her evidence and mentioned your name and ordinarily it would have been preferable that you get – you got a chance to respond or deal with that soon after she had given evidence and not too far from when she gave evidence.

Maybe what we should do is maybe I should give you a chance after lunch to give your evidence in regard to what you want to say about the issues that you are ready to talk about.

MR MZWANELE JIMMY MANYI: Yes.

CHAIRPERSON: And leave the Legal Team to ask you questions if they want to ask you questions about what you are ready on or to reserve their cross-examination and you come back on the 23rd and then they cross-examine or ask you questions. Maybe I should not use the word cross-examine. They ask you whatever questions they want to ask on that day but in a way you get a chance today to say what you want to say in response to the allegations that you feel strongly about that were made.

MR MZWANELE JIMMY MANYI: Yes. Thank you, Chair.

CHAIRPERSON: You would be happy with that?

MR MZWANELE JIMMY MANYI: I would be very happy with that, Chair.

CHAIRPERSON: Yes. Okay thank you.

MR MZWANELE JIMMY MANYI: Thank you, Chair.

CHAIRPERSON: Mr Maleka, what do you think of that? So in other words we would take the lunch adjournment. Then after lunch we give Mr Manyi the opportunity to say what he says. You may or may not lead him. He knows what he wants to talk about. Maybe you just say the floor is yours. He deals with those issues and when he has finished if you have questions at this stage you ask him. If you do not have at this stage and you want to reserve them for the 23rd then we adjourn until the 23rd.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: What do you think of that? Then in that way he gets a chance to say what he wants to say but he will come back on the 23rd and everything can still continue.

ADV VINCENT MALEKA SC: Yes, no Chair we would support that approach.

CHAIRPERSON: Okay. In – maybe I should just check. Do you know whether you are likely to rather reserve all your questions for the 23rd or you do not know yet?

ADV VINCENT MALEKA SC: Chair, I prefer to – well to raise my questions in one session but if you think I should ...(intervenes).

CHAIRPERSON: Yes?

ADV VINCENT MALEKA SC: Deal with those matters he is prepared to speak on ...(intervenes).

CHAIRPERSON: Yes ...(intervenes).

ADV VINCENT MALEKA SC: Then I can ask questions in that regard.

CHAIRPERSON: Yes. I am easy. I – if, I think it is important, maybe it is important

just to give him a chance to really deal with the allegation that he feel strongly about.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: And I am quite easy even if you were to say may I not ask him any questions today, may I reserve all my questions for the 23rd or you say I will ask him only a limited number of questions now. Others will be asked later. I am easy, but in that way he will have been given an opportunity to deal with what he feel very strongly about.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: And then we will still continue on the 23rd.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: So it may be that it might not be a bad idea to – not to ask any questions.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: And then we resume on the 23rd with him.

ADV VINCENT MALEKA SC: Yes. Chair I will confer with my colleagues to see what is the best option.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: For us.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: And we can report to you after Mr Manyi has testified.

CHAIRPERSON: Yes. Okay, no that is fine. Then we are at 13:43. Maybe I should just ask Mr Manyi how long do you think you would take if you were not to be asked any questions today?

MR MZWANELE JIMMY MANYI: I think ...(intervenes).

CHAIRPERSON: You are obscuring him Mr Pretorius.

MR MZWANELE JIMMY MANYI: Chairperson I am ready. I think I can do what I had to do within one hour.

CHAIRPERSON: Okay, no thank you, thank you, thank you.

ADV PAUL PRETORIUS SC: One further matter please Chair. I have been asked Mr Bloom to place on record that he was here or is here today, but that he will abide arrangements with the Legal Team in relation to his future attendance. He is perfectly willing to do so.

CHAIRPERSON: Okay no thank you very much. Thank you Mr Bloom for availing yourself and thank you for being able to be flexible for future arrangements. Thank you. We are going to take the lunch adjournment now and resume at 14:45. That is an hour from now. Thank you. We adjourn.

HEARING ADJOURNS

HEARING RESUMES

CHAIRPERSON: Registrar, administer the oath of affirmation to Mr Manyi please.

AUDIO FILE FAULTY – DOES NOT PLAY THE ADMINISTERING OF THE OATH OR AFFIRMATION

MR MZWANELE JIMMY MANYI (duly sworn, states)

CHAIRPERSON: Thank you Mr Manyi.

ADV VINCENT MALEKA SC: Chair before Mr Manyi starts with his testimony we have thought of providing some discipline to his testimony by preparing a bundle of all the statements he has made and subject to your directions to present that bundle to you in a form of an exhibit I have taken the liberty of marking it as Exhibit M. On my last count the last exhibit you dealt with was L.

CHAIRPERSON: Yes, yes.

ADV VINCENT MALEKA SC: And we have placed a copy of that bundle before Mr

Manyi.

CHAIRPERSON: Okay.

ADV VINCENT MALEKA SC: And he is aware that this bundle comprises ... (intervenes).

CHAIRPERSON: Yes ... (intervenes).

ADV VINCENT MALEKA SC: The statements he has made.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Including applications for condonation.

CHAIRPERSON: Yes. Okay, no that is fine. Thank you. Are you going to lead him or are you going to let him just speak?

ADV VINCENT MALEKA SC: Chair ... (intervenes).

CHAIRPERSON: Either is fine.

ADV VINCENT MALEKA SC: We would prefer that he presents his evidence.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: The way he chooses.

CHAIRPERSON: Yes, okay, okay thank you. Mr Manyi ... (intervenes).

MR MZWANELE JIMMY MANYI: Yes Mr Chair?

CHAIRPERSON: Are you ready?

MR MZWANELE JIMMY MANYI: Yes, yes Chairperson.

CHAIRPERSON: Well the normal way is just to start by telling us a little bit about yourself and then go to deal with the issues you want to deal with and to the extent that you may want to refer us to any of the documents or statements in the bundle you may do so just indicating what page and if there is a paragraph number what paragraph number, but otherwise feel free and you may start.

MR MZWANELE JIMMY MANYI: Thank you Chairperson. My name is Mzwanele

Manyi and I am addressing this Commission in my capacity as the former CEO of GCIS.

CHAIRPERSON: Yes you can continue and you have been prompted to give this evidence in reaction to the evidence that was given by Ms Phumla Williams, is that correct?

MR MZWANELE JIMMY MANYI: Yes Chairperson. I am here on two accounts. The one account is really on the direction of the Commission, call it a subpoena to talk to the text that I had sent to Phumla and I kindly requested the people I was dealing with Chairperson that in order to be more efficient that could I not use that opportunity to also deal with the rest of what Ms Williams had to say and the team agreed that I do that. So today I am hoping to do both things to deal with Mr Williams' – Ms Williams' testimony and at the same time incorporate the text message which is also consolidated in my submission.

CHAIRPERSON: Okay. Is what you are telling me now any different from what you told me before lunch in terms of what you want to cover in your evidence?

MR MZWANELE JIMMY MANYI: No.

CHAIRPERSON: It is still the same?

MR MZWANELE JIMMY MANYI: Exactly the same Chair.

CHAIRPERSON: Okay all right. You may proceed.

MR MZWANELE JIMMY MANYI: Thank you Chair. Okay. So Chairperson I think in terms of the – I am going to start with Ms Phumla Williams' testimony. In her affidavit the areas that deal specifically with me are paragraph 14 and, two paragraphs, paragraph 16 specifically.

CHAIRPERSON: Did you say 14 and 16?

MR MZWANELE JIMMY MANYI: 14 to 16.

CHAIRPERSON: Oh 14 to 16.

MR MZWANELE JIMMY MANYI: 14 to 16 are the paragraphs that have got the direct allegations so to speak that are levelled at me.

CHAIRPERSON: Yes.

MR MZWANELE JIMMY MANYI: But then I just thought Chair that with your indulgence Chairperson if you allow me that before I get to paragraph 14 and 15 I also deal with paragraph 12 and 13 as a build up to that so that everything ...(intervenes).

CHAIRPERSON: That is fine ...(intervenes).

MR MZWANELE JIMMY MANYI: Is in proper context.

CHAIRPERSON: That is fine.

MR MZWANELE JIMMY MANYI: Thank you Chair. So Chairperson the first point I want to make on paragraph 12 relates to basically when Themba Maseko left, which is a direct impact on when I arrived, because everybody knows it is the same day and when Ms Williams was here she made statements about January, that Themba would have left in January and so on and there was a lot of discussion around that. So I just want to place it on record Chairperson that that is not true in the first instance. Themba would have left the department, left GCIS ...(intervenes).

CHAIRPERSON: That is Mr Maseko.

MR MZWANELE JIMMY MANYI: Sorry. Sorry Chairperson he is somebody I know very well.

CHAIRPERSON: Yes.

MR MZWANELE JIMMY MANYI: Mr Maseko left GCIS on the 3rd of February and this is very important Chairperson, because the events of January 2011 in GCIS is not something I want to be associated with. So it is very – it must be very clear that

what happened in January all the transgressions I am going to go through here that happened in January happened long before I even knew I was ever going to be at GCIS. So there is context to what happened. So that is the first point. Then I just thought ...(intervenes).

CHAIRPERSON: Maybe just so that I follow. You said Ms Williams said you came in or you said she said Mr Maseko left GCIS ...(intervenes).

MR MZWANELE JIMMY MANYI: Yes ...(intervenes).

CHAIRPERSON: In January.

MR MZWANELE JIMMY MANYI: She said Mr Maseko left GCIS in January and then it was also said here that I came in the same day.

CHAIRPERSON: Yes.

MR MZWANELE JIMMY MANYI: It was explained here within hours.

CHAIRPERSON: Yes, yes.

MR MZWANELE JIMMY MANYI: So therefore by ...(intervenes).

CHAIRPERSON: Yes ...(intervenes).

MR MZWANELE JIMMY MANYI: Inference I would have also therefore arrived in January.

CHAIRPERSON: Yes, yes.

MR MZWANELE JIMMY MANYI: It is not true.

CHAIRPERSON: Okay so you are saying you came, you came in or he left, that is Mr Maseko, you say he left on the 3rd of February?

MR MZWANELE JIMMY MANYI: Yes and I interacted with him on that day Chair, on the 3rd of February.

CHAIRPERSON: Okay.

MR MZWANELE JIMMY MANYI: I do put in my statement here that he had given,

on the 2nd of February there was a Cabinet meeting and if people can go through the diary of 2011 2nd of February you will find it is a Wednesday which is a normal Cabinet day and then on Thursday it was a Cabinet press briefing, which Mr Maseko was leading. After the press briefing I had a chat with him outside at Union buildings. At the time they were doing press briefings at the Union buildings. So I had a chat with him briefly just to say "okay hand over, what do we do" and he was actually in a rush to go to DPSA at the time. So I did not pursue him any further. He said just go and you will find a team there, which is exactly what I did and just in case there was any doubt on what I am saying Chairperson I have actually prepared a statement, an exhibit here which I have called RA1, which is in the bundle and this exhibit is the Cabinet statement, which is dated the 3rd of February and at the end of that Cabinet statement ...(intervenes).

CHAIRPERSON: I am sorry in this bundle what page is it or is it not included there?

MR MZWANELE JIMMY MANYI: It is included Chairperson it is just that ...(intervenes).

CHAIRPERSON: It is just ...(intervenes).

MR MZWANELE JIMMY MANYI: I did my own preparation last night.

CHAIRPERSON: Okay, all right. Have you got copies of the one you have prepared separately or you do not?

ADV VINCENT MALEKA SC: Chair if I may assist?

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: RA1 is pages 26.

CHAIRPERSON: Page 26.

ADV VINCENT MALEKA SC: And 27.

CHAIRPERSON: Okay.

ADV VINCENT MALEKA SC: Of Exhibit M.

CHAIRPERSON: Thank you.

ADV VINCENT MALEKA SC: Okay.

MR MZWANELE JIMMY MANYI: Thank you and now I would request Chair that through you Mr Maleka – that Mr Maleka to continue with this kind of assistance. I will be mentioning these various exhibits if he can just keep the pages I would really be, appreciate it.

CHAIRPERSON: Yes, no I am sure he will. Thank you.

MR MZWANELE JIMMY MANYI: Okay thank you Chair. So Exhibit 1 for me RA, that RA is for response affidavit. So my Exhibit 1 is exactly what he has pointed out to. This is a Cabinet statement. So I think they should put to bed any discussion about when is it that Mr Maseko left. There is concrete evidence right here. So that is the first thing. The second ...(intervenes).

CHAIRPERSON: I am sorry. So this statement refers to a Cabinet meeting of the 2nd of February?

MR MZWANELE JIMMY MANYI: Yes. What happens is ...(intervenes).

CHAIRPERSON: Would it have been issued on the same day or the following day?

MR MZWANELE JIMMY MANYI: The following day Chair.

CHAIRPERSON: Okay.

MR MZWANELE JIMMY MANYI: Yes.

CHAIRPERSON: Okay.

MR MZWANELE JIMMY MANYI: It was issued on the 3rd of February for a meeting that happened the day before on the 2nd.

CHAIRPERSON: Okay.

MR MZWANELE JIMMY MANYI: Yes.

CHAIRPERSON: Okay, okay, okay.

MR MZWANELE JIMMY MANYI: Right so that is the first thing. The second thing
Chairperson ...(intervenes).

CHAIRPERSON: I had got the impression from Mr Maseko's evidence that he left
GCIS on the same day on which there was a Cabinet meeting. So to the extent that
he may have said that you are suggesting that may not be correct.

MR MZWANELE JIMMY MANYI: It is impossible Chairperson.

CHAIRPERSON: Yes.

MR MZWANELE JIMMY MANYI: Because here is a statement.

CHAIRPERSON: Yes.

MR MZWANELE JIMMY MANYI: And I have played this role as well I would know
that you have a Cabinet meeting and you prepare that statement the whole night.
The following day you table the statement. So here is the statement tabled on the
3rd.

CHAIRPERSON: I did understand that his evidence was to the effect that he was
involved in the preparation of the statement that would talk about the Cabinet
meeting, but I was under the impression that the statement – that he was suggesting
that the statement was issued on the same day, but I may have made a mistake, but
your point is simply that it was issued the following day.

MR MZWANELE JIMMY MANYI: He actually read it the following day.

CHAIRPERSON: Yes, thank you.

MR MZWANELE JIMMY MANYI: Not just issued. He tabled it and I am sure people
from the media that are here would vouch to that. They asked questions and so on.

CHAIRPERSON: Okay.

MR MZWANELE JIMMY MANYI: But he tabled it at the Union building. That is how

I met him. Usually when you issue it there is not even a press briefing you just issue it electronically and then that is it.

CHAIRPERSON: Yes.

MR MZWANELE JIMMY MANYI: This time around we were at the Union buildings on the 3rd.

CHAIRPERSON: Okay.

MR MZWANELE JIMMY MANYI: Yes. So that is the first point Chair and then the next thing ...(intervenes).

CHAIRPERSON: But I want to hear more about your conversation with him. You have referred to a conversation with him when you say he was in a hurry to go to DPSA. Was this on the Wednesday – on Thursday?

MR MZWANELE JIMMY MANYI: Yes, Chair.

CHAIRPERSON: After the Cabinet meeting?

MR MZWANELE JIMMY MANYI: Yes, Chairperson it was on Thursday.

CHAIRPERSON: And was it after the press briefing?

MR MZWANELE JIMMY MANYI: After the press briefing.

CHAIRPERSON: Okay. So the two of you did talk about on that day about the fact that he was leaving GCIS and you were going to GCIS?

MR MZWANELE JIMMY MANYI: Yes on that day yes we had a brief chat and really I think we knew that – we knew Chairperson I would have known maybe a day or so before that ...(intervenes).

CHAIRPERSON: That you were deployed?

MR MZWANELE JIMMY MANYI: Deployed to GCIS.

CHAIRPERSON: Yes. Yes.

MR MZWANELE JIMMY MANYI: Yes and then we had a brief chat and then he was

saying he was going to DPSA.

CHAIRPERSON: Yes. Yes.

MR MZWANELE JIMMY MANYI: Yes.

CHAIRPERSON: Okay. If you are going to address this later it is fine. You can deal with it later but if you were not going to address it maybe you can deal with it now. I would like to know when you got to know that you were being moved to GCIS and what were the circumstances under which you were told that?

MR MZWANELE JIMMY MANYI: Yes.

CHAIRPERSON: So you can deal with it immediately if you want to or later.

MR MZWANELE JIMMY MANYI: Yes, Chair.

CHAIRPERSON: If you want to.

MR MZWANELE JIMMY MANYI: I can deal with it right now.

CHAIRPERSON: Thank you.

MR MZWANELE JIMMY MANYI: Yes. I think, Chairperson, now that the date was the 3rd of February it would have been a few days before that. I just do not remember the exact times. It was a few days before that. Not more than five days before that. Not more than five days before that where Minister Chabane – the late Mr Chabane we had a meeting and we actually met at Protea Hotel in Midrand.

In fact, Chairperson, I remember very well he actually proposed – I chose to do this role. He gave me two options. At the time this was the one position that was open or rather that he was putting forward for me to consider. The other position was a COO position in the Presidency and the reason I decided on this position is because at the time the COO position was a Grade 15.

Now I was already Grade 16 being a DG of Labour so it did not make sense to me to opt for a grade lower. So I then opted for the GCIS position because it was

horizontal move. So that is what happened. So we had a chat there and then he said well if I choose that one so that is it.

So his issue was to fill one of the two positions and I had the first bite at the cherry in terms of deciding which one. So that is really what then happened and yes.

CHAIRPERSON: And did you – did he say why or rather let me put it this way. Had you asked to be moved from the position of DG of Labour elsewhere?

MR MZWANELE JIMMY MANYI: No.

CHAIRPERSON: In other words his approach to you was it in response to any request made by you or wish to be moved from the position of DG Department of Labour?

MR MZWANELE JIMMY MANYI: No, Chairperson it was not. I had not requested to be moved to that position but there was a situation that I think government was dealing with because at the time at the Department of Labour we had some kind of a fallout with the Minister at the time.

In fact I was on precautionary, what is it? On special leave.

CHAIRPERSON: Suspension?

MR MZWANELE JIMMY MANYI: No special leave. Well it started as a precautionary leave and it graded into a special leave and all that.

CHAIRPERSON: Oh.

MR MZWANELE JIMMY MANYI: So I was at home.

CHAIRPERSON: Oh okay. Okay so there was a certain situation that needed to be dealt with.

MR MZWANELE JIMMY MANYI: Yes.

CHAIRPERSON: Which affected the working relationship between yourself and the Minister in your Department at the time?

MR MZWANELE JIMMY MANYI: Yes, Chairperson.

CHAIRPERSON: Yes. Okay. All right and then this approach from him you saw as an approach to try and deal with that situation?

MR MZWANELE JIMMY MANYI: Yes. I thought it was a resolution to my – because I had been at home for a couple of months, a few months actually and so when this came I said oh, well because even for that without going into that detail I never got really charged into a disciplinary process and whatever and so when it was something that was about to happen or going to happen months rolled by.

I was sitting and preparations were being made to do all kinds of charges but bottom line is that I do not sit with a guilty verdict or having sat and being dealt with by DC. So while that process was busy rolling and so on I think sanity prevailed from where I sit and then I had to move on.

CHAIRPERSON: And can you just speak more about the conversation between yourself and Minister Chabane when he came with this suggestion? Just tell us more about that conversation.

MR MZWANELE JIMMY MANYI: Chairperson, this would have happened in 2011. This is now 2018 so ...(intervenes).

CHAIRPERSON: Yes, no what you cannot remember, you cannot remember.

MR MZWANELE JIMMY MANYI: Yes. No, all – Mr Chabane is not a man of many words, Chairperson. He comes and he just very telegraphic, he just has a job to do. He does that. He is not your longwinded kind of person. He came and said Chief, let us sit and talk and then we ordered some cold drinks and then he says look, I have two positions for you to consider, this one or this one. What is your choice?

CHAIRPERSON: Okay.

MR MZWANELE JIMMY MANYI: Yes. I did not – we did not even get to the second glass of drinks, Chairperson. The meeting was over.

CHAIRPERSON: Okay. Okay, no that is fine. You may continue.

MR MZWANELE JIMMY MANYI: Okay. So that was that part and then, Chairperson, on paragraph 13 of Ms Williams' input or testimony ...(intervenes).

CHAIRPERSON: Statement.

MR MZWANELE JIMMY MANYI: Yes, statement she talks about the changes I made. Yes indeed, Chairperson I did make some very dramatic changes and in fact I think it was my duty as an Accounting Officer to give expression to the substance and the letter of Section 38 of PFMA.

So I come into a department because at the end of the day I am going to be accountable. Everything is going to be on my head so therefore I think the issue of making the changes is the right thing to do. One of the things that I spearheaded in changing was the vision statement, Chairperson.

I found a paragraph long preamble of sorts for a vision statement which no one could remember by the way. You would stop – I would stop to – I would stop people and say what is the vision of GCIS? No one would be able to remember. So I just took the view that if you do not even know the vision of the organisation how can you get yourself to work towards it? So the first thing we went to a strategy session to change the vision into something that is memorable, that is – that can rally people together to say this is where we are headed.

So we ended up with a vision statement that says – that is to be the pulse of communication excellence in government. That vision statement still stands today, Chairperson and is rallying the teams together and indeed one of the changes I also brought in is a do it now culture.

I am that kind of a person if something must be done it must be done here and now not tomorrow, tomorrow, tomorrow. So that is my culture. It does not start today,

Chairperson. I found a situation at GCIS where you know typical government culture so to speak that characterises government of not delivering quickly.

A simple thing of moving out tray from your own out tray to somebody's in tray five steps away. I am not over dramatising this, Chairperson when I say that would not move without a mailman coming to move that out tray and five steps away to drop it off to the in tray of another. That is what was happening when I arrived there.

So there are a few things that I changed. By way of example as well as I conclude on some of these changes that I brought in that would have created some kind of a culture shock when I arrived there, there was an auditorium, Chairperson that was underutilised, almost redundant.

Then I converted that. Within two weeks we were able to convert that auditorium into a press briefing session with all kinds of video linkages between Pretoria and Cape Town. My very first briefing two weeks later was in that auditorium, Chairperson.

So this is the kind of "do it now" culture that I introduced when we got there. So that is by way of introduction and just lastly even the issue of the payment of suppliers we were priding ourselves at GCIS that we were the one department that had the best of the turnarounds.

When I left I know for a fact that the July report 2012 will show that we were able to pay suppliers within 14 days because this was not complicated, Chairperson. A person submits an invoice. If the person submits an invoice all we have got to do is to check if work was done to that invoice.

That is not complicated to establish whether that work was done or not to the right quality and standard. That cannot take more than two weeks honestly for anything. So that gets done and within two weeks the person is done and you do not

go on workshop instead of paying people's invoices and so on.

So I established that culture of people understanding that not everybody is on a monthly salary. That there are entrepreneurs out there that are dependent on those invoices being paid on time. So we did that at GCIS and very proud to say that we really did very well for the people that we were doing business with GCIS.

I then moved to paragraph 14, Chairperson then I deal specifically with some of the allegations about changing the Bid Committee. Did I change the Bid Committee? Did I dismantle the Bid Committee? Yes I did. Do I apologise for that? Definitely not. So why did I do this? So the background is this, Chairperson. When I arrived I indeed reappointed Ms Williams in the same position to Chair the Bid Committee. This is on my arrival and that for me is a demonstration that I did not go there with any agenda.

I came there to maintain smooth operations, smooth running of things. So if Phumla was Chairing and I am not aware of anything going wrong so Phumla continued to Chair. The issue that came about was then the realisation, somehow it got to my attention that something has gone horribly wrong in the procurement space where, Chairperson, there was an irregular appointment of a particular service provider.

Now that on its own cost the government just under R7 million in terms of money that government lost in that process and I found the collaboration of Bid Adjudication Committee members and procurement members, that whole team, somehow they had a very elaborate scheme of doing this thing.

A typical mini VBS Chairperson if I could call it that which I will explain a bit later just now. That is the situation I found. That situation was untenable. There was no way any Accounting Officer would have left that thing unattended. So that is the reason, chief reason, why I had to change that Bid Committee. We then appointed – I then on realisation of this I said to the Chief Internal Auditor just report this to all the

authorities available and the Chief Internal Auditor went and reported this matter everywhere. You know it was reported with the SIU, Special Investigating Unit and also to the Auditor-General. After those reports but still something – not much was coming out because people have got all their various protocols and so on. So we ended up at the end cutting the long story short with the Statistician General because this service provider was meant to do some project which had to do with Census 2011. So the whole thing about the campaign, awareness campaign, and so on to popularise Census 2011. This is what this is about.

So in that mix the appointment of the – and I will go to details about that just now – the appointment of that service provider was irregular to the extreme and we together with the Statistician General we then agreed to appoint National Treasury to do thorough investigation of this matter having reported to the other two authorities.

So we gave National Treasury four key areas to look at. One was whether the process followed in acquiring service providers for the Census 2011 projects was followed. Whether service providers were they procured for, whether or not there was value for money to the state in the supplied services, whether the project was conducted in accordance with the memo between STATS SA and GCIS.

So those are the four key areas that we wanted probed. I must point out – pause at this point Chair and point out that all this calamity happened in the presence and with the participation of the people that Ms Williams was giving a glowing CV of here that they were competent and committed. They had all kinds of training. They had a five day training with National Treasury. They are committed. The CFO or it ticked all the boxes, but despite ticking all the boxes there was corruption and fraud with a lot of them implicated in that.

So that was the situation that had transpired there. So I then had to unbundle

that Bid Adjudication Committee and then Chairperson I just want to take you through some of the findings. What I am going to go through here is not me saying this it is the National Treasury report. They made findings or there is no Manyi input here. It is exactly as it is. I have got the report here, but I have just paraphrased it here, but it is almost word for word as it were Chairperson.

The first point that National Treasury makes is that the company that was appointed despite the fact that it was registered in 2009, in December 2009 they make the very interesting observation that on the 3rd of January 2011 there were three Directors that came into this company. They make specific reference to this point and then they make a very interesting observation again to say when these Directors came in three days later basically this company was then, which is on the 6th of January, then this company was already in the system with GCIS. Now on the 6th of January when the interaction started with this company GCIS, the 7th of January that interaction was approved and so on. So on the 6th – so National Treasury makes these dates very interestingly. They say on the 3rd these Directors come in. On the 6th the first interaction with GCIS happens basically. On the 7th there is a payment notice that is signed off to approve payment Commissioning of some R26 million project happened just the very next day and they make very interesting observations – findings Chairperson.

The first one is that the person that signed this payment notice was Ms Phumla Williams and National Treasury finds that in fact in terms of the financial delegations of GCIS she was not delegated to do this. So strictly speaking her signing this thing was on its own irregular. They go on to make all kinds of findings that you needed to have had a Bid Specification Committee in the first place. So even that was not put into place.

Then they make all – they make list of the contraventions that were entered into by GCIS that even the Constitution Section 217 that deals with procurement was contravened. They also mention that Section 38 of the PFMA which is – means that an Accounting Officer must put in processes in place, all of those were contravened where the Accounting Officer needed to make sure that the provisioning system for procurement is fair, equitable, transparent, competitive and cost effective that was not in place. He also mentioned that GCIS contravened paragraph 4.9 of the National Treasury supply chain management and so on.

They also mention that GCIS contravened Treasury Regulation 16(a)(6.a) paragraph A in that no bid adjudication process took place as required. They go on Chairperson about these transgressions that the appointment of the service provider was not supported by an appointment letter which outlined the scope of work as well as deliverables expected from the service provider.

Now at that point Chairperson I want to point out to Exhibit RA2. This is the only piece of paper that Commissioned this project which was like R26 million. This is all there is to it. No ...(intervenes).

CHAIRPERSON: Mr Maleka do you know where to find, where we find that one?

ADV VINCENT MALEKA SC: I do not ...(intervenes).

CHAIRPERSON: You do not, you do not know?

ADV VINCENT MALEKA SC: I do not have a copy of the report.

CHAIRPERSON: Okay.

ADV VINCENT MALEKA SC: The testimony of Mr Manyi on these transgressions.

CHAIRPERSON: Yes, okay.

ADV VINCENT MALEKA SC: Begin at page 11 nê?

MR MZWANELE JIMMY MANYI: Page 28. It is on page 28 Chairperson.

CHAIRPERSON: Sorry?

MR MZWANELE JIMMY MANYI: It is on page 28.

CHAIRPERSON: 28?

MR MZWANELE JIMMY MANYI: Yes.

CHAIRPERSON: Okay thank you.

MR MZWANELE JIMMY MANYI: Page 28.

CHAIRPERSON: Okay, thank you.

MR MZWANELE JIMMY MANYI: Yes. So ...(intervenes).

CHAIRPERSON: Sorry, sorry. Yes Mr Maleka?

ADV VINCENT MALEKA SC: Unless I have a different record ...(intervenes).

CHAIRPERSON: That is not what you have on 28?

ADV VINCENT MALEKA SC: I picked them up from page 11 going to page 13. In fact they end at page 14 paragraph 12.

CHAIRPERSON: What are you looking for there Mr Maleka?

ADV VINCENT MALEKA SC: The testimony of Mr Manyi talking about what he found when he got to GCIS the mini VBS saga he is talking about.

CHAIRPERSON: Oh, oh.

ADV VINCENT MALEKA SC: All of that is explained as I have it.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: From page 11.

CHAIRPERSON: Oh, yes no that is fine. He is dealing with a specific document which he says is at page 28 and it looks like what I have at page 28 is what he is talking about.

ADV VINCENT MALEKA SC: Yes, yes Chairperson.

CHAIRPERSON: Marked Exhibit RA2.

ADV VINCENT MALEKA SC: Yes, yes Chairperson.

CHAIRPERSON: Yes. Okay thank you.

ADV VINCENT MALEKA SC: Okay.

CHAIRPERSON: Okay.

MR MZWANELE JIMMY MANYI: So this is the exhibit. This is the only piece of document that constituted the engagement of GCIS and this particular service provider. None of this had anything about deliverables, anything, anything at all. This is all there was to it and which was also signed by a person who is not even delegated to do that. So that is what was happening there Chairperson. As I am saying these are the findings of a – of National Treasury. This is not me being very intelligent and finding out these things.

Treasury also noted that the service provider of GCIS was appointed despite not being registered on the supply database. Now these are all the roles for a team that is doing this that had all the, ticked all the boxes, but look at what National Treasury has found. No evidence was found to indicate that the service provider was even screened by GCIS prior to their appointment and all that. So, and these things happened in January Chairperson. I must make this very clear. That is why I want to stay away from January. These are things that happened before I arrived. This must be very clear. This is all the things that happened before I arrived.

Treasury noted that the registration document was signed on the 8th of January and the registration captured on the 14th of January after the appointment of the service provider. So it was, you know Chairperson every rule that could be broken was broken in this thing and then National Treasury also notes that notwithstanding that services had not yet been rendered, but an invoice dated 10th of February was submitted by the service provider to GCIS.

So it goes on like that Chairperson to illustrate that the whole on boarding of this service provider was really a monumental disaster as it were, but ...(intervenes).

CHAIRPERSON: How much in financial terms did you say was involved with this?

MR MZWANELE JIMMY MANYI: I said under R7 million Chairperson. The actual number is R6 983 460,02.

CHAIRPERSON: 6 million?

MR MZWANELE JIMMY MANYI: 6,9.

CHAIRPERSON: Oh, okay.

MR MZWANELE JIMMY MANYI: Yes, but it is going to go up just now Chairperson.

CHAIRPERSON: And that 26 – that R26 million on that document?

MR MZWANELE JIMMY MANYI: That R26 million on that document was the total project if it had gone on, but the – it was stopped dead in its tracks at some point. It was stopped at R6,9 million otherwise it was headed for R26 million.

CHAIRPERSON: Okay.

MR MZWANELE JIMMY MANYI: So somewhere ...(intervenes).

CHAIRPERSON: Okay ...(intervenes).

MR MZWANELE JIMMY MANYI: It got interrupted.

CHAIRPERSON: Yes.

MR MZWANELE JIMMY MANYI: And the investigation started and everything was stopped.

CHAIRPERSON: Okay.

MR MZWANELE JIMMY MANYI: So the amount lost by the time it got stopped was just around R7 million.

CHAIRPERSON: Okay, okay.

MR MZWANELE JIMMY MANYI: Yes. Okay. So and I must hasten to say then

Chairperson that all this was in the empire of Ms Williams, because what she had done there Chairperson all supply chain reported to her. The CFO reported to her. The Chief Internal Auditor reported to – so everything was right here and so on. No checks and balances, nothing and so on. So that is the situation that was happening there and it goes on Chairperson, you know, National Treasury did a good job in terms of doing this investigation. National Treasury also found that the supply chain officials advised the service provider to break up the invoice. This is fraud.

So what they would do Chairperson is that because if you have to pay anything over a million that attracts National Treasury's attention. So therefore all other things need to be in place. So in order to avoid that so what they would then do is to advise the service provider to bill less than a million just so that it can go under the radar and so on. So that is how this R6 million was – R7 million was paid in seven different invoices as it were. So ...(intervenes).

CHAIRPERSON: So like each invoice would be under a million?

MR MZWANELE JIMMY MANYI: Yes.

CHAIRPERSON: But then you would have many invoices instead of ...(intervenes).

MR MZWANELE JIMMY MANYI: Yes.

CHAIRPERSON: Even when you could have had just one invoice or two?

MR MZWANELE JIMMY MANYI: Yes that is right, exactly.

CHAIRPERSON: Okay.

MR MZWANELE JIMMY MANYI: If for instance for that piece of work for argument sake was R1,5 million and then you say okay just divide that by two let us make it R750 000, R750 000 kind of thing and then it goes under the radar and nobody sees, yes. So that is what happens and that has got quite implications Chairperson because then what then happens is that when you do that in terms of the government prescripts

the person that gets red carded is the Accounting Officer, because the prescripts are all rooted around the Accounting Officer then the law is going to say Accounting Officer did not do this yet you have got officials on the ground that are busy fiddling with the system, that are busy cutting corners circumventing processes and all that.

So that is the situation and I want to underscore this point, Chairperson that this happened and later I will say why these dates are important. These invoices were paid between the 7th of March and the 23rd of March. So that whole R7 million was paid and I will get to why that is important.

Now of great concern, Chairperson, which was also found by National Treasury, National Treasury found that when they were doing interviews one of the people that they interviewed said the issue of splitting of invoices was actually common practice at GCIS and then that she had – this person that they were interviewing said she had requested suppliers to split invoices on numerous occasions in order to ensure prompt payment and she said the practice was never rectified or brought to her attention as being irregular.

So for me that is a great concern and I think somewhere I make a recommendation to the Commission that I think more must go into how many of these split invoices would have happened even before January 2011 if this official is saying "what is the problem here? This is normal practice" and so on in GCIS.

So how many millions have been irregularly dispensed with using this irregular method as it were. There is another supplier around the same time of the same project, Chairperson that also got paid under exact similar conditions and so on about R777 000 to the supplier.

So the total amount paid irregularly for this project was something like R7 761 215.90. So that is the number. R7 761 215.90 that is the total amount that was

paid irregularly as it were. Treasury – National Treasury recommended disciplinary actions on various identified individuals which were at the forefront of the scam and also that fraud cases must be opened.

So, Chairperson I have not detailed the list of people here because my intention coming here was not to reopen this investigation so to speak. I was just mentioning – I am just here to mention it as an example of what happened.

So due processes did take place to deal with it by way of National Treasury and further investigations are happening and so on. So I did not want to put people's names here when they might be in other processes as it were but bottom line is that this is the kind of rot that got me to say "up to here, no further". I must dismantle this Rolls Royce and so on.

Further to that point, Chairperson also National Treasury also found that they are actually – there were actually three service providers, Chairperson that were involved with this. Two service providers were appointed by GCIS irregularly.

The one service provider was appointed by STATS SA but I think their appointment might have been correct, might have been regular but the issue here is that that STATS SA service provider the duty of that provider was to supply artwork for these other two to do whatever they needed to do and that did not happen but that service provider, Chairperson was paid R64 million for work not delivered.

So STATS SA paid a whopping R64 million to a service provider whose work was never delivered at GCIS and these two were blaming that service provider and so on. So I also make a recommendation that I think the Commission must look into that R64 million and I must also say then here, Chairperson that as much as National Treasury did a good job but I was somewhat disappointed by the lack of enthusiasm by National Treasury to follow on that R64 million.

They just say in the report, Chairperson, that they tried to find the supplier. The supplier did not return the call. They just left it at that R64 million and yet National Treasury has got a duty in terms of the Constitution of this country to run and ensure that the financial affairs of government are where they should be.

Now if National Treasury is aware that there is R64 million on somebody who we have got evidence on the other side that the services that they were procured for were not actually delivered but you do not find any enthusiasm to chase behind that R64 million. So I am very worried and nervous about the attitude of National Treasury in that specific aspect. I proceed, Chairperson.

CHAIRPERSON: Well I am just concerned about R64 million being paid for work that was never done and we all know that from – that we do hear stories of contractors getting paid for work that has not been done or incomplete work.

MR MZWANELE JIMMY MANYI: Yes.

CHAIRPERSON: Or work of very poor quality.

MR MZWANELE JIMMY MANYI: Yes.

CHAIRPERSON: And obviously where this is based on corrupt intentions even from within government departments.

MR MZWANELE JIMMY MANYI: Yes.

CHAIRPERSON: Maybe that is something that can happen.

MR MZWANELE JIMMY MANYI: Yes.

CHAIRPERSON: But I wonder whether some of these things happen in circumstances where from the government departments it is just incompetence whether we could be having incompetence of that level or whether it is just always that everyone involved has corrupt intentions.

MR MZWANELE JIMMY MANYI: Well Chairperson I think we are fortunate that we

have a Commission to investigate corruption and state capture. For me this is the grand corruption and classical state capture where you have very intelligent people.

Everybody that is involved here are all graduates, typical VBS. Everybody here they are all intelligent educated people but somehow monies of government get lost and nobody takes accountability. People produce reports and that said they tick a box report is done but nobody is brought to book.

As we sit here now, Chairperson I am not aware of anybody that has really accounted for this thing. This report by National Treasury I must point out, Chairperson that it was made available on the 1st of November 2012 this report.

I had left GCIS in August. So it came out after I had left. So from where I sit I personally could not do anything about it because I was outside the public service or rather outside government.

So as to what happened since 2012 until now is the issue that people must respond to because that R64 million is a lot of money and I do know that with the R6 million – R7 million or so of GCIS there were certain court cases and the court also ruled that that procurement was also irregular and null and void and what have you.

So that is what the court even ruled in that matter and therefore GCIS had a duty to chase up that money from that service provider. So maybe the current leadership of GCIS must respond to where the process is in terms of that.

CHAIRPERSON: Thank you.

MR MZWANELE JIMMY MANYI: Now, Chairperson, before I then proceed I have been struggling also – that is why I also asked for condonation to submit my affidavit later. I have been struggling to get a lot of information from GCIS.

This report I have just referred to I want to place it on record I struggled to get it. In fact the acting CEO – acting DG of GCIS refused in writing to give me this report

and all that. I had to get the Minister – to appeal to the Minister to get this report.

If it was not for the Minister I would not have got this report. They had come up with all kinds of fancy footing about why I should not get this and so on and so on but when I pointed out to the Minister that this report contains a lot of fraudulent activities the Minister rose to the occasion and ordered them to give me this report.

Still as they were giving this report as you could see that they were doing it half-heartedly they gave the report and then they do not give the attachments that go with the report. I struggled to get the attachments for this report.

In fact some of the attachments I only got last night as I was coming here. Then they gave me the attachments of that report and I did not even get a chance to submit them to the team. They only came last night.

Now the important thing, Chairperson which I want to place on record in terms of that is that one of the attachments makes reference to a memo that was actually authored by Phumla herself. It is a pity that the team now will be disadvantaged because they do not have this but I will leave it here. Maybe we can deal with it on the 23rd or whatever.

But on this memo it is a very elaborate memo that talked to how we should procure – seeks to regularise the deviations of procuring bulk. Indeed to procure bulk buying is not your straightforward procurement. You need special dispensation.

Now this report, Chairperson, this memo sanitises everything that would have been procured from 2010 September somewhere to end of March. Now it so happens that all these shenanigans happened in that period.

Now with the memo here that the Bid Adjudication Committee says they quote all chapter and verse of the regulations they followed and what have you on the, that they followed in order to comply with regulations and everything else why we should

allow these deviation got submitted to me for noting. So I noted this and then they show a list of things of suppliers up to say 50 million suppliers that needed this kind of a deviation in there.

Now the interesting thing, Chairperson, about this submission and I wanted to go on record as Exhibit 26 on the actual National Treasury report is Exhibit 26. On this Exhibit 26 which I only got last night the list of companies that were needed to be excused the one was blanked out.

One of the companies was blacked out. Now I was very curious to say what is this blacking out now? I take this, Chairperson, to sunlight. You know outside you go into the sun and I looked at this carefully and I find that this R6,9 million is that company that has been blacked out.

Now I do not understand what kind of mischief is this as it were. That is it because now it is becoming clear to me that this report was a whitewash, this memo was a strategy to whitewash at some point when GCIS officials are asked to account they are going to bring this and say but no this was corrected.

Now this was done in March 2011 and I signed this thing in May 2011 and all that. Now when it came to my attention it came to me the recommendation to say the Bid Adjudication Committee has looked at the presentation, has endorsed. That is the words used, has endorsed and we want the COO to note.

Now, Chairperson, there are three things that you do when you sit in a position of authority in government. You approve, you decline, you note. So and that has got different levels of a scrutiny. When you are given something to approve you do not rush that thing. You sit down and you make sure that all the whistles and bells are where they should be and you either approve or decline.

When I am given something to note it is just for – it is a heads up that the

people with the appropriate mandate have actually approved the thing. You are just being kept in the loop. Just be aware that we are doing this.

So I got this thing to note but I see on the Treasury report they have noted my noting as ratification now which is another matter and by the way when National Treasury was interviewing the people that they were interviewing I was never interviewed by National Treasury.

I really thought that you know lawyers have got this thing, Chairperson that would know more than all of us here that *audi alteram partem* that surely I should have been given a right to respond. "Manyi why did you note this" or if they want to upgrade my noting to a ratification give me an opportunity. They did not even do that, but I – if it was not for this Commission I would not have known that in that report National Treasury has said I have ratified things, which I have not ratified. I noted this thing was approved by the Bid Adjudication Committee, but anyway.

I place it on record as a memo that is created in my view for posterity measures so that in future somebody says, no but this thing was – I mean the crime happened in January then we get this thing noted in May and no direct link to the activity in January. There is a host of transactions that are there. So if you are sitting as an Accounting Officer you do not know all of these projects that this one means this. You are just looking at the principle and the principle here that are presented with is a principle that says "CEO, we as the Bid Adjudication Committee were presented with this memo and things need to happen this way in terms of regulation this, in terms of circular this. As the Bid Adjudication Committee we are endorsing this. Please note." So I note, but somehow Treasury has upgraded that to a ratification. So I want to place on record that National Treasury I do not think they acted particularly correct in this regard, but I note in passing. I proceed Chairperson. One of the other thing I also

noted in the – in this arrangement with this Bid Adjudication Committee was something which I call conflict of interest whereby line managers that were responsible to issue tenders for various of their requirements would be the exact same physical beings. Same people that would be sitting at the Bid Adjudication Committee. So I had a problem with this that this is too much a conflict system.

So there is another reason I decided that no this is just so wrong. Line managers must not be in this Bid Adjudication Committee. Let me get people that do not run budgets, because Chairperson the main thing you do at the Bid Adjudication Committee is to oversee, is to oversee what the Bid Evaluation Committee would have done as it were. So the technical grind really happens at the bid evaluation level. At an adjudication level you check policies were correctly, processes were followed, it is an overseeing body as it were.

Now to find people that are overseeing projects of their call it acquaintances for lack of a better term because what happens Chairperson truth of the matter is that if you are running a particular line function you develop relationships with the various service providers. Now if you have developed these relationships with the various service providers and then again you, the same person, must sit and adjudicate with people that you have been very casual with. It is a problem for me at least. So I just thought that is another reason. Lastly Chairperson I also looked at the length of stay of these people in this Bid Adjudication Committee. You know Chairperson Phumla Williams has been in the Bid Adjudication Committee for 10 years. I cannot believe this. 10 years. Now if I look at the members of this, not only her, there is about at least three of them that were 10 years in this committee. Others were six years in this committee and all that.

So what we have here Chairperson you have people that have got no

freshness. People that are very vulnerable to corruption because everybody knows who is in the Bid Adjudication Committee. So understanding how corruption works in this country what better place to be than to be dealing with the place where you know exactly who is going to be in the Bid Adjudication Committee. So that was another reason that I thought no time for a change and all that.

So indeed Chairperson those were the reasons. I mean these people that had 10 years, five years in this Bid Adjudication Committee the splitting of invoices, the flouting of policies, the fraudulent activities happened under their watch with all the experience that they had here. So, yes, I just thought Chairperson that to dismantle this was the right thing to do, which even today I actually do not apologise for it. I think it was a right decision to do that and I must also just underline the fact that even the Chief Audit Executive was also mired into this division of corporate services. So, it was just terrible conflict. So I dismantled it. I proceed Chairperson to paragraph 16 of my presentation.

CHAIRPERSON: We are at about six or seven minutes to four. We normally stop at four.

MR MZWANELE JIMMY MANYI: Oh.

CHAIRPERSON: I am just wanting to check how long you think you still will be?

MR MZWANELE JIMMY MANYI: Okay Chairperson can you give me ...(intervenes).

CHAIRPERSON: I am not pushing you to unfairly cut you short.

MR MZWANELE JIMMY MANYI: Yes.

CHAIRPERSON: Of course on the 23rd you can always continue, but I am just checking and how much more time so that I can take a view now whether we should – what we should do.

MR MZWANELE JIMMY MANYI: I could finish by quarter past.

CHAIRPERSON: Okay that is fine.

MR MZWANELE JIMMY MANYI: Okay.

CHAIRPERSON: It is fine.

MR MZWANELE JIMMY MANYI: All right. All right Chairperson then I go to the issue around the issue of the Internal Auditor that Ms Williams queried that I changed the Internal Auditor that used to report to her, that I made a report, I made the Internal Auditor to report to me as the CEO. Chairperson I must say that I was not only astounded, but I was overwhelmingly disappointed to hear Ms Phumla Williams in the year 2018 still challenging a corrective action taken in 2011 to ensure proper governance on an issue that was actually a transgression since the inception of GCIS.

What are the facts Chairperson? In terms of the internal audit framework released by National Treasury in March 2009 the Chief Audit Executive must report functionally to the Audit Committee and administratively to the Accounting Officer of the organisation. This is what should be. So for me to come and change it in 2011 and Phumla challenging it in 2018 I really – I am astonished as to what actually is going on here.

Now Chairperson we are pressed for time. I will not go through other prescripts that support this except maybe just to mention also that National Treasury internal framework ...(intervenes).

CHAIRPERSON: I just want to say when – on the 23rd you could always fill in where you might not have filled in.

MR MZWANELE JIMMY MANYI: Okay.

CHAIRPERSON: If that is fine with you.

MR MZWANELE JIMMY MANYI: Alright.

CHAIRPERSON: Okay.

MR MZWANELE JIMMY MANYI: Okay Chairperson. I wanted to reserve 23rd for Mr Maleka's T and A and all others. I want to be ready for him for that.

CHAIRPERSON: Well ...(intervenes).

MR MZWANELE JIMMY MANYI: So I want to clean this up now and ...(intervenes).

CHAIRPERSON: Okay, no just continue. Let us see ...(intervenes).

MR MZWANELE JIMMY MANYI: Okay.

CHAIRPERSON: Let us see by quarter past how the situation is.

MR MZWANELE JIMMY MANYI: Okay. Okay, all right Chairperson quarter past.

CHAIRPERSON: Thank you. Yes.

MR MZWANELE JIMMY MANYI: Now Treasury regulations paragraph 3.2.9 state thus. An internal audit function must report directly to the Accounting Officer and it carries on like that. So Chairperson I want to say here that to have Phumla, Ms Williams, challenging that was really shocking for somebody that calls herself a governance person as it were. I proceed Chairperson to Exhibit 4, but before I do that Exhibit 4 I just want to drop off Exhibit 3 which shows the length of service of the Bid Adjudication Committee which I dismantled. They have got all the dates that are listed here. So the 10 years I am talking about is not me thumb sucking. I have got Exhibit 3 here, RA3, that is very clear.

CHAIRPERSON: Okay, okay that is at page 29 of the ...(intervenes).

MR MZWANELE JIMMY MANYI: Okay.

CHAIRPERSON: Of the bundle. Okay.

MR MZWANELE JIMMY MANYI: Right, now also then Chairperson I have got Exhibit 4 which are minutes of the GCIS MANCO that took place on the 1st of July 2011.

CHAIRPERSON: That is Exhibit RA4 at page 32.

MR MZWANELE JIMMY MANYI: Okay.

CHAIRPERSON: Yes, okay.

MR MZWANELE JIMMY MANYI: All right. Now that exhibit RA4 that took place on 01 July signed on the 22nd of July has recorded the approval of the change in the reporting line of the Chief Audit Executive from Deputy CEO corporate services which is Ms Williams to the Accounting Officer. Now the point I am raising here Chairperson is that it is not like I was just doing my own things without even taking them through processes. I took this thing to MANCO and Ms Williams in the minutes here of RA4 was present in that MANCO and the minutes which I was provided by GCIS recently nothing in this minute Chairperson show any objections from Ms Williams. Maybe we would have dealt with this thing in 2011, but she keeps quiet until 2018 and she raises and even the objection itself is irregular, even that objection, but be that as it may I just wanted to point out that on that RA 4 this thing was done above-board.

I proceed then Chairperson to go to some of the desktop researches that we have done to look at other departments. We looked at public enterprise on Exhibit 5 doing the same thing which is correct in terms of the auditor reporting to the CEO. I also looked at STATS SA on RA6, same thing. They are doing the right thing. We also looked at public service and administration Exhibit RA7, same thing and so on.

So one would have thought that maybe Phumla, Ms Williams would have been aware that what GCIS was doing was really out of order really. So I really want to say I really think her objection must really be dismissed as it were. It really has no substance. Now then we go to the issue of the chief directorate media buying that I also changed that – the reporting line to myself and again Chairperson the main reason for changing this reporting line was that some senior key officials of media buying were also implicated in this irregular tender. So I was just doing a real operational clean-up. Also the important thing is that this department was a department that was poised to

deal with billions of Rands of government media, advertising spend. Now the last thing you need is to have a department that has got to be dealing with these billions but you have some dodgy activities in there. So I needed to make sure that this thing is cleaned out and people that are – do not have the right ethics on matters be removed and all that. So that is what I did and so on Chairperson and I just think that even today I continue to be happy that I did the right thing.

Then Chairperson I then move to point out that, you know, in the oral testimony of Ms Williams she created the impression that – she created the impression here that the Chief Director was reporting directly to me and not through her. Now Chairperson on, on Exhibit RA8 I just show an organogram of the department and I show here on that organogram this division of media buying. On the extreme left is Mr Diphoko there Chief Director Advertising and Media Buying.

CHAIRPERSON: That is at page 39 on this – on the bundle.

MR MZWANELE JIMMY MANYI: Thank you. Thank you, Chair. Yes now the point here, Chairperson is that this was envisaged to be a branch of its own this thing so the impression given that there is this Chief Director that is undermining so to speak under Deputy CEO's and so on and reporting to the CEO.

It was actually false and misleading because this was envisaged to be in the – to be a separate branch of its own because this was a division that was going to handle billions and billions of Rands so it had its own focus, its own senior staff to deal with matters.

So that is it, Chairperson, that I just thought that that answer was really misleading.

CHAIRPERSON: But I am not sure that I follow. You mentioned that Ms Williams' evidence created the impression that the Chief Director concerned was reporting

directly to the DG or CEO so to speak skipping the level of Deputy DG.

MR MZWANELE JIMMY MANYI: Yes.

CHAIRPERSON: And I am not sure what you are saying. You are saying that the unit in which or Section in which the Chief Director was working was supposed to be on its own?

MR MZWANELE JIMMY MANYI: Yes.

CHAIRPERSON: I just want you to explain that.

MR MZWANELE JIMMY MANYI: Okay.

CHAIRPERSON: That whether on its own meant that it was not under any Deputy DG or what it meant?

MR MZWANELE JIMMY MANYI: Yes. There are two issues, Chairperson. You could have a Chief Director that is on branch A and that Chief Director on branch A for whatever reason reports to the CEO. Now in that case one would understand why a person would be aggrieved that a person that is my subordinate is reporting to the boss.

Now and this is the impression that was created I am arguing and therefore almost like they were undermined as deputies and CEO's and so on when that was not the case. This Chief Directorate on its own – the whole lot was moved to be a separate branch as it were.

We were in fact having an unfunded DDG position that we were still trying to get funding to have somebody at the DDG level to run this but in the meantime it was hired off on the side and it was reporting to the CEO not by passing anybody.

It was its own – it had its own line. So there is no ..(intervenes).

CHAIRPERSON: So I think your answer is she was factually correct, that is Ms Williams, in saying that the particular Chief Director was reporting to the CEO but what

you are saying is there was justification for that?

MR MZWANELE JIMMY MANYI: I am saying more, Chairperson.

CHAIRPERSON: Yes?

MR MZWANELE JIMMY MANYI: I am not saying ...(intervenes).

CHAIRPERSON: Or you are saying it – what was happening namely that Chief Director reporting to the CEO was permissible?

MR MZWANELE JIMMY MANYI: Yes.

CHAIRPERSON: Under certain circumstances?

MR MZWANELE JIMMY MANYI: Yes. Yes.

CHAIRPERSON: That is what you are saying?

MR MZWANELE JIMMY MANYI: That is what I am saying.

CHAIRPERSON: You are not denying that the Chief Director was reporting directly to the CEO?

MR MZWANELE JIMMY MANYI: Yes.

CHAIRPERSON: You are simply saying there was nothing wrong with it?

MR MZWANELE JIMMY MANYI: Yes. There is nothing wrong with it and also I am adding, Chairperson that to create the impression that you are undermining anybody else is wrong because it is not like you take a Chief Director that is currently on a particular line function and you make it report – make that person report to the CEO, you take the function and everybody gets explained that we are trying to build Communication Service Agency on this site.

So we are building this thing. The first building block is this Chief Directorate and in the meantime so that you guys because this was a new function to be internalised at GCIS. All these years it was outsourced and so on. It was now brought in-house. So we wanted this in-house function to be fully fledged as it were.

So it was hired off on the side. It was reporting directly to the CEO but the point I am making, Chairperson is that that on its own not only is it not wrong but it is wrong to interpret it to be undermining any of the other three people, the other deputies that had their own functions which was not this function. So that is the point I am making.

Okay and by the way I also – I also put – I also submit to this RA8 as well just to show because this was on the annual report. It is not like it was some blue eyed boy so to speak that was reporting. This was all above-board.

You cannot have this thing on an official organogram when you are doing your shady things behind the scenes. This was right there for everyone to see. The Minister signed on this annual report which had this thing and nobody questioned.

We presented this to parliament as is. We had four – it was the fourth program as it were so it was destined to have its own Deputy CEO this thing. So that is the point I am making and I think RA9 makes the same point as well. It continued even on 2012/13 to be like that as reflected on RA9 as it were.

Now, Chairperson I move on to some of the comments that Ms Williams made on the annual report of 2012/13 and I want to read just quickly. I know I am out of time but very quickly. She says in more than 10 years I have been with GCIS and this is all in the attachments here.

In the more than 10 years that – on Exhibit RA10 it is all there. She says;

“In more than 10 years I have been with GCIS the importance of functioning as a single unit whether as a department, a government communication system or government itself has never been clearer.”

Okay, so she acknowledges these things and then she says;

“During the year under review we restructured certain functions and

sought to work better as a single unit rather than a coalition of desperate Chief Directorates.”

She then further says;

“I am proud to say we have mostly achieved what we set out to do although a number of challenges remain.”

Now this is the sentiment I left at GCIS, Chairperson and Phumla or Ms Williams writes this in July 2013. I am long gone and but she still writes this thing. I do not know where the toxicity came in but this is the last I left. Everybody was happy with the changes that were made. Everybody was happy. There were no issues. This is also without pre-empting myself the reason what I thought when she was getting something wrong let me quickly correct her with that text because I understood us to be working well together and all of that.

I was surprised how she responded to that but be that as it may things happen. So I proceed then, Chairperson to Exhibit RA11 that it is worth noting that on page 47 of the 2012/13 annual report which is there on the pack as RA11 just some highlights of how – what did this division on its own being hired off what did it actually achieve. Four bullet points very quickly.

One, that this Communication Service Agency which has been hired off managed to bill something like R220 million in advertising placements with no audit comebacks for 24 national departments, five provincial departments and nine public entities under our roster. This was a well-oiled machine that we had put into place.

We had some 200 odd media buying campaigns and importantly through you, Chairperson, Mr Maleka R30.5 million was saved through this exercise. I know that on the 23rd Mr Maleka wants to ask some questions but I think we must note that with what we had done we saved R30.5 million.

All of this is in the attachment in the RA12 that – RA11 that I am referencing. So once again I say all the changes that were made as Phumla had put them there yielded very, very positive income – positive outcome as it were and therefore the objections once again must really be rejected as baseless.

On paragraph five – on paragraph 15 Chairperson of Ms Williams' testimony she talks with the issues of the new members that almost like you know the people that were replaced were almost like substandard so to speak in her submission. I argue – it is my contention, Chairperson that the pertinent details as regard to the calibre of the newly appointed professionals have been left out and thus creating a very misleading picture as it were. I think actually Ms Williams' demeanour during her oral testimony on the calibre of her own colleagues that demeanour really sought to undermine their capacity, their professional competence and experience which I found quite unfortunate and disturbing.

I am adding here, Chairperson that contrary also to Ms Phumla Williams' false response to a direct question by the Chair the Chair will remember that the Chair asked a question that were all the members of this Bid Committee people from GCIS or from outside and the answer was very direct that they were some were from outside.

She mentioned people from Labour, from Transport and so on. That was false, Chairperson. Everybody to the last person were all employees of GCIS. Now if by outside you mean the recently joined and so on then it should have been clearer because then it means then I am also from outside.

Then I do not know where you draw the line but from where I sit if you are one day at GCIS you are an employee of GCIS. You cannot have an answer where GCIS people, GCIS employees are deemed to be from outside the department yet these people have got employee numbers of GCIS. These are employees of GCIS all of

them as it were.

In fact of the four people that were there three of them were on MANCO because they Chief Directors as it were. So for her to say some people were from outside was really false truth of the matter. They were all employees of GCIS. Also, Chairperson part of the calibre of these people these were not some junior officials. These were all senior people, Director and above and by the way barring one of them three of them had Masters degrees, these people.

Now to then hold it against them that they do not have a five day training workshop of National Treasury these are Masters people and so on. Surely it is my contention, Chairperson that a person with a Masters level qualification should be able to familiarise themselves with what a five day workshop would have given them and the only thing that they really do not have is really a certificate of attendance but these people have got the wherewithal to be able to do this and again, Chairperson there was also on that space there was also a misleading response that Ms Williams gave.

The Chairperson asked another direct question. Chairperson asked did Mr Manyi remove everybody? Chairperson would remember this. Did Mr Manyi remove everybody and she said yes. What is the truth? The truth is that I removed the four people but – and the impression created and I think actually just to go back one step, Chairperson, I think the substance of the question was to establish whether there was continuity, whether there was any institutional memory preserved or was it just the blind leading the blind with the new people and the impression created was that yes it is just four people and the blind were leading the blind but the truth of the matter, Chairperson which is well explained in RA12 – Exhibit RA12, these people – yes it is all explained here in RA12 the people that were members of the Bid Adjudication Committee.

On RA12 you will see, Chairperson, that about three of the people that were here are technical advisors and so on. So the issue of totalling scores and all of that technical work there were at least three people that were part of the Procurement Team that were subject matter experts as it were but the impression created here was that it was all new people and what have you and all that. So I want to put it on record here, that, that was incorrect. And then towards the end Chairperson, it is almost quarter past – it is actually quarter past, towards the end Chairperson, I must also point out that paragraph 16 just to complete, Chairperson, quickly, paragraph 16 that I made people report the bid adjudication processes that everything must now report to me must be signed off by me it is actually not true.

And I must add that, Chairperson, that even if that were to be true it would not be irregular to require the Bid Adjudication Committee to have concurrence with the holder of the original power. In the public service when we have the original power that you have delegated, you have the right to use that power, nonetheless as it were.

But in this case, Chairperson, I had set the benchmark. I had said that 500 – up to 500 million – up to 500 000 the Bid Adjudication Committee can conclude. Anything above 500 must get concurrence as it were, and this was because I had already seen what had happened, so I did not want any more surprises as it is.

And I think, Chairperson, one thing that the evidence leader, I was hoping would ask at the time is that after Manyi had changed all this bid adjudication all of this, what the happened and all that. So that we can then see after all of this change was corruption enabled, was corruption stopped? And telling this now Chair that the system that are put in place there is really paying dividends. In fact the Chairperson that I left there is still the Chairperson of that Bid Adjudication Committee doing a great job.

There has never been ...(intervenes).

CHAIRPERSON: Is he approaching 10 years as well?

MR MZNANELE JIMMY MANYI: That is it, Chairperson, this is another problem. I think somebody needs to deal with that, Chairperson. I think he has been there too long as well and all that. So, Chairperson as I close I go to the SMS text that I sent and as I do that, Chairperson I want to ask the Chair to just look at RA9. RA9 is the organogram of the annual report 2012/2013.

If you – and I think – yes, if you go to that, Chairperson, you will find what was happening. So just have it handy, Chairperson. So the point I want to make, Chairperson, is that in conclusion is that the Evidence Leader, Ms Hoffman in my view had already done – was already done with the issues that pertained to me.

Now I quote her verbatim where she says:

"We are now going to move onto a new topic."

This is what she says, this is on page 5:

"Ms Williams you begin on paragraph 17..."

And she goes on and all that. Now and then she begins to ask her about what other changes were brought in and so on. And then Ms Williams started to go on about what the Chief Financial Officer was bullying the Procurement Team and all that and all that. At that point and then fortunately she asked her again, as to who was bullying the people and she mentioned that it was Mr Zuli Mumeka and so on.

At that point I knew exactly that that is when I was not there. So I then without understanding, Chairperson, I am not a lawyer, without understanding the legalities I thought my colleague has just forgotten the chronology. During break, in good faith, Chairperson, let me just call her to say when you go back can you just find a way of ensuring that you correct this chronology and so on?

That is all I asked for and I even asked Mr Mabunda to say Mr Mabunda you are not sitting very far from the Evidence Leader, just get her to even ask the question whether I was at – just to – because I just thought Chairperson we are here in this Commission to tell the truth and nothing but the truth. So if I am saying something that something is wrong and I have an opportunity to correct it on real time and the importance of this real time, Chairperson, is this.

We have got media sitting at the back. Now media takes everything, real time, they tweet it, they do all kinds of things with it and the importance of that is that other people make decisions based on what media is saying. One of the institutions that relies on media reports are the banks.

The banks are busy guarding their reputations, rightly so. Take a lot of the input of the media, so I just thought I had a duty to make sure that the media must report that which is right, but at the same time let us not create a thing here that Manyi did this, which he did not do.

CHAIRPERSON: You were not saying she must change what she believed was the truth, you were simply – you believed that she was mistaken and you wanted to help her to remember the exact position?

MR MZNANELE JIMMY MANYI: Yes, correct, Chairperson, in fact I wanted her to contextualise it so that – because she was talking about the epochs of various people that she was interacting with and so on. This was too close to when she was talking about me and so on. Now she moves onto another era without saying the Captain had changed and so on.

So somebody is sitting there, must say, wow, this Manyi, he must have been something, you know. So I wanted that, the record to be set straight so that we do not create a wrong impression, that was all in good faith. And I point out, Chairperson, on

this RA9 with this report that it is written here that the CFO resigned in 2012 and was replaced by Mr Maumeka in April 2013.

Now I left in August 2012. So Mr Maumeka starts in 2013. So anything that has got Mr Maumeka in it I have nothing to do with.

CHAIRPERSON: It will exclude you?

MR MZNANELE JIMMY MANYI: It excludes me. That is the only point I really was trying to say can she just make sure that the record is corrected.

CHAIRPERSON: Okay.

MR MZNANELE JIMMY MANYI: Yes. Thank you, Chairperson, I think I have ...(intervenes).

CHAIRPERSON: You have covered ...(intervenes).

MR MZNANELE JIMMY MANYI: I think I have covered what I needed to cover.

CHAIRPERSON: Okay, no, thank you. If there is anything that you have not covered, I know that you said that you wanted to reserve the 23rd for other matters that Mr Maleka mentioned, but if there is anything that you have not covered I will give you an opportunity on the 23rd to cover it.

MR MZNANELE JIMMY MANYI: Okay, thank you, Chairperson, I appreciate, but also, Chairperson, I must just make this point, that the questions – I am ready for any questions, but I want to encourage Mr Maleka to stick within the rules and regulations and that is that for all the 3.3 issues that had been raised – were ruled 3.3 matters that have been raised before me, I have got one outstanding which I got last night, but all others I filed an affidavit.

Now on all those that I filed – on all those which an affidavit has been filed I have not asked to cross-examine anyone. Now I am getting the sense that – I am getting the sense that Mr Maleka is itching to cross-examine me now. I may be wrong,

but not that I am running away from any cross-examination, but I will understand what is the basis of that when I have not asked for cross-examining anyone for that matter.

But I am happy to take anything fresh, but I must have clear allegations made and so on, but I do not want to get to a situation where people break the rules.

CHAIRPERSON: Well you can rest assured that the bottom line will be that everybody will be treated fairly.

MR MZNANELE JIMMY MANYI: Thank you.

CHAIRPERSON: But I must just say that the mere fact that you may not have applied for leave to cross-examine anybody, does not on its own preclude Mr Maleka or any member of the Legal Team to ask you questions on whatever they may want to ask you on. But the way the process happens is that you will have been aware of the matters on which you will be – you are implicated. You will have been aware and the Legal Team will not do anything to have a situation where you are here, but you cannot really give answers, because you are taken by surprise.

MR MZNANELE JIMMY MANYI: Yes.

CHAIRPERSON: So there will be fairness in that regard.

MR MZNANELE JIMMY MANYI: Thank you, Chair.

CHAIRPERSON: Thank you very much for coming to give your evidence. We will still see you on the 23rd, but thank you very much for coming forward. For now you are excused.

MR MZNANELE JIMMY MANYI: Thank you, Chair.

CHAIRPERSON: Thank you. Mr Maleka I think this is the time for us to adjourn? We will resume tomorrow for two or so applications that I need to deal with, but we will not have any witness' giving evidence tomorrow. And what will happen on Friday will be announced once I have dealt with the two applications. We adjourn.

HEARING ADJOURNS

TRANSCRIBER'S CERTIFICATE FOR COMMISSION OF INQUIRY

INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

DATE HELD : 2018-11-14

DAY: : 23

TRANSCRIBERS : E. KOEKEMOER, C. SWART,

M. BOCCHIO, E BOUWER

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